



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 18.12.2019

Delivered on: 07.01.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.841 of 2013
and
M.P.Nos.1 & 2 of 2013

V.Pankaj ...Appellant/ Appellant/Defendant
vs.

S.Gopalakrishnan ... Respondent/Respondent/Plaintiff

Second Appeal is filed against the judgement and decree dated 19.06.2013 passed by the Principal Subordinate Judge, Tindivanam, A.S.No.38 of 2012 confirming the judgement and decree dated 17.04.2012 passed by the Additional District Munsif, Tindivanam, in O.S.No.241 of 2005.

For appellant :: M/s.N.Mala

For Respondent :: Mr.A.K.Kumaraswamy, Senior counsel
for
M/s.S.Kaithamalai Kumaran

JUDGEMENT

This second appeal is filed by the defendant in the suit as against the judgement and decree, dated 19.06.2013, passed by the Principal Subordinate Judge, Tindivanam, in A.S.No.38 of 2012, confirming the judgement and decree, dated 17.04.2012, passed by the Additional District Munsif, Tindivanam, in O.S.No.241 of 2005, which was one for permanent injunction.

2.The Appellant herein is the defendant and the respondent is the plaintiff in the suit. The respondent/plaintiff had approached the trial Court and filed O.S.No.241 of 2005, seeking for bare injunction, restraining the defendant, who is the appellant herein and his men and servants from in any manner interfering with his peaceful possession and enjoyment of the suit property.



3. According to the respondent/plaintiff, the suit scheduled property was purchased by him on 15.07.1988, under Ex.A2, from one Mr. Gopalakrishnan Chettiar, the vendor. The said Gopalakrishnan came into possession of the suit scheduled property as early as in 1976, through family settlement, dated 24.07.1976, called 'Coor chit', wherein, the properties were divided among the family members and the said Gopalakrishnan, being one of the family members, was given a portion of the properties under the said settlement. Thereafter, he sold the property to the present plaintiff on 15.07.1988. The family settlement, dated 24.07.1976, was an unstamped and unregistered document. According to the plaintiff, when the family settlement was effected in 1976, the same was acted upon and the parties had come into possession of their respective properties allotted to them. In any event, according to the plaintiff, he had purchased the property, on 15.07.1988, through a registered sale deed Ex.A2 from the vendor Gopalakrishnan and was in continuous possession and enjoyment of the suit Scheduled property.

4. According to the plaintiff, originally the property contained a superstructure and that was mortgaged by the plaintiff to one Senthil, on 29.09.1988. Subsequently, the superstructure was demolished and the suit scheduled property had become vacant. During some time in 1988, the plaintiff was asked by the father of the defendant to sell back the property, since that was not agreed to, an attempt was made to disturb the possession of the property by the plaintiff. In fact, a suit was filed in O.S.No.157 of 1998 on the file of Sub Court, Tindivanam, by one Lakshmikanthammal, who was original title holder of the property, from whom, the property devolved upon Gopalakrishnan Chettiar, the vendor of the plaintiff. The suit was for declaration of title and recovery of possession. However, the suit was finally dismissed for non-prosecution on 08.01.2004 and thereafter, the suit was not pursued at all, by either Lakshmikanthammal or anyone on her behalf.

5. In the above circumstances, in order to protect his possession and enjoyment, the respondent herein, as plaintiff, has approached the civil Court seeking for permanent injunction, which suit is the subject matter of the present Second Appeal.

6. A written statement was filed on behalf of the appellant/defendant stating that the family settlement entered into in 1976 was an invalid settlement and the same cannot be relied upon, as it was an unstamped and unregistered document and also it was not acted upon by the parties. According to the defendant the said Gopalakrishnan had no title and therefore, his conveyance to the plaintiff had not conferred any title to the plaintiff.



7. After advertenting to various materials and evidence and also the pleadings, the trial Court has passed the judgement on 17.04.2012, granting the prayer of injunction, as sought by the plaintiff. While granting injunction, the trial Court has clearly reasoned that even though there was a cloud created as to the title of the plaintiff over the suit property, yet the possession was proved beyond any doubt and ultimately, granted the relief. In fact, the trial Court in extenso has relied on a decision of the Hon'ble Supreme Court of India in the case of Rame Gowda(D) by Lrs. vs. M.Varadappa Naidu (D) by Lrs. And another[2004(1) SCC 769]. The trial Court had in fact extensively extracted the legal principle enunciated by the Hon'ble Supreme Court of India and held that even a trespasser is entitled to the protection of possession even as against the true owner. Moreover, in this case, the title was being disputed and also in the absence of title on the part of the defendant, the crucial issue to be decided is only in regard to possession. Since the plaintiff had proved the continuous possession, notwithstanding the fact whether the plaintiff had title to the suit property or not, his possession was required to be protected and hence, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the said judgement and decree of the trial Court, the defendant preferred an appeal before the lower appellate Court in A.S.No.38 of 2012.

