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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26.02.2021

JUDGMENT PRONOUNCED ON: 22.06.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.2083 of 2000

1. Sadayandi
2. Karuppan
3. Virudhambal

... Appellants/
Respondents/Defendants

...Versus...

R.Masilamani (Deceased)

1. Pavunambal
2. Rukmani
3. Ekambaram
4. Balakrishnan
5. Gunavathi
6. Mayakannan
7. Devendran (Died)
8. Paranthaman
9. Kamalakannan
- 10.D.Thaili

[R10 brought on record as L.R of the
deceased R7 vide order of Court dated
20.01.2020 made in C.M.P.No.27263/19]

... Respondents/
LRs of Appellants

PRAYER:

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.83 of 1993 dated 31.08.2000 on the file of the Principal Sub-Judge, Villupuram reversing the judgment and decree made in O.S.No.375 of 1985 dated 29.01.1993 on the file of the District Munsif, Thirukoilur.



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For Appellants :: Mr.R.Singaravelan,
Senior Counsel
For Mr.R.Jayaprakash

For R2 to 6 & 10 :: Mr.T.Sivagnanasambandam
For Mr.M.L.Ravi

For R8&R9 :: No appearance

J U D G M E N T

The defendant defendant is the appellant herein.

2. The respondent/plaintiff filed a suit for declaration of his title over the 'C' schedule property and for Permanent Injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property or in the alternate declare the title of the plaintiff over the suit property by adverse possession by prescription and for Permanent Injunction.

3. Pending suit, it is alleged that the defendant has encroached upon the property and hence Mandatory Injunction to remove the superstructure put up by the defendant in the alternate relief column.

4. The plaint proceeds on the basis that the property was originally belonged to Sadhasiva Naicker and by virtue of Exs.A1 to A3 sale deeds the suit schedule property was in possession and enjoyment of the plaintiff and the defendant trying to interfere with his possession and hence after exchange of notice, above suit has been filed for the above relief.

5. The Gist of the written statement filed by the defendant is that the property is originally belonged to one Syed dhathaigeer sahub and one Sanjeevi Pillai has purchased the same in which the suit property was allotted to the share of Ramamurthy, one of his sons of the Sanjeevi Pillai from him, the first defendant has purchased the property after obtaining the patta and the construction plan, he had constructed a building in which the plaintiff trying to interfere with the peaceful possession and hence he gave a police complaint wherein the plaintiff and his agent P.W.2 was asked to pay fine before the District Munsif Court.

6. During the trial, P.W.1 to P.W.3 were examined and Exs.A1 to A19 were marked; D.W.1 to D.W.4 were examined and Exs.B1 to B3 were marked and the Advocate Commissioner's Report C1 to C3 were marked.



7. P.W.3 Narayanasamy is the village karnam who had deposed that the property has not belong to panchayat and he had assisted the Advocate Commissioner during the inspection for filing of documents C1 and C2 stated that the plaintiff have encroached upon 92 feet of the suit property.

8. The trial Court on consideration of the oral and documentary evidence has dismissed the suit. The appellate court in A.S.No.83/93 allowed the appeal and decreed the suit and hence the Second Appeal.

9. The above Second Appeal was admitted on the following substantial questions of law 1&2 and notice of motion was ordered.

1. Whether the learned Sub Judge has considered the admitted facts of the cases before rendering judgment in the light of the evidences of P.W.2 and P.W.3?

2. Whether the learned Sub-Judge is right in granting both the relief permanent prohibiting injunction as well as mandatory injunction when the plaintiff himself had sought for the mandatory injunction only in the alternative?

10. Heard the learned Senior Counsel Mr.R.Singaravelan for the appellant.

11. There was amendment of pleadings wherein Mandatory injunction was sought for by way of amendment and hence the (ii) substantial question of law does not arise on the above factual background.

12. It is a specific case of the respondent/plaintiff that they derived title from the ancestral through A1 to A3.

13. On perusal of the schedule of the property in the said document, the suit property namely Item No. III of the suit property does not find a place assumes significance.

14. It remains to be stated that these documents are relied to Item No.I & II of the property against which no relief has been sought for also assumes significance. The 'A' schedule property is a house site land and building measuring 52 1/2 and multiplied by 40. While 'B' schedule property is also house building measuring 18x29 1/2 feet and 'C' schedule property is 33 1/2x15 feet. While the respondent/plaintiff may makes reliance upon Ex.A1 to A3 document for declaration of the title is main prayer and in the alternate the respondent-plaintiff has sought for the declaration of title by adverse possession in the



nature of prescription of title and prayed for Permanent Injunction.

