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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1142 of 2008

K.S. Nallasamy Gounder
S/o. Chellappa Gounder

... Appellant/Plaintiff

Vs.

1. Pavayee Ammal (died)
W/o. Nachimuthu Gounder

2. K.N. Palanisamy
S/o. Nachimuthu Gounder

3. Dhanapakkiam
W/o. Dhanapalan

4. K.N. Eswaramoorthy
S/o. Nachimuthu Gounder

... Respondents/Defendants

R2 to R4 are recorded as LR's of the deceased R1
vide order of court dated 29.11.2019 made in
S.A. 1142/08 as per memo dated 12.11.2019 in USR
No.34111/19 are recorded.

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment dated 20.12.2007 passed in A.S. No.59/07 on the file of the Principal District Court, Erode, reversing the decree and judgment dated 18.09.2006 passed in O.S.No.180/05 by the Second Additional Sub Judge Court, Erode.

For Appellant : Mr. I.C. Vasudevan

For Respondents : Mr. C. Prakasam

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 20.12.2007 passed in A.S. No.59/07 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.180/05 on the file of the Second Additional Subordinate Court, Erode.



2. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

3. The plaintiff in O.S. No.180 of 2005 is the appellant in the Second Appeal.

4. Suit for permanent injunction.

5. The case of the plaintiff, in brief, is that the first defendant is the mother of the defendants 2 to 4 and the suit property originally belonged to the plaintiff's father Chellappa Gounder by way of the registered sale deed dated 24.11.1952 and thereafter, Chellappa Gounder had executed a settlement deed in favour of his son, namely the plaintiff, by way of the settlement deed dated 09.09.1985 and the plaintiff obtained the possession of the property by way of the settlement deed and enjoying the same till date and the suit property was originally a vacant site upon which the plaintiff built up a terraced house about 15 years back and enjoying the same by paying the house tax, etc., and the relationship between the plaintiff and the defendants is not smooth and cordial and when the plaintiff wanted to demolish the house in the suit property and build up a new building in the same and for that purpose when he removed the tiles in the roof on 15.04.2004, the defendants attempted to interfere with the plaintiff's endeavour without any basis and hence according to the plaintiff, he has been necessitated to institute the suit against the defendants for the relief of permanent injunction.

6. The defendants resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and disputed that the suit property originally belonged to the plaintiff's father Chellappa Gounder as put forth in the plaint and that according to the defendants, the suit property is the undivided property belonging to the family of Sengoda Gounder, who had three sons, namely, Muthusamy, Nachimuthu and Marappa Gounder and it is their ancestral property and the plaintiff is the sister's son of Sengoda Gounder. There had been a partition suit of the family properties pending between the family members and the alleged settlement deed dated 09.09.1985 said to have been executed by Cellappa Gounder in favour of the plaintiff is not binding upon the defendants and the plaintiff's suit is bad for non joinder of necessary parties, namely, the other sharers who have shares and interest in the suit property. The suit has been laid by the plaintiff at the instigation of Arunachalam and Karuppayammal with a view to delay the partition, particularly the suit proceedings in



O.S. No.66 of 2003 laid for partition. The suit property is the building built up by Sengoda Gounder and as well as a vacant site and after the demise of Sengoda Gounder, his son built up a separate house and it continues in the possession of the defendants' family and till date the patta and the revenue records stand in the name of the defendants' father. The plaintiff has never in he possession and enjoyment of the suit property and the suit building is already in a dilapidated condition and the suit property has not been properly described and suppressing the abovesaid materials, the plaintiff has come forward with the false suit. The plaintiff, without any cause of action, has laid the suit and hence prayed for the dismissal of the plaintiff's suit. In the additional written statement, the defendants would plead that the plaintiff's suit for bare injunction without the relief of declaration, as such, is not maintainable and on that score also the suit is liable to be dismissed.

7. It is noted that the abovesaid suit in O.S.No.180 of 2005 and the another suit laid for partition and permanent injunction in O.S.No.66 of 2003 were jointly tried and a common judgment was rendered by the trial court. It is further noted that the common evidence was recorded in O.S. No.66 of 2003 and the same had been treated as the evidence in O.S.No.180 of 2005.

