



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.11.2020

Pronounced on: 01.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1463 of 2010

C.Raja,  
S/o.Chinnapaiyan,  
Panniyanoor Village,  
Tiruvannamalai Taluk,  
Tiruvannamalai District.

...Appellant/Appellant/Defendant

/versus/

C.Venugopal,  
S/o.Chinnathambi,  
Panniyanoor Village,  
Tiruvannamalai Taluk,  
Tiruvannamalai District.

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C, praying against the judgment and decree of the Learned Additional Subordinate Judge, Tiruvannamalai in A.S.No.18 of 2009 dated 14.07.2010 confirming the judgment and decree of the Learned Principal District Munsif, Tiruvannamalai in O.S.No.423 of 2006 dated 31.10.2007.

For Appellants : Ms.J.Prithivi,  
for Mr.S.Kaithamalai Kumaran

For Respondent : Mr.Dilli Kumar,  
for Mr.G.Rajan

J U D G M E N T

(The case has been heard through video conference)

The concurrent findings of the Courts below is under challenged in this Second Appeal.

2. The aggrieved defendant is the appellant herein. The suit is filed for permanent injunction with the averment that the suit property was purchased by the plaintiff on 26.05.2004 from K.Nallthambi and his brother K.Veerappan and got it duly registered. It is the ancestral property of the vendors. The defendant is the younger brother of the plaintiff. He wished to buy that property but could not buy it due to his financial constrains. Since, the plaintiff purchased it,



misunderstanding between them cropped up and due to the grudge, the defendant has created a document of sale dated 04.08.2004 as though Nallathambi, his brother Veerappan along with their children sold the suit property to him. It is a void document since executed by persons, who had no right over it. However, based on the said void document, the defendant is attempting to obstruct the peaceful possession of the plaintiff and also trying to get patta in his name. Fearing threat of dispossession, relief of permanent injunction restraining the defendant and his men and agents as prayed for.

3. The suit resisted by the defendant with the averment that the sale dated 26.05.2004 and the alleged possession by the plaintiff is false and denied. The sale deed dated 04.08.2004 in favour of the defendant, executed by his vendors is genuine and not a void document as pleaded. In fact, the defendant entered into a sale agreement in respect of the suit property on 12.08.2001 with Nallathambi and Verrappan. The agreement was entered by Nallathambi and Veerappan for themselves and on behalf of their children. Out of Rs.70,000/- fixed as sale consideration, advance of Rs.20,000/- paid on that day and agreed to complete the contract within three years period. After receiving the balance sale consideration of Rs.50,000/- on 04.08.2004 Nallathambi and Veerappan for themselves and their respective children executed sale deed and the possession was handed over to the defendant. Since, the date of purchase, the possession is with him. He is paying kist for the property and he has transferred the Electric service connection in his name. The sale deed dated 26.05.2004 relied by the plaintiff is a false document a creation of the plaintiff.

4. The Trial Court framed the following issues:

1). Whether the plaintiff is entitled for the relief of permanent injunction?

2). What relief the plaintiff is entitled for?

5. The plaintiff mounted the witness box and examined as P.W-1. The sale deed dated 26.05.2004 in the name of plaintiff, the sale deed dated 04.08.2004 in the name of the defendant, Legal notice dated 21.11.2005 issued to the defendant and the postal acknowledgment card are the documents relied by the plaintiff marked as Ex.A-1 to Ex.A-4 respectively.

6. The defendant, Nallathambi, Veerappan and Jaiker were examined as D.W-1 to D.W-4. The sale agreement dated 12.08.2001, communication from TNEB dated 18.10.2003 and sale deed dated 04.08.2004 in the name of defendant were marked as Ex.B-1 to Ex.B-4.

7. The Trial Court, after analyzing the oral and documentary evidence, held that the registered sale deed in



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favour of the plaintiff is prior in point of time. The defendant rely upon the sale agreement dated 12.08.2001 marked as Ex.B-1 to prove his agreement is prior to the sale to the plaintiff. However, the scrutiny of Ex.B-1 reveals the stamp paper released for sale from Treasury on 12.09.1995, the same vendor name is shown as Venugopal of Ulundurpet. He has sold the stamp on 06.07.1999. The agreement being an unregistered document, the claim of the defendant that he was the first agreement holder based on this document is doubtful. The evidence of D.W-2 and D.W-3 that they were forcible taken to the Registrar Office by the plaintiff and got Ex.A-1 deed dated 26.05.2004 disbelieved by the Trial Court in view of the fact elicited during the cross examination of these two witnesses. D.W-2 an Ex-service man had produced his identity card before Sub-Registrar voluntarily and executed the document. Both D.W-2 and D.W-3 never protested at the time of registration or thereafter. The letter from TNEB marked as Ex.B-2 was found to be prior to Ex.B-3 and it is in respect of transfer of service connection name. This document have no relevancy to the fact in issue. In the result, the Trial Court decreed the suit. The Trial Court judgment and decree passed in O.S.No.423 of 2006 was appealed before the First Appellate Court in A.S.No.18 of 2009 before the Additional Sub-Court, Tiruvannamalai.

