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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.93 of 2008

1.Saraswathy

2.Ramamoorthy

3.Lakshmi Ammal

4.Pakkirisamy

...Appellants / Defendants 2 to 5

Vs

1.Thiyagarajan

...1st Respondent / Plaintiff

2.Senthil

3.Angalammal @ Maheswari

...Respondents 2 & 3 / Defendants 6 & 7

PRAYER : The Second Appeal is filed under Section 100 of the Civil Procedure Code to prefer the Memorandum of Grounds of Second Appeal to this Hon'ble Court against the Judgement and decree dated 31.08.2007 made in A.S.No.78 of 2006 on the file of the Court of the Subordinate Judge, Chidambaram, confirming the judgment and decree dated 22.06.2006 made in O.S.No.287 of 1996 on the file of the Court of the District Munsif, Parangipet.

For Appellants : Mr. R. Agilesh

For Respondents : Mr. Srinath Sridevan for R1
Not ready in notice - R2 and R3

J U D G M E N T

The unsuccessful defendants 2 to 5 are the appellants before this Court. The parties are referred to in the same array as in the suit.



2. The plaintiff had filed the suit O.S.No.287 of 1996 on the file of the District Munsif cum Judicial Magistrate, Porto Nova (Parangipettai) for a bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit A Schedule property and for a recovery of possession in respect of B Schedule property. The B Schedule property formed part of the A Schedule property.

3. Suit Property:

a) The suit A Schedule property measures an extent of 12 1/2 cents and is comprised in S.No.88/5 of Mutlur Village, Parangipettai, Chidambaran out a total extent of 0.34 cents with following boundaries:

East by:	Mariamankoil and Sambodai Pattai
West by:	the properties of the plaintiff's vendor
South by:	R.S.No.88/6
North by:	Abdul Haq lands excluding 10 feet pathway on the northern side.

b) The B Schedule property is the southern portion of the A Schedule property measuring east west 12 meters on the northern side, 11.4 meters on the eastern side and 14 meters on the western side bounded:

On the east by	: Sambodai Pattai
On the West by	: the lands belonging to Abdul Haq
On the North by	: remaining portion of the A Schedule property
On the South by	: R.S.No.88/6.

4. Plaintiff's case:

4.1. It is the case of the plaintiff that the larger extent of the suit properties was the ancestral property of the Shaik Abdul Haq from whom the plaintiff had purchased the A Schedule property under a registered sale deed dated 24.10.1994 for a sum of Rs.25,000/-. Although the lands were originally used for agricultural purposes, however since the adjacent lands had been converted into residential areas, no cultivation activities were taking place in the 'A' Schedule property and the lands were kept vacant. From the date of the sale, the



plaintiff had been in effective possession and enjoyment of the suit property. The defendants who are total strangers to the suit property demanded that the plaintiff should sell the suit schedule property to them which demand was turned down by the plaintiff. Therefore, they had started to interfere with the plaintiff's possession and enjoyment of the suit property and in the month of December 2003, defendants 6 and 7 had trespassed into the portion delineated as the B Schedule property. Therefore, left with no other alternative, the plaintiff was constrained to file the suit in question.

5. Defendants' case:

5.1. The written statement was filed by defendants 1 to 3 and adopted by defendants 4 and 5. They would contend that neither the plaintiff nor his predecessor in title had any right to the suit property at any point of time.

5.2. The defendants would further contend that the description of the property is false. It was their further case that to the west of the Pattai, property measuring 8 1/2 cents comprised in S.No. 88/5 was owned by three persons, one Murugesan owned 0.02 1/2 cents in the north, south of this property one Annamalai owned 0.03 cents and further to the south of Annamalai's property, the first defendant owned 0.03 cents. To the west of these three items of property, one Uthandi Padayachi owned 0.04 cents of lands in R.S.No. 88/5, by a sale deed dated 30.08.1944, he sold this extent to Thayarammal. Under this sale deed, the Survey Number was wrongly mentioned as 88/4 when actually the property was comprised in S.No.88/5. The property was bounded

On the North by : the lands which was sold to Uthandi Padayachi by Palani Puchi who in turn sold it to Abdul haq.
On the west : it was bounded by the property of Shaikh Khader,
On the South by : Murugesan,
On the East by : Pattai.

Under three sale deeds dated 16.07.1981, Thayarammal had sold 1 1/4 cents to Murugesan, the middle portion of 1 1/2 cents to Annamalai and the south extent of 1 1/4 to the first defendant.