8. On the abovesaid basis, it is found that in the trial court, on the side of the plaintiff P.Ws.1 and 2 were examined and Exs.A1 to A11 were marked and on the said of the defendants D.Ws. 1 to 4 were examined and Exs. B1 to B16 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit for partition in O.S.No.66 of 2003 and also granted the relief of permanent injunction as prayed for in O.S.No.180 of 2005.

10. As against the judgment and decree passed in O.S.No.180 of 2005, the appellants/defendants had preferred the first appeal in A.S. No.59 of 2007. The first appellate court, on an appreciation of the materials available on record and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the trial court in O.S.No.180 of 2005 and consequently by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff' in O.S. No.180 of 2005. Impugning the judgment and decree of the first appellate court, the present second appeal has been laid by the plaintiff'.



11. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

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- 1) Whether the relief of declaration is mandatory for mere asking in a suit for permanent injunction based on valid title?
- 2) Whether in a suit for permanent injunction based on title, is it mandatory for the plaintiff to reside in the suit property to prove possession though the suit property is in the dilapidated condition?"

12. The plaintiff has laid the suit simplicitor for the relief of permanent injunction. The suit property has been described as a house situate at Karumandisellipalayam Village, Old Survey No.326, new R.S.No.564/6 measuring an extent of 0.06.5 hectares and in the above extent of 1200 sq. ft present Door No.46 situated in the south west corner. Now, according to the plaintiff, when he endeavoured to demolish the existing house construction in the suit property and built up a new house, the defendants, without any basis, attempted to interfere with his possession and enjoyment and hence it is stated that he had been necessitated to lay the suit against the defendants for the relief of permanent injunction.

13. As above pointed out, in the written statement the defendants have, in toto, disputed the same. As rightly concluded by the first appellate court, particularly, when the defendants have challenged the claim of the plaintiff's title to the suit property, as contended by the defendants' counsel, the plaintiff's should have amended the suit relief by including the relief of declaration of title qua the suit property. However, the plaintiff has proceeded to continue the suit only for the relief of permanent injunction. In such view of the matter, considering the dictum laid by the Supreme Court in CDJ 2008 SC 603 (Anathula Sudhakar V. P.Buchi Reddy (dead) by Lrs and others), the suit laid by the plaintiff for the relief of bare injunction, without seeking the relief of declaration of title qua the suit property, particularly, in the light of the stout denial of the plaintiff's title to the suit property on the part of the defendants, on that ground, the suit is found to be not legally sustainable.

14. In the light of the abovesaid background, it is for the plaintiff to establish that he is in the possession and enjoyment of the suit property as described in the plaint. The plaintiff claims title to the suit property based on the settlement deed said to have been executed by his father dated 09.09.1985, which has been marked as Ex.B14. On a perusal of the



description of the settled property as also extracted by the appellate court in its judgment, it is evident that there has been no house property in the property settled under Ex.B14. On the other hand, as rightly concluded by the first appellate court, only the vacant site measuring 1200 sq. ft with boundaries on the north west in R.S.No.564/6 has been settled in favour of the plaintiff. Therefore, the claim of the plaintiff that inclusive of the house property bearing door No.46 his father has settled the suit property and handed over the possession of the same to him, as such, cannot be, believed and accepted.