15. As stated supra, the documentary evidence Ex.A1 to A3 does not disclose the disputed suit property namely Item No.III of the property. What was found in those documents are Item No.I and II alone and not the schedule No.III of the suit property which the lower appellate court appears has lost the sight of the same and hence in the absence of any derivative of title from the document, the main prayer namely declaration of title on the strength of the document Exs.A1 to A3 filed cannot be granted.

16. On the point of alternate relief namely declaration of title by prescription in favour of the respondent, it is a specific plea of the respondent-plaintiff that the property was a poramboke land belonging to the panchayat and one of the ancestral has title and enjoying the property. P.W.3 Village Administrative Officer have given a categorical evidence that it does not belong to the panchayat. He also accompanied the Advocate Commissioner for the measurement of the property and has specifically deposed that the plaintiff has encroached upon 92 feet of land and hence the contention of the plaintiff that it was originally panchayat land and he was in enjoyment of the property falls to ground. This is the admitted position of the evidence of the P.W.1 in the cross-examination.

17. In view of the admission made by the P.W.1 during the cross-examination that the disputed suit property, schedule 'C' of the suit property does not belong to the property in Exs.A1, A2, A3-Sale Deeds and hence, question of prescription of title over the period of time has pleaded by the plaintiff has no legs to stand.

18. At this juncture, it is relevant to refer to the case of the appellant/defendant. It is a specific case of the appellant/defendant that the land was originally belonged to Syed Thathegeer Sayub, from him one Sanjeevi Pillai purchased the disputed suit property under Ex.B1, in the partition deed his son Ramamoorthy it was allotted (under Ex.B2 partition deed) and from the said Ramamoorthy, he had purchased the property under Ex.B3. Ex.B1 is dated 29.05.1942. The Partition deed to the vendor of the defendant under Ex.B2 is 02.03.1971 and the defendant had purchased the property under Ex.B3 on 11.04.1984 assumes significance.

19. In the absence of any derivative title to the plaintiff and in view of the cogent evidence given by the defendant to derivative title under Exs.B1 to B3, the trial Court has rendered a categorical finding that the plaintiff is not



entitled for declaration of title on the ground of derivative title and this was rejected. I find that the finding rendered by the trial Court is correct and it is rightly concluded the derivative title of the defendant which was not properly appreciated by the lower appellate court.

20. In view of the evidence of P.W.3 coupled with the admission made by him during the cross-examination regarding the original owner of the property that the land does not belonged to panchayat coupled with the documentary evidence of B1 to B3, I find that the defendant has successfully demonstrated their title to the suit property and in fact they appear to be in the suit site as per evidence of the Advocate Commissioner under Exs.C1 and C2 and under Ex.C2 coupled with the evidence of P.W.3 that it is a plaintiff who is encroached upon and the plaintiff who had encroached upon the suit property upto 92 feet and hence I find that the plaintiff having encroached upon the property of the defendant has filed the suit. From the schedule of the property mentioned under Ex.A1 and Ex.A3 I find that the 'C' schedule property namely the subject matter of the suit does not form part of the document and the location has described by the lower appellate court appears to be on his surmise and hence the finding rendered by the trial Court is restored and the contra finding given by the lower Appellate Court stands vacated and hence I find that the defendant having derived the title under Exs.B1 to B3 coupled with the admission of P.W.3, they are the owners of the property when that be so they are in possession and the enjoyment of the property and hence the plaintiff cannot be granted the relief of declaration of title by prescription since his possession was not proved in the manner known to law.

21. Accordingly, the alternative relief sought by the plaintiff is also stands negatived and the substantial question of law is answered in affirmative in favour of the appellant herein and the (ii) substantial question of law, on facts of the case and the discussion supra does not arise for consideration.

22. In the result, this Second Appeal is allowed. The judgment of the and decree granted by the lower appellate court in A.S.No.83 of 1993 dated 31.08.2000 is set aside and the judgment and decree granted by the trial Court in O.S.No.375 of 1985 dated 29.01.1993 is restored. No costs.

Sd/-

Deputy Registrar (TNMCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub-Judge, Villupuram

2. The District Munsif, Thirukoilur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.T.Sivagnanasambandam, Advocate, S.R.No.29288

+1cc to Mr.R.Jayaprakash, Advocate SR.No.28859 (03/03/2022)

S.A.No.2083 of 2000

BR(CO)
CS/25/10/2021