

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18/12/2019
Delivered on	25/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1145 of 2014 &
M.P.No.1 of 2014

G.R.Gopinath ... Appellant/Appellant/Defendant

Versus

1.P.Mugundan
2.E.Balachander
3.M.Subash Chandra Bose
4.Mayilvel.S
5.Prithiviraj.P

... Respondents/Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.493 of 2011, dated 03.01.2014 on the file of the Principal Judge, City Civil Court Chennai, confirming the Judgment and Decree dated 26.07.2011 made in O.S.No.476 of 2008, on the file of I Assistant Judge of City Civil Court, Chennai.

For Appellant : Mr.R.Abdul Mubeen

For Respondents: Mr.K.P.Chandrasekaran

JUDGMENT

The unsuccessful defendant in O.S.No.476 of 2008 is the appellant herein. The said suit was filed by the respondents herein for permanent injunction restraining the defendant, his men and agent from interfering with their peaceful possession and enjoyment of the plaint schedule property.

2. According to the plaintiffs, Krishnampet Gokulam Co-operative Housing Building Society purchased the land measuring an extent of 1.1/3 acres from Madras Diocessan Trust Association and developed a layout and the suit schedule property was allotted to Krishnan Temple and Welfare Hall. It is stated that one Ramanathan, the father of the first defendant filed the suit for permanent injunction in O.S.No.7893 of 1974 against the plaintiffs and some other persons for injunction

restraining them from interfering with the possession and enjoyment of the suit property. The said suit was dismissed on 29.07.1978. It is claimed that the suit property is being enjoyed by Gokulam Colony people without any interruption from the others. While so, a second suit was filed by the said Ramanathan in O.S.No.4966 of 1995 against 9 persons and obtained a Decree fraudulently. It is the case of the plaintiffs that the second suit filed by Ramanathan was not maintainable, however taking advantage of the Decree, the defendant is trying to grab the suit property and an unsuccessful attempt was made on 23.12.2007. Hence, a police complaint dated 30.12.2007 was given and thereafter, the plaintiffs were constrained to file the present suit.

3. The suit was resisted by the defendant contending that the Gokulam Colony House Building Society by a Resolution, dated 02.06.1971 allotted a vacant housing site measuring an extent of about 700 sq.ft to the defendant's father, viz., Ramanathan. Thereafter, the said Ramanathan had put up a superstructure thereon and was in exclusive uninterrupted possession of the property. After his demise, his family members are enjoying the property. The averments and allegations made in the plaint were denied as false and prayed for dismissal of the suit.

4. On the basis of the above pleadings, the trial Court framed necessary issues. On the side of the plaintiffs, the first plaintiff gave evidence as P.W.1 and marked Exs.A1 to A10. On the side of the defendant, D.W.1. was examined and Exs.B1 to B48 were produced. After considering the evidence adduced by the parties, the trial Court decreed the suit. The appeal preferred by the defendant was dismissed by the Principal Judge, City Civil Court, Chennai in A.S.No.493 of 2011. Assailing the concurrent findings, the present appeal has been filed.

5. This appeal was admitted on the following substantial questions of law:-

"(i) Whether the Courts below were right in decreeing the suit filed by the plaintiff in a representative capacity without proper permission under Order 1 Rule 8 of C.P.C.?

(ii) Whether the Courts below were right in not concluding that the dismissal of the earlier suit in O.S.No.7893 of 1974 would operate as res-judicata against the defendant in the present suit?"

6. Mr.R.Abdul Mubeen, learned counsel for the appellant urged that the plaintiffs in the present case are neither owners nor authorized persons to file the suit, hence the suit itself is not maintainable. Further, the Courts below granted decree

in favour of the plaintiffs on wrong notion of law, which causes gross injustice and irreparable injury to the appellant. It is contended that the appellant is in possession of the suit property, but the Courts below have erroneously held that the appellant is not in possession of the property and the suit in O.S.No.476 of 2008 is also barred by res-judicata, in view of the Judgment and Decree in O.S.No.4966 of 1995.

7. Per contra, Mr.K.P.Chandrasekaran, reiterated the case of the respondents / plaintiffs and submitted that the trial Court as well as the appellate Court have rightly decided in favour of the respondents herein, hence no interference is required in this appeal.

8. Heard the learned counsel on either side and perused the materials available on record.

9. In the instant case, admittedly, Krishnampet Gokulam Co-operative Housing Building Society, purchased larger extent of land from Madras Diocessan Trust Association and later, developed house sites and it was named as 'Gokulam Colony'. Ex.A2 is the approved layout plan of Gokulam Colony. It is the case of the plaintiffs that the property in dispute was allotted to Krishnan Temple and Welfare Hall and the defendant is attempting to usurp the property taking advantage of the Decree passed in O.S.No.4966 of 1995. The plaintiffs further contended that the second suit filed in the year 1995 is barred by res-judicata, since the earlier suit filed by the defendant's father in O.S.No.7893 of 1974 was dismissed. It is the contention of the defendant that the suit schedule property was allotted to his father-Ramanathan, by Gokulam Co-operative Housing Society by a Resolution, dated 02.06.1971.

10. It is pertinent to note that admittedly, the said Resolution was not produced by the appellant / defendant. It is the specific case of the plaintiffs that the suit schedule property was allotted as vacant site and his father put up the superstructure and he was residing therein. It is relevant to note that the document relied on by the defendant revealed that he was occupying Door No.16, Lloyds Road, Triplicane, Madras -5, however, during the course of cross-examination, he admitted that he vacated the house bearing Door No.16 and at present, he is residing in the house bearing Door No.12. Further, the report of the Advocate Commissioner shows that no such superstructure is existing in the suit property and it is a vacant site.

11. The Courts below were right in rejecting the defense taken by the appellant that the present suit is barred by res-judicata as the plaintiffs were not parties in O.S.No.4966 of

1995. Moreover, they do not seek declaration of their title over the property and it was filed on behalf of the residents of Gokulam Colony. Hence, I do not find any merit in the contention of the learned counsel for the appellant.

12. The learned counsel for the appellant drawing reliance on the decision of the Hon'ble Apex Court in Anathula Sudhakar vs. P.Buchi Reddy (dead) [(2008) 4 SCC 594], would argue that the suit for bare injunction is not maintainable and a declaration of title ought to have been sought for. In the matter on hand, Ex.A2 plan shows that the suit property was allotted for Krishnan Temple and Welfare Hall. The plaintiffs, as residents of the area instituted the suit on the premises that the suit schedule property is being enjoyed by the people of the Gokulam Colony. So, in my considered opinion, the decision cited by the learned counsel is no way advance the case of the appellant.

13. In such view of the matter, the questions of law are answered against the appellant and the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s
To

1.The Principal Judge,
City Civil Court
Chennai.

2. The I Assistant Judge,
City Civil Court, Chennai.

3.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.Abdul Mubeen, Advocate sr 16112.

+2 Ccs to Mr.K.P.Chandrasekaran, Advocate sr 16418.

S.A.No.1145 of 2014 &
M.P.No.1 of 2014

MR(CO)
SP(21/08/2020)