8. The appellate Court, after going through the materials and the judgement of the trial Court, has dismissed the appeal on 19.06.2013. The lower appellate Court has accepted the reasons and findings adopted by the trial Court in full and confirmed the judgement and decree of the trial Court. In fact, the lower appellate Court has agreed with the legal principle relied on by the trial Court in the decision of the Hon'ble Supreme Court of India, in the case cited as above. As against the judgement and decree of the appellate Court, the defendant has filed the present Second Appeal, raising the following substantial questions of law:

"A) Whether the concurring judgement of the Court below is perverse for relying only on judgements of the Hon'ble High Court and the Supreme Court without advertenting to the evidence both oral and documentary filed by both sides in the suit?

B) Whether the Courts below on their own finding that a serious dispute as to title was involved in the case erred in entertaining the suit for bare injunction?

C) Whether the Courts below failed to note that as against the true owner, the suit for injunction would not lie?



WEB COPY

D)Whether the Courts below erred in relying on Ex.A-The Koorchit which document was admittedly rejected on an objection taken by the respondent against its admissibility?

E)Whether the judgement and decree of the Courts below is vitiated for relying on Ex.A a document held to be inadmissible in evidence on the ground of violation of provisions of Stamp Act and registration Act?

F)Whether the lower appellate Court failed to note that the trial Court ought not to have arrayed Ex.A1, as a document, when the same was held to be inadmissible?

G)Whether the Courts below failed to note that a bare suit for injunction was not maintainable. More so when the title of the Vendor of the appellant was admitted by the respondent?

H)Whether the Courts below failed in not advertng to the valuable admission of the respondent as regards the title of the appellant's Vendor?"

9.Ms.Mala, the learned counsel appearing for the appellant/defendant would strenuously contend that when there is a serious cloud about the title of the plaintiff to the suit scheduled property, the proper course for the plaintiff was to file a substantive suit for declaration of title and consequential direction. In the absence of declaratory suit, bare injunction suit is not maintainable at all. According to the learned counsel for the defendant, the document relied on by the plaintiff i.e. Ex.A1, Coorchit, dated 24.07.1976, was admittedly an unstamped and unregistered document and therefore, the vendor of the plaintiff would not have derived valid title at all. In fact, earlier suit O.S.No.157 of 1998 was filed by Lakshmikanthammal, who was the original owner of the suit property, which was unfortunately not pursued and was dismissed for non-prosecution, on 08.01.2004. According to the learned counsel, even otherwise, the plaintiff did not have any title to the suit scheduled property, as the title was not established at all before the trial Court. Except few documents, all other documents, relied on by the plaintiff for proving the possession of the suit scheduled property, are all relating to the period after the suit was filed by the plaintiff. Exs.A3 and A4 relied on by the plaintiff, viz., the mortgage deed and Rent receipt of the year 1988, are all collusive documents. The property receipts, which were extensively marked on various dates, cannot be the basis for deciding the title.



10. The learned counsel for the appellant/defendant would submit that when there is a cloud and dispute regarding the title to the suit scheduled property, the trial Court ought to have dismissed the suit for bare injunction, since the plaintiff had not approached the Court for declaratory relief, before seeking for injunction. Unfortunately, the trial Court, without understanding the legal principle, has decreed the suit in favour of the plaintiff and the lower appellate Court has also, without any basis, confirmed the judgement and decree of the trial Court. According to the learned counsel, there is no element of acquiescence by the true owner in regard to the possession of the suit property. The learned counsel would also rely on two decisions of the Hon'ble Supreme Court of India in (i) Rame Gowda (D) by Lrs. vs. M. Varadappa Naidu (D) by Lrs & Another [2004(3) LW 143] and (ii) in Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs and Others [2009(2) LW 546].

11. In the former decision, the Hon'ble Supreme Court of India has held that the possession, which has not matured into a settlement, can be obstructed or removed by a true owner. The learned counsel would rely on the following passage of the said judgement, which would run thus:

" 10. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;



WEB COPY

serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title"

13. In the above case, the Hon'ble Supreme Court of India has held that when there is a cloud in regard to the title, the proper course for the party is to file a declaratory suit and then seek for injunction.

14. The learned counsel for the appellant/defendant, would, therefore submit that without appreciating the legal principle, as laid down by the Hon'ble Supreme Court of India, both the Courts below have granted only the bare injunction, notwithstanding the cloud being created by the defendant as to the claim of title by the plaintiff to the suit scheduled property. Therefore, the learned counsel for the appellant/defendant would submit that the judgements and decrees of both the Courts below are liable to be set aside.

15. At the fag end of the submissions, the learned counsel for the appellant/defendant would also state that in regard to the suit scheduled property, a suit was filed in O.S.No.171 of 2012 by the true owners, claiming declaration of title and recovery of possession on the file of the Sub Court, Tindivanam, and the said suit is still pending.

16. Per contra, the learned counsel appearing for the respondent/plaintiff would submit that the possession aspect can be independently appreciated by the Courts. The trial Court has in extenso relied on the law laid down by the Hon'ble Supreme Court of India in the case of Rame Gowda (D) by Lrs. vs. M.Varadappa Naidu (D) by Lrs & Another [2004(3) LW 143]. In fact, both the Courts below have rightly held that in the event of competing title dispute, the possession aspect alone can be gone into and whoever was in possession, they were entitled to be granted the relief of injunction, even as against the true owner. In this case, the possession aspect has been more clearly proved by the plaintiff.



