



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :09.12.2020

Pronounced on :16.12.2020

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.1622 of 2010

and

M.P.No.1 of 2011

Theniammal

W/o Picha gounder

Rep.by her power of Attorney

Agent Sadayan

Panchapallathuvalavu,

Thekkampattu Village,

Karumandurai Via.,

Vadakkunadu,

Chinnakalrayan Malai,

Attur Taluk,

Salem District.

... Appellant /Plaintiff

/versus/

Thenan

...Respondent /Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.08.2008 in A.S.No.6 of 2008 on the file of the Sub Court, Attur, reversing the judgment and decree dated 28.01.2008 in O.S.No.413 of 1999 on the file of the District Munsif Court, Attur.

For Appellant :Mr.Jagadeesan

For Respondent :Ms.J.Prithivi for
Mr.S.Kaithamalai Kumaran

JUDGMENT

(The case has been heard through video conference)

The original suit filed for permanent injunction by the appellant herein was allowed by the trial Court, but reversed in the appeal. The second appeal is filed against the reversing judgment of the first appellate Court.



2.The case of the Appellant/plaintiff:

The suit property comprised in S.No.279/5 of Vadakunadu Pacchapolathivalivu Village, Chinnakalvarayan hills. Theertha Gounder was the owner of the suit property. From him, the plaintiff Theniammal, W/o Pictha gounder purchased 2.06 acres of land out of 1.48.5 hactre with specific boundaries, vide the sale deed Ex.A-1 dated 13/08/1984. The sale deed was executed by Theertha Gounder on his behalf and on behalf of his 7 years old minor son Palani. From the date of purchase, the suit property is in possession and enjoyment of the plaintiff. The remaining land in the said survey number is in possession of the defendant. For the land in possession of the plaintiff, all revenue records are in the name of the plaintiff. Patta Ex.A-2, chitta Ex.A-3, Adangals Ex.A-5 to Ex.A-7 and kist receipts Ex.A-8 prove her possession of the suit land. The defendant, who failed in the attempt to purchase the land from Theertha gounder, giving pinprick to the plaintiff's possession and enjoyment. On 04/12/1999, the defendant attempted to trespass into the suit land with an intention to damage the crops and dispossess the plaintiff. Hence, the suit to restrain the defendant and his men from in anyway trespass into the suit property by way of permanent injunction.

3.The case of the defendant:

The alleged sale deed Ex.A-1 is not true and genuine. Theertha Gounder the vendor of the plaintiff had no title or alienable right upon the suit property, after selling AC 1.85 cents in the property at S.No.279/5 to Karian and Vadamalai on 10/07/1975, without retaining any portion of the land in the said survey number. The said Karian and Vadamalai, who purchased a total extent of 2.00 acres (AC 1.85 in S.No.279/5 and 0.15 cents in S.No. 279/8) under the sale deed Ex.B-2 on 10/07/1975, sold the entire 2.00 acres to one Arumugam under sale deed dated 28/01/1977. Arumugam in turn sold away the property to Chinnadurai, the father of the defendant, under the sale deed dated 03/12/1984 vide Ex B-3. Thus, the defendant is in possession of the entire extent of the suit property and other portion in the said survey number. He has dealt the property absolutely. He sold a portion of the property to one Ramasamy, who inturn sold it to one Sankaran. He has encumbered the property to one Soundararajan. While so, to grab the property, the plaintiff and Theerthan conspired and had created Ex.A-1 in the year 1984 and had approached the court with unclean hands based on certain fabricated revenue records.



4.The trial Court, on considering the pleadings and evidence held that PW-1 has clearly deposed that the total extent of land in S.No.279/5 is 3 acres 66 cents. Theertha Gounder, after selling 2.00 acres of land together in S.No.279/5 and 279/8 to Kariya Gounder and Vadamalai in the year 1975, the balance land measuring 2.06 acres in S.No 279/5 was sold to Theniammal (plaintiff) in the year 1984 and she had perfect title over the 2.06 acres of land hence entitled for the relief of injunction.

5.On appeal to the first appellate Court, factual error and improper appreciation of the evidence was alleged by the defendant and the same was accepted by the first appellate Court. Hence, the trial court judgment was reversed, resulting in dismissal of the suit for injunction.

