

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13.09.2021
Pronounced on	06/10/21

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

S.A.No.1154 of 2009
and M.P.No.1 of 2009

E.B.Lingan

...Appellant/6th Defendant

Vs.

1.J.R.Bellie (Died)

...Respondent/Plaintiff

2.B.Lakshmanan

3.B.Muthuraman

4.B.Natarajan

5.B.Sivalingam

6.Kaiyammal

7.E.Madhan

8.J.B.Chandrasekaran

9.J.B.Radhalakshmi

10.J.B.Nagaraj

11.J.B.Nehru

12.J.B.Parvathy

...Respondents

[R2 to R7 given up] [R8 to R12 brought on record as Lrs of the deceased R1 vide Order of Court dated 21.04.2014 made in M.P.Nos.2 & 3 of 2014 in SA.No.1154 of 2009]

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree dated 29.06.2009 in A.S.No.33 of 2007 on the file of the Sub Court, Uthagamandalam confirming the decree and judgement dated 18.04.2005 in O.S.No.88 of 1997 on the file of the District Munsif's Court, Coonoor.

For Appellant : Mr.R.Subramaniam

For Respondents: Mr.Lenin and Bhagya [R8 to R12]

R1 - Died

R2 to R7 - given up

JUDGEMENT

(Heard through video conferencing)

This Second Appeal is preferred against the judgement and decree dated 29.06.2009 passed by the learned Subordinate Judge, Uthagamandalam in A.S.No.33 of 2007.

2. The sixth defendant is the Appellant herein and the deceased first respondent was the plaintiff.

3. The averments made by the parties in brief:-

The plaintiff is the absolute owner of the land measuring 47 cents in R.S.No.201 of Jagathala Village and the property has got specific boundaries described in the suit schedule. He derived title by way of inheritance from his father late J.M.Ranga Gowder. The suit property was the ancestral property of the plaintiff and it was in the continuous enjoyment of the plaintiff and his ancestors for so many years. The plaintiff was cultivating the suit property by raising crops and he has produced the Chitta and Adangal extracts to show the same. On 28.02.1997 and 02.03.1997, the defendants who were strangers to the suit property attempted to trespass into the suit property by use of force and violence and the said attempt was resisted by the plaintiff. Since the defendants continued to disturb peaceful enjoyment of the plaintiff over the suit property, he has filed the suit for the relief of permanent injunction.

3.1 The defendants have filed the written statement by stating that the suit property belonged to one Joghee Gowder and he was in enjoyment of the same. After the lifetime of Joghee Gowder, his three sons Ajja Gowder, Madha Gowder and Kari Gowder inherited the same. One of the sons of Joghee Gowder, Kari Gowder had a son and two daughters and he died in the year 1904 leaving behind his wife and children as his legal heirs. One of the daughters by name Badikki Haliammal died in the year 1982 and her son also died in the year 1943. As the legal heir of her father Kari Gowder, Badikki Haliammal had inherited an undivided $1\frac{1}{3}$ right in $15\frac{1}{3}$ cents of the suit property. Badikki Haliammal died in the year 1982 and her husband predeceased her and their only son E.P.Lingan - 6th defendant/appellant had inherited the said $15\frac{1}{3}$ cents and his name has also been included in the revenue records. The son of Joghee Gowder by name Madha Gowder is also entitled to $15\frac{1}{3}$ cents and he sold $30\frac{2}{3}$ cents to one Bellie Gowder on 04.04.1934. Bellie Gowder sold the same to the first defendant on 08.04.1953. The first defendant had executed a sale deed in favour of the plaintiff and sold an extent of $23\frac{1}{2}$ cents on 27.04.1953. So the plaintiff is entitled to only $23\frac{1}{2}$ cents and not for 47 cents. Since the defendants are in enjoyment of the property, the plaintiff is not entitled for the relief as claimed for.

4. Basing on the pleadings, the trial Court has framed the following issues:-

1. தாவாவில் கோரியுள்ளபடி வாதிக்கு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

2. வாதிக்கு கிடைக்கத்தக்க பரிகாரம் என்ன?

5. During the course of the trial, on the side of the plaintiff, two witnesses were examined as P.W.1 & P.W.2 and Exs.A1 to A8 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and Exs.B1 to B3 were marked.

6. At the conclusion of the trial, the learned trial Judge has decreed the suit as prayed for. The defendants 6 & 7 have challenged the judgement and decree of the trial Court by way of preferring an appeal before the Sub Court, Udhagamandalam and the said appeal was also dismissed. Aggrieved over that, the 6th defendant has filed this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law 1 and 2:-

1. When the title of the plaintiff to 0.24 acre in S.No.201 is disputed by the defendants and frame of bare suit for injunction is questioned, are the Court below right in decreeing the suit for bare injunction?
2. Are not the judgements of the Court below vitiated in not considering the import of Ex.B1 to Ex.B3 which clearly show that the plaintiff had purchased only 0.23 1/3 acre of land in S.No.201 under Ex.B3 and consequently are the Court below right in granting a decree for 0.47 ½ acre?

7. Heard Mr.R.Subramaniam, learned counsel for the appellant/6th defendant and M/s.Lenin and Bhagya, learned counsel for the respondents 8 to 12.

8. The learned counsel for the appellant/6th defendant submitted that the plaintiff has purchased only an extent of 23 1/3 cents in S.No.201 vide Ex.B3 and hence, the Courts below are wrong in granting a relief of permanent injunction as prayed by the plaintiff. It is further submitted that since the defendants have cast a cloud on the title of the suit property, the respondents ought to have filed a suit for declaration. Supporting his submission, the learned counsel has relied on the decision of the Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs & Ors reported in 2009-2-L.W.546 at paragraph 17 as extracted below:

"....