17. According to the learned counsel Mr. A.K. Kumarasamy, Lakshmikanthammal, claiming herself to be the true owner, has filed a declaratory suit and sought recovery of possession in 1998, in O.S.No.157 of 1998. However, the so called true owner did not pursue the remedy successfully and the said suit was dismissed for default on 08.01.2004 and thereafter, no steps were taken for reviving the said suit. Therefore, even as on 1998, the so called true owner has sought recovery of possession, which means the possession was not with the defendant. Moreover, the learned counsel for the respondent/plaintiff would submit that the so called true owner/defendant filed the present suit O.S.No.171 of 2012, wherein, the same declaratory relief and recovery of possession have been asked for, which again mean that the possession is not with the defendant. In the absence of possession with the defendant, the possession with the plaintiff stood overwhelmingly established by several documents filed on behalf of the plaintiff in the suit proceedings.

18. In regard to the legal contention raised by the learned counsel for the appellant/defendant about the non-maintainability of bare injunction suit, when there was a cloud about the title to the suit Scheduled property, is concerned, the learned counsel for the respondent/plaintiff would submit that even assuming so, this is a case where there was a competing title dispute between the parties and in which event, it is always open to the Courts to look into the aspect of possession alone while adjudicating the suit for bare injunction. Both the Courts below have rightly appreciated the legal position and dealt with the bare injunction suit and on the basis of proper appreciation of facts and circumstances, decreed the suit in favour of the plaintiff. He would therefore submit that the judgements and decrees of both the Courts below are liable to be upheld.

19. Considered the submissions of the learned counsels appearing for the parties.

20. As regards the injunction, although there appears to be a dispute in regard to the title of the plaintiff in regard to the suit scheduled properties, as contended by the learned counsel for the appellant/defendant, yet it is always open to the Courts to appreciate the possession aspect independent of the title and that is the law laid down by the Hon'ble Supreme Court of India in the judgements cited supra. In the event of competing title dispute, when a bare injunction suit was laid, the Courts can independently appreciate the possession aspect and on the basis of the evidence and the materials placed on record, can grant or refuse the relief of bare injunction to the parties.



21. In this case, this Court is of the considered view that both the Courts below have found that the plaintiff had proved his possession and therefore, protected his possession by granting injunction as prayed for.

WEB COPY

22. In a suit for bare injunction, it is not necessary for the Courts below to delve deep into the aspect of title. Therefore, the Courts below have rightly appreciated the possessory aspect and found that the plaintiff was in possession and protected the same. Moreover, admittedly, the so called true owner had filed a suit in 1998, in O.S.No.157 of 1998, for declaration of title and recovery of possession of the suit Scheduled property. Therefore, even as early as in 1998, there was a doubt about the title in regard to the suit property and also the relief of recovery of possession would admittedly mean that the possession was not with the true owner, who claimed declaratory relief. Therefore, it has become very clear that there were competing claims of title, but the possession aspect was rather conceded on the side of the defendant that it was not with him. In the said circumstances, the plaintiff has established, through his own documents, which were marked in the suit proceedings, his possession for many years. Therefore, the Courts below have rightly appreciated the documentary evidence and granted the relief of injunction in favour of the plaintiff.

23. Further, in regard to the latest development, viz., laying of O.S.No.171 of 2012, which is still pending on the file of the Sub Court, Tindivanam, wherein, the defendant has sought for declaration of title and recovery of possession to the suit scheduled properties is concerned, it was nothing but re-enforcing the fact that the possession was not with the defendant, which was with the plaintiff. Therefore, there cannot be any iota of doubt regarding the possession of the plaintiff in respect of the suit Scheduled property. In such circumstances, the Courts have rightly decreed the suit in favour of the plaintiff. The Courts need not get unnecessarily swayed on the issue of title when circumstances warrant to decide only about the possession aspect. In this case, the Courts below have rightly appreciated the possession aspect alone without being unnecessarily dragged into the issue of title, when the title dispute was not germane to the adjudication of bare injunction suit by the Courts. In the case on hand, even the defendant has not come up with any clear title. Therefore, this Court finds that in all fours the appellant/defendant's legal submissions against the judgements and decrees of both the Courts below have to necessarily fail. This Court is of the considered view that the questions of law, raised by the appellant in the second appeal, have no merit at all and the same are to be answered against the appellant/defendant.



24. In the result, the Second Appeal fails and the same is dismissed. It is always open to the appellant/defendant to workout his remedies in the pending suit in O.S.No.171 of 2012, on the file of the Sub Court, Tindivanam. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Msk

To

1. The Principal Subordinate Judge,
Tindivanam.

2. The Additional District Munsif,
Tindivanam.

+1cc to Mr.S.Kaithamalaikumaran, Advocate, S.R.No. 1796

S.A.No.841 of 2013

NRJK (CO)
GN (28/08/2020)