6.In the second appeal, the learned counsel for the appellant submitted that, the trial Court had rightly granted the relief of permanent injunction, after proper appreciation of the four boundaries found in the respective title documents and based on the deposition of PW-1 to PW-3. The continuous possession of the suit property through patta Ex.A-2 , chitta Ex.A-3 and Adangal Extracts Ex.A-3 to Ex.A-7 along with kist receipts Ex.A-8 not been properly appreciated by the lower appellate Court. The deposition of the defendant admitting the fact that the land of the defendant is on the North Eastern side and the land of the plaintiff is on the South Western side in S.No.279/5. Therefore, the defendant has no right to claim right over the suit property. This fact is not considered by the lower appellate Court. Under Ex.B-2, the vendor of the defendant's father purchased only 1.60 AC of land in S.No.279/5. While so in the remaining portion of the land in S.No.279/5 measuring a total extent of 3.66 acres, the defendant cannot have any right.

7.The learned counsel for the appellant pleaded to formulate the following Substantial Questions of Law and answer them in affirmative.

1.Whether or not the findings of the lower appellate Court that the plaintiff has not proved her possession of the suit property, without properly appreciating the valid oral and documentary evidences adduced by the plaintiff/appellant are totally unsustainable and perverse in law?



WEB COPY

2. Whether or not finding of the lower appellate Court that the suit for permanent injunction is not maintainable without seeking for the relief of declaration of title to the suit property are erroneous and unsustainable in law?

3. In any event, even assuming without admitting that the vendor of the appellant retained only an extent of 1.81 ac in S.C.No.279/5 and the appellant purchased the same under Ex.A1, is she not entitled to get a decree for the said extent of land in the suit property?

8. In response, the learned counsel for the respondent submitted that Theertha Gounder sold 2.00 acres of his land comprised in S.No.279/5 and 279/8 to Karian and Vadamalai, as early as 1975. They are the predecessors in title to the respondent. In the said sale deed Ex.B-2, it is clearly mentioned that the total 2.00 acres of land lay in S.No.279/5 (AC 1.85) and in S.No.279/8 (AC 0.15). After selling 1.85 AC to Karian and Vadamalai in S.No.279/5, Theertha Gounder had no property left in S.No.279/5. This fact could be easily seen from the recital and four boundaries of the property mentioned in Ex.B-2.

9. The vendor of the appellant, Theertha Gounder had not mentioned in the sale deed Ex.B-2 that he is retaining land in S.No.279/5 after alienating 1.85 AC. If he had any land remain with him, in Ex.B-2, while describing the boundaries of the property sold, the land retained, if any would have been mentioned as one of the boundary. When Theertha Gounder had no land left in S.No.279/5 to alienate, Ex.A-1 which came into existence after 9 years will not confer any title to the appellant. Further when there is cloud over the title and extent of property, the suit for bare injunction is not maintainable. The lower appellate Court after analysing the exhibits relied by the appellant including the patta and chitta rightly concluded that these revenue documents neither proves title nor the possession of the suit property.

10. This Court carefully perused the evidence, in the light of the submissions made by the learned counsels. The facts unravel from examination of evidence is that both the contesting parties accepted that they derive title from Theertha gounder and he was their prior title holder. The extent of S.No. 279/5 is 1.48.5 hactre which is equal to 3.66 AC. The sale deed dated 10/07/1975 - Ex.B-2 is the earliest registered document in this



case. Under this sale deed, Theertha Gounder has sold land totally measuring 2 acres to Kariyan and Vadamalai. Both in the recital as well as in the statement annexed to the sale deed, the measurement of land conveyed in two different survey numbers are clearly mentioned. From the recital, without any doubt, one can understand that in the year 1975, Theertha Gounder has sold 1.85 cents in S.No.279/5 and 0.15 cents in S.No.279/8. The total extent in S.No.279/5 is AC 3.66. Even assuming that the rest of the land in S.No.279/5 was retained by Theertha Gounder though it is neither explicitly mentioned in the sale deed Ex.B-2 nor any proof to infer that the balance land in S.No.279/5 remind with Theertha Gounder, the alienable right of Theertha Gounder in S.No.279/5 after 10/07/1975 at the most can only be 1.81 cents. He could not have alienated 2.06 acres of land in 1984 to the plaintiff. So it is doubtlessly established that when Theertha Gounder executed Ex A-1 in favour of the appellant, he had no title for 2.06 acres.