8. The First Appellate Court re-appreciated the facts and evidence confirmed the Trial Court judgment and decree. It held that, D.W-2 and D.W-3 had voluntarily gone to the Sub-Registrar Office in an Auto and executed the sale deed in favour of the plaintiff with consent. They have handed over the parent document to the plaintiff on executing the sale deed. They never protested or challenged the validity of that sale deed. The contention raised in this Appeal that, the Trial Court ought not to have gone into the issue of title in the suit for permanent injunction simpliciter and when there is dispute regarding title bare injunction suit not maintainable, was negatived by the First Appellate Court.

9. The learned counsel for the appellant submitted that when the suit is for bare injunction based on possession, the Trial Court failed to frame issue regarding possession. Beyond the scope of the pleadings, it erred by embarking upon an enquiry regarding title to the suit property. In the absence of evidence to prove possession with the plaintiff, the Trial Court ought not to have relied on the self serving deposition of P.W-1. When the D.W-2 and D.W-3 who are the vendors of the plaintiff had deposed that they have not given possession of the property to the plaintiff, the Courts below ought not to have disbelieved their evidence. The Courts below gravely erred in not following the well laid dictum of the Higher Courts that when there is cloud upon the title, suit for injunction simpliciter is not maintainable.



10. The Learned Counsel for the respondent submitted that, the Courts below were forced to look into the title since the Appellant tried to set up a title upon himself based on a fabricated void document. The property is vacant dry agricultural land. The possession goes with title. The Courts below, after pointing out the fabrication in the sale agreement and the date of sale deed Ex.B-3=Ex.A-2 held that the plaintiff sale deed is prior to the defendant and D.W-2 and D.W-3 after alienating the property, had assisted the defendant for creating the documents Ex.B-1 and Ex.B-3.

11. In a suit for permanent injunction, the Court has to find out the party in possession. The question of title is only incidental. It is also well settled principle of law that in case of vacant land possession follows title. It is the burden of the plaintiff to prove possession. In this case, the sale in favour of the plaintiff is on 26.05.2004. The defendant through D.W-2 and D.W-3, the vendors of the plaintiff has tried to project that the said sale deed was obtained under threat and coercion. The validity of the execution of Ex.A-1 never been challenged before any authority. The element of threat or coercion while executing Ex.A-1 not proved. Hence, the sale under Ex.A-1 deemed to be valid. When Ex.A-1 is held to validly executed deed, then the D.W-2 and D.W-3 have no right or title to convey subsequently under Ex.B-3 dated 04.08.2004. The Courts below were forced to look into the title documents for the simple reason that neither of the parties have produced any other document except these two documents to possession. Ex.B-4 is a communication from TNEB in connection with service connection in the common well and nothing to say about the possession.

12. Probably for two reasons, parties were not able to produce any documents relating to possession. (i). the land is barren and not under cultivation. (ii), soon after Ex.A-1 and Ex.B-3 came into existence, the dispute also started so neither of them are in possession.

13. Both the plaintiff and the defendant claim their right of title and possession through Nallathambi and Veerappan. Ex.A-1 sale deed is dated 26.05.2004. Ex.A-2 (certified copy)=Ex.B-3(original) sale deed is dated 04.08.2004. The sale agreement Ex.B-1 dated 12.08.2001 is doubted to be a anti dated document fabricated for the purpose to show as if, the defendant was the agreement holder prior to the sale to the plaintiff. In view of the date of the release of the stamp paper on which the agreement written, the date of the sale of the stamp paper, the place of the stamp vendor and the date of the agreement only leads to the inference Ex.B-1 a doubtful document. Using of the stamp paper of the year 1995, purchased in the year 1999 from Ulundurpet, a place far away from the residence of the parties for the agreement purported to have



executed on 12.08.2001 naturally draw suspicion about its genuineness. Even assuming the said agreement is validly executed on the date it bears, the agreement holder cannot have a title over the property until the sale is concluded.

14. The common vendors for the plaintiff and the defendant without any compunction had executed the second sale deed Ex.A-2=Ex.B-3 in respect of the suit property and deposed on oath that Ex.A-1 was obtained by force and coercion. The Hon'ble Supreme Court in Ananthula Sudhakar -vs- V.P.Buchi Reddy reported in AIR 2008 SC 2033, had answered the question under consideration as under: -

"The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title."



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17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:-

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.



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(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

15. The facts of the case in hand falls under the category (d). The parties, in their pleadings have disclosed the source of their title. The vendors, who have executed the sale deed to them had deposed before the Court as D.W-2 and D.W-3. The plaintiff, who hold the sale deed prior in point of time, deemed to have clear title over the property as long their vendors not challenged the validity of Ex.A-1. As far as possession, being a vacant land, the possession follows title. Therefore, this Court holds that the relief for declaration is not necessary since the defendant is merely a meddler wrongfully claiming title with intend to encroach upon the property in connivance with the erstwhile owners.

16. In the result, the Second Appeal is dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

Bsm



To:

1.The Subordinate Judge,  
Tiruvannamalai.

2.The Principal District Munsif,  
Tiruvannamalai.

3.The Section Officer,  
V.R.Section, High Court, Madras.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No. 38366

+1cc to Mr.Kaithamalaikumaran, Advocate, S.R.No.38479

S.A.No.1463 of 2010

CNR(CO)  
GN(19/08/2021)