

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.972 of 2014

Sellammal

..Appellant/Plaintiff

Vs.

1. Muthusamy

2. Anandan

3. Sankar

4. Manonmani

..Respondents /Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 28.11.2011 made in A.S.No.75 of 2010 on the file of the Sub Court, Namakkal confirming the decree and judgment dated 19.07.2010 made in OS No.102 of 2005 on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mr.R.Jayaprakash

For Respondents: Mr.N.Manokaran
for M/s.S.Doraisamy for RR2 to 4

J U D G M E N T

सत्यमेव जयते

The plaintiff in OS No.102 of 2005 whose suit for injunction was dismissed by the Trial Court, upon its affirmation by the Appellate Court in AS No.75 of 2010 has come with this Second Appeal.

2. The plaintiff sought for decree of permanent injunction on the ground that she purchased the suit property from one Karupayee, who is the wife of the first defendant and mother of defendants 2 to 4 under a registered Sale Deed dated 14.02.1990. It is also claimed that the said Karupayee purchased the said property under

Ex.A1 her Sale deed dated 15.11.1979. Claiming that the property remains vacant and the plaintiff had gone to Nilgiris to work in the Tea Estate, when she returned in the year 2005 and wanted to put up construction, the defendants obstructed and prevented her from enjoying the property, she sued for an injunction.

3. The suit was resisted by the defendants. While admitting the sale by Karupayee in favour of the plaintiff, the defendants would contend that the plaintiff was not put in possession of the property, pursuant to the said sale deed. It is also claimed that the defendants continued to be in possession of the property and as such, they have perfected title by adverse possession. It was also contended that there was difference in measurement of the property as found in Ex.A2 and Ex.A1 Sale Deeds. While Karupayee had purchased only an extent of 1591 Sq. feet with linear measurements of 25¼ feet east west and 63 feet north south, she had chosen to sell an extent of 2573 sq.feet with linear measurement of 35¼ feet east west and 73 feet north south. Therefore, according to the defendants the sale itself is invalid.

4. The Trial Court on a consideration of the evidence on record concluded that the plaintiff has not proved her possession, since there was no mutation of Revenue Records and that the defendants have perfected their title by adverse possession. The mistake in the measurements of the property was also shown as a reason by the Trial Court for refusing the relief of permanent injunction. Aggrieved, the plaintiff preferred an appeal in AS No.75 of 2010.

5. The Lower Appellate Court rightly rejected the claim of the defendants that they have perfected title by adverse possession. It also adverted to the fact that the plaintiff had sought for a decree only in respect of 6 and 1/3 cents that is of an extent of 1591 sq.feet, which was purchased by Karupayee under the Sale Deed dated 15.11.1979 marked as Ex.A1. The Lower Appellate Court, however, fell in error and concluded that the plaintiff has not proved her possession because she had not got the Revenue records mutated in her name. Therefore, the Lower Appellate Court dismissed the Appeal. Aggrieved the plaintiff has come up with this Second Appeal.

6. The following questions of law were framed at the time of admission:

a) Is the physical possession in barren vacant land mandatory in a suit for injunction? (sic)

b) Is the suit for bare injunction maintainable when the plaintiff has proved the title through Sale Deed?

7. I have heard Mr.R.Jayaprakash, learned counsel appearing for the appellant and Mr.N.Manokaran, learned counsel appearing for Mr.S.Doraisamy, learned counsel appearing for the respondents.

8. Mr.Jayaprakash, learned counsel appearing for the appellant while elaborating on the questions of law would contend that the Lower Appellate Court having rejected the claim of adverse possession made by the defendants erred in concluding that the plaintiff has not proved possession. The Lower Appellate Court over looked the settled position of law that insofar as, vacant land is concerned the principle possession follows title would be applicable. According to him, the Lower Appellate Court also fell in error in concluding that the defendants could be allowed to raise the plea that possession was not handed over to the plaintiff upon execution of Ex.A2 Sale Deed on 14.02.1990. He would submit that Section 92 of the Evidence Act, would bar such a plea by the defendants, since they claim under the executant of the Sale Deed dated 14.02.1990.