15. The plaintiff, who has been examined as D.W.4 before the trial court, in the chief examination, would state that when his father purchased the suit property it was a vacant site and that 15 years thereafter, it is he, who had put up the house construction and enjoying the same by paying the house tax. However, he did not disclose the door number of the house property said to have been put up by him as testified in the chief examination and that apart, he has also not mentioned clearly as to when in particular he had put up the house construction in the suit property. Furthermore, during the course of cross examination would depose that with reference to the property comprised in R.S. No. 564/6 i.e. survey number of the suit property, it is stated that the patta and chitta extracts for the same stands in the names of Nachimuthu Gounder and Marappa Gounder. The plaintiff would further state that during 1986, he had put up the new house construction and for the same, he had obtained the sanction plan from the panchayat. However, the sanction plan has not been produced in the court and the same is not in his custody and he would also claim that prior to the demolition of the existing house during 2004, he had been enjoying the electricity. However, no proof is available with him to evidence that he has been enjoying electricity service connection viz. the old house construction existing in the suit property. Further the plaintiff would also state during the course of evidence that inasmuch as the house construction had been demolished he is not in the possession of the suit property and he is residing in 111C Karumandisellipalayam. Based on the abovesaid evidence tendered by the plaintiff, it is found that the plaintiff is unable to substantiate as to whether actually he is in the possession and enjoyment of the suit property as described in the plaint and also not established whether he had obtained any valid sanction for putting up the house construction in the suit property and also unable to clearly point out as to whether and in what mode he had been enjoying the alleged existing house said to be available in the suit property and pertaining to the same no acceptable and reliable material is forth coming on the part of the plaintiff.



16. The plaintiff would also endeavour to produce certain house tax receipts to substantiate that he has been in the possession and enjoyment of the house located in the suit property. As rightly concluded by the first appellate court, the house tax receipt marked as Ex.B9 does not relate to Door No.46. Ex.B10 electricity receipt is found to be in the name of one Arunachalam. As mentioned in Ex.B10, the plaintiff has not established that the service connection No.254 was provided to the house situated in the suit property. Ex.B4 electricity receipt is in connection with the Service S.C.No.816 in the name of Arunachalam and E.B12 kist receipt is also found in the name of Arunachalam. The house tax receipt marked as Ex.B16 series are found to have been filed from the year 1991 for Door No.46 and the same stand in the name of the plaintiff, however, as rightly analysed by the first appellate court, the receipt dated 14.02.1992 though states as pertaining to Door No.46, it is described as located at Angappa Street, Ward No.4, Perundurai and in some other receipts of B16 series, the above house is mentioned as situated at Angappa Street, Perundurai. Therefore, the plaintiff is not unable to correlate the house tax receipts marked as Ex.B16 series to the alleged house construction said to have been put up by him in the suit property. As above pointed out, the plaintiff has not produced the sanction plan said to have been issued by the panchayat for the proposed construction of the house in the suit property. Therefore, in such view of the matter, when there is no acceptable and reliable material on the part of the plaintiff to hold safely that he is in the possession and enjoyment of the suit property as claimed by him and when the plaintiff has failed to establish his claim of possession and enjoyment of the suit property as described in the plaint by acceptable and reliable documents and furthermore, when the plaintiff's suit is also found to be not legally sustainable without the relief of declaration of title to the suit property despite the denial of the title by the defendants as outlined by the Apex Court in the decision referred to supra, all put together, it is seen that the first appellate court is justified in setting aside the judgment and decree of the trial court and dismissing the plaintiff's suit.

17. I do not find any valid reason warranting interference in the reasonings and conclusions of the first appellate court in dismissing the plaintiff's suit.

18. In the light of the abovesaid factors, as above held, the plaintiff's suit for bare injunction, without seeking the relief of declaration of title despite the specific plea of his title to the suit property having been stoutly repudiated by the defendants in the written statement, is not legally maintainable and, as above discussed and held, the plaintiff having failed to



establish that he is in the possession and enjoyment of the suit property as claimed by him either before the alleged demolition of the alleged house construction or after the same by placing acceptable and reliable materials, in my considered opinion, no substantial question law is involved in the second appeal. Be that as it may, the substantial questions of involved in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

19. For the reasons aforesaid, the judgment and decree dated 20.12.2007 passed in A.S. No.59/07 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 18.09.2006 passed in O.S.No.180/05 on the file of the Second Additional Subordinate Court, Erode, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bga
To

1. The Principal District Court,
Erode.
2. The Second Additional Subordinate Court,
Erode.

Copy to

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

+1cc to Mr.I.C.Vasudevan, Advocate Sr.7112

S.A.No.1142 of 2008

ajs[col]
srg 24/08/2021