11.The learned counsel for the appellant submitted that, in such event, for the extent of 1.81 AC which the Theertha Gounder had alienable right, the appellant is entitled for permanent injunction.

12.This Court have no hesitation in rejecting the said plea. This is a suit for permanent injunction. In the plaint, it is specifically pleaded that as per Ex.A-1, land measuring 2.06 acres is in possession and enjoyment of the appellant. The first appellate Court has gone into the issue of possession and had held against the appellant. The three witnesses deposed in favour of the appellant and 9 documents exhibited on behalf of the appellant does not probablise the case of the appellant in respect of their possession.

13.From the incidental discussion on the respective title document for collateral purpose, no doubt there is an indication that after selling 1.85 acres out of 3.66 acres, Theertha Gounder might have had 1.81 acres in S.No. 279/5. This is only a presumption and not a conclusive proof. Unless there is a plea and all the stake holders are before the Court, the issue of title cannot be decided. It is also pertinent to note that in the written statement itself, the respondents herein have pleaded that the suit is bad for non-joinder of necessary parties. The trial Court also framed a issue in this regard and held that in the suit for injunction, the other pattadars are not necessary parties. The appellant having failed to seek declaratory relief and having failed to identify the portion of the land in her actual possession by getting an Advocate



Commissioner appointed to note the physical feature, at the second appeal stage, the injunction relief restricting to 1.81 acres cannot be entertained.

WEB COPY

14. Now, coming to the patta Ex.A-2 which is heavily relied by the learned counsel for the appellant, this Court find that it is a joint patta in the name of plaintiff and two others. The patta Number is 2618 for the S.No.279/5 measuring 1.48.5 hectre (equal to 3.66 AC). Who are the two others and how much land in 3.66 acres each one of them hold are not mentioned in Ex.A-2 patta. In the chitta Ex.A-3, this Court finds against the name of the appellant '2.06' is written within bracket. The chitta is for patta No.498 and there is no entry regarding the pasali year in this chitta. As far as the adangal marked as Ex.A-4 to Ex.A-7, it is in the name of Theerthan, who is the common predecessor for the parties. The kist receipts Ex.A-8 is for patta No. 498 and it is in the name of the appellant but does not indicate the extent of land in patta No.498. For all these reasons, the first appellate Court has allowed the appeal and consequentially dismissed the suit for permanent injunction.

15. The trial Court had failed to examine the documents properly. Instead it has given credence to the oral evidence of the witnesses, which are self serving and substantially contradictory to the documentary evidence. The trial Court has also failed to see the embellishments in the oral evidence about the facts not pleaded. The first appellate Court, on proper appreciation of evidence, has rightly held that when there is doubt about the title, lay and extent, the suit for injunction without declaration of title, is unsustainable.

16. It is well settled preposition of law that when there is genuine cloud over the title, bare injunction suit is not sustainable. Party, who seek relief of permanent injunction, should not only prove the possession also the extent and lay of the property in possession are essentially to be proved. In this case, there is doubt about the actual extent of land left over to the vendor (Theertha Gounder) of the appellant in S.No.179/5, when he executed Ex.A-1 in favour of the appellant. The error in the trial Court judgment has caused, due to mismatching of the boundaries, while analysing the boundaries shown in the document and as deposed in the oral evidence of the parties. Further, the trial Court has also erred in deciding the case, based on the lacuna in the respondent's case.



17.The finding of the first appellate Court reversing the trial Court judgment is, therefore, factually and legally appropriate. The Substantial Questions of Law raised by the appellant is answered in negative.

WEB COPY

18.In the result, the Second Appeal is dismissed. The judgment and decree of the first appellate Court is confirmed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ari
To:

1.The Sub Court,
Attur.

2.The District Munsif Court,
Attur.

Copy to

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

+lcc to Mr.S.Kaithamalai Kumaran, Advocate Sr.41464
+lcc to Mr.P.Jagadeesan, Advocate Sr.41362 [20/09/2021]

S.A.No.1622 of 2010
and
M.P.No.1 of 2011

pa[co]
srg 26/08/2021