9. Contending contra, Mr.Manoharan learned counsel appearing for the respondents would submit that in the absence of any proof of possession either in the form of Revenue Records or otherwise the Courts below were right in concluding that the plaintiff is not entitled to a decree for permanent injunction. He would also contend that when there is a cloud on the title of the plaintiff, the plaintiff should have sought for a decree for declaration, a suit for bare injunction simplicitor would not be maintainable. He would also submit that there is no evidence to prove that the plaintiff was an actual physical possession of the property on the date of the suit.

10. I have considered the rival submissions.

11. The plaintiff seeks permanent injunction based on her purchase under Ex.A2 Sale Deed dated 14.02.1990. Though there is a mistake in the extent in Ex.A2 Sale Deed,

the plaintiff had not sought to take advantage of the mistake, but she had sued only for an extent of 1591 sq. feet with linear measurements of 25 ¼ feet east west and 63 feet north south.

12. The defendants in their written statement would admit the execution of Sale Deed by Karupayee in favour of the plaintiff. But their only contention is that the plaintiff was not put in possession of the property on execution of Ex.A2. I do not think that the defendants could be allowed to raise such a plea. Ex.A2 Sale Deed has been executed by the wife of the first defendant and mother of defendants 2 to 4. The vendor is the predecessor of the defendants. Therefore, the defendants claiming under Karupayee cannot lead evidence against the contents of the document, which is prohibited by Section 92 of the Evidence Act. The Courts below while considering the claim of possession by the plaintiff have totally forgotten the Principal of law that in respect of vacant land possession will follow title. The plaintiff has established the title by producing Ex.A2, the execution of which is admitted by the defendants.

13. No doubt the Revenue Records have not been mutated, but it is seen from the Commissioner's Report, the land remains vacant as of to-day. Once it is held that the land remains vacant, the plaintiff as the owner will be entitled to invoke the principle that possession follows title and seek a decree for injunction. I therefore, find that the Lower Appellate Court had erred in holding that the plaintiff has not proved her possession on the date of the suit.

14. For the foregoing discussions, both the questions of law are answered in favour of the appellant. Though it is contended that the suit for bare injunction is not maintainable, I do not think such a contention would be available to the defendants, in view of the judgment of the Hon'ble Supreme Court in Anathula Sudhakar v. P.Buchi Reddy and others, reported in (2008) 4 SCC 594, wherein the Hon'ble Supreme Court had pointed out that unless there is a serious dispute regarding title and in view of such dispute a cloud is created on the title of the plaintiff, the plaintiff need not seek a declaratory relief.

15. From the facts of this case, it is seen that the defendants admit the title of the plaintiff and the

execution of the Sale Deed by Karupayee on 14.02.1990 and therefore, I am of the considered opinion that the suit for bare injunction at the instance of the plaintiff is maintainable and the plaintiff cannot be faulted for not seeking the relief of declaration.

16. The Lower Appellate Court has specifically observed that though there is a mistake in the extent the boundaries would prevail. It is seen from the description in the plaint that the plaintiff has sought for injunction only in respect of a lesser extent within specified boundaries. Therefore, I do not think that the plaintiff could be faulted for the mistake that had occurred in the Sale Deed executed by Karupayee viz. Ex.A2. The principle that the boundaries would prevail over extent when there is a doubt regarding the correctness of the extent in the document can be applied to this case.

17. In view of the answers to the questions of law as above, I also conclude that the findings of the Courts below which overlooked the fundamental Principal of Law, relating to possession of vacant land are perverse and therefore, liable to be interfered with. The second Appeal is allowed, the judgment and decree of the Courts below are set aside the suit in OS No.102 of 2005 will stand decreed as prayed for. However in the circumstances there will be no order as to costs.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Sub Judge,
Namakkal.
2. The Additional District Munsif,
Namakkal.
3. The Section Officer,
V.R.Section,
Madras High Court.

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+1cc to Mr.S.Doraisamy, Advocate, S.R.No.23156
+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.23248

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NMI (CO)
CB(20/08/2020)



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