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for

declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more

comprehensive declaratory suit, depending upon the facts of the case."

9. The above cited decision is not applicable to the facts and materials available in this case.

10. The learned counsel for the respondents 8 to 12 submitted that the preponderance of evidence with regard to title and enjoyment of the suit property is in favour of the plaintiff and hence, the learned trial Judge and the First Appellate Judge have appreciated the evidence in the right perspective and hence, the appeal has to be dismissed.

11. The simple case of the deceased first respondent is that the suit property measuring 47 cents in S.No.201 of Jagathala Village was the ancestral property of the plaintiff. The deceased first respondent's father namely Ranga Gowder, has inherited the property and was in enjoyment of the same for several years. It is claimed by the plaintiff that patta No.321 pertains to the suit properties and Chitta and Adangal have also been standing in the name of the first respondent/plaintiff.

12. It is the contention of the defendants that the suit property originally belonged to one Joghee Gowder, who died intestate by leaving his three sons; one of the sons by name Kari Gowder had $1\frac{1}{3}$ share (15 $\frac{1}{3}$ cents) in the suit property and that was inherited by his three children; as the son of Kari Gowder died after marriage and his wife also married someone else and went out of the family, the two daughters of Kari Gowder are said to have inherited the said 15 $\frac{1}{3}$ cents and in a partition between themselves, the above said 15 $\frac{1}{3}$ cents was allotted to one of the daughters by name Badikki Haliammal; after the death of the said Badikki Haliammal and her husband, her son who is the appellant herein, had inherited the property; the other son of Joghee Gowder namely Madha Gowder, had $1\frac{1}{3}$ share (15 $\frac{1}{3}$ cents). However, he sold 30 $\frac{2}{3}$ cents to one Bellie Gowder, who in turn had sold the same in favour of the first defendant on 08.04.1953. The first defendant has executed 23 $\frac{1}{2}$ cents in favour of the deceased first plaintiff on 27.04.1953; so, according to the appellant/6th defendant, the plaintiff is entitled to an extent of 23 $\frac{1}{2}$ cents alone in the suit property.

12.1 He has further claimed that the original sharer Madha Gowder himself has got 15 $\frac{1}{3}$ cents only in the suit property and he has no title to sell 30 $\frac{2}{3}$ cents in favour of the first defendant. But the deceased first plaintiff has claimed title to the entire extent of 47 cents in the suit property by alleging that it is his ancestral property and that the relevant patta in No.321 for the suit property also stood in his name.

He has produced the Chitta, Adangal and field map in respect of R.S.No.201 and claimed that he only is in enjoyment of the same. Though the appellant/6th defendant claims to be the son of Badikki Haliammal, he could not produce any document to show his enjoyment over the whole lot of suit property. In fact, the name of the appellant/6th defendant was included in the Chitta and thereafter, on the objection made by the deceased first plaintiff, his name was removed from the Chitta through the proceedings produced as Ex.A8. But the appellant/6th defendant did not file any appeal by challenging the said order. The patta for the entire 47 cents stood all along in the name of the deceased first plaintiff and his ancestors. Though the deceased first respondent/plaintiff did not produce any document to show his title to the entire extent of 47 cents, the revenue records are standing in the name of the deceased first respondent/plaintiff. This would no doubt show the enjoyment of the first respondent/plaintiff in the suit property and that the possession lies with him.

12.2 It is true that the plaintiff has not produced any title document. According to him, the suit property is his ancestral property and his right to the property is through his continuous enjoyment only. It is true that whenever a cloud is cast on the title, the plaintiff should file a suit for declaration and not for bare injunction. But the person who sets up a counter claim on the suit property ought to have produced prima facie evidence to show that there is a likelihood of title in his favour. Only in such case, it can be considered that a cloud is cast on the title of the plaintiff and hence he has to file a suit for declaration. But in the case in hand, the appellant/6th defendant who claimed right over an undivided 15 1/3 cents by way of inheritance from his mother has stated that his mother derived title from her father. According to him, his great grand-father was the original owner of the entire suit property. But to substantiate such a claim, the 6th defendant has not produced any title document or any other document to show that the suit property was owned and it was in the enjoyment of his ancestors. In fact, on the objections made by the deceased first defendant/plaintiff, his name was deleted from Chitta through the proceedings dated 12.12.1997 and 6th defendant did not challenge the same. Excepting 6th defendant, the rest of the defendants did not challenge the judgement of the Lower Courts. Since the appellant/6th defendant himself has not produced any prima facie document to substantiate his claim over the suit property, he can be viewed only as a stranger only.

13. The document produced by the deceased first respondent/plaintiff would show that the preponderance of probabilities are in his favour. Hence, the learned trial

Judge and the First Appellate Judge are right in decreeing the suit as prayed for. In view of the same, I find no factual or legal infirmity in the decree for injunction granted. Accordingly, the substantial questions of law 1 & 2 are answered against the appellant/6th defendant.

In the result, this Second Appeal is dismissed and the Order dated 29.06.2009 passed by the learned Subordinate Judge, Uthagamandalam in A.S.No.33 of 2007 is confirmed. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Sni
To

- 1.The Subordinate Judge,
Uthagamandalam.
- 2.The District Munsif's Judge,
Coonoor.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.R.Subramaniam, Advocate sr 52571
+1 CC to M/s. Lenin & Bhagya, Advocate sr 52579.

S.A.No.1154 of 2009

SPD(CO)
SP(19/11/2021)