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5.3. Once again the Survey Number was wrongly mentioned as S.No.88/4 instead of S.No.88/5. By reason of this purchase, Murugesan became entitled to a total extent of 0.03 3/4 cents, and Annamali to an extent of 0.04 1/2 cents and the first defendant 4 1/4 cents.

5.4. The wife of Murugesan, Vasantha after his death sold the property to the third defendant and Annamalai sold his property to the second defendant. Therefore, it was the contention of the defendants that the suit property was in the occupation and possession of these defendants. They would further contend that west of this 8 1/2 cents, which is the suit property, the remaining extent in R.S.No.88/5 belonged to Shaik Khader, who also owned properties in other Survey Numbers. On his demise, his sons Shaik Abdul Haq and his brothers had partitioned the properties and the properties west of the suit property in R.S.No.88/5 was the subject matter of partition in which they had left a pathway to access the road on the left.

5.5. The defendants would further contend that the fact that the suit property had not been divided by Shaik Abdul Haq and his brothers and that they had not objected to the compound wall being put upon by the defendants clearly indicates that they had conceded the ownership of the defendants to the suit property.

6. Reply Statement:

6.1. A reply statement was filed by the plaintiff to the written statement of the defendants hereinabove.

6.2. The plaintiff would submit that the entire contents of the written statement was totally false and the lands in S.No.88/5 was the ancestral property of plaintiff's vendor and they owned the entire extent in S.No.88/5. The defendants had no semblance of right to the property in question.

6.3. During the pendency of the suit, an application was taken out for appointing an Advocate commissioner to note down the physical features of the suit schedule property and submit his report along with measurements. The Advocate Commissioner had visited the property for the first time without the help of the Surveyor and had submitted his Report. Thereafter, the



Advocate Commissioner had once again visited the property with the Surveyor and after measuring the property in question had submitted a Report.

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6.4. The plaintiff had examined himself as P.W.1 and his neighbor Kuppan as P.W.2. Exs.A1 to A3 were marked on the side of the plaintiff. The defendants on their side had examined the third defendant as D.W.1, one Veerapan and Vasantha as D.W.2 and D.W.3 respectively and marked Ex.B1 to B10. The Commissioner's Report and Plan were marked as Exs.C1 to C4.

6.5. The learned District Munsif on considering the evidence on record rendered a finding that it was the plaintiff who was in possession of the suit property and that the defendants had no right to the suit property as they were in possession and enjoyment of the lands comprised in S.No.88/4 which was the Survey number in which their properties were situate.

6.6. The learned Judge had held that as early as in the year 1944, the defendants predecessor in title was in enjoyment of the lands comprised only in S.No.88/4 and not the lands situate in S.No.88/5.

7. Appellate Court:

7.1. Aggrieved by this judgment and decree, defendants 2 to 5 had filed A.S.No.78 of 2006 on the file of the Subordinate Judge, Chidambaram. The learned Subordinate Judge on a detailed analysis of the evidence on record confirmed the decree and judgment of the Trial Judge and aggrieved by the above judgment and decree the defendants 2 to 5 are before this Court.

Question of law

7.2. When the Second Appeal was listed for admission, the same was admitted on the following substantial question of law.

" Whether the Lower Court is correct in decreeing the suit without a prayer of declaration regarding "B" Schedule property, while denying by defendants title itself ? (should be read as when the defendants had denied the title of the plaintiff)"





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"11.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

8.5. He would contend that in the instant case despite the fact that the defendants had questioned the title of the plaintiff to the suit property, the plaintiff did not take any steps to amend the suit and had continued with the suit for bare injunction. He also relied on the judgment reported in "[2016-1-L.W. Page 998], L.C. Hanumanthappa (since dead) represented by his Lrs. vs. H.B. Shivakumar)", in support of his argument that even an application for amending the relief should be taken within the prescribed time and once it is time barred, the amendment cannot be permitted.

8.6. He would therefore submit that the Courts below have failed to appreciate this fundamental question of law and therefore the judgment and decree of the Courts below requires to be set aside.

8.7. Mr. Srinath Sridevan, learned counsel appearing on behalf of the first respondent would contend that the defendants have no manner of right, title or interest in the suit schedule property. The suit property has been described within well defined boundaries and the contention of the plaintiff that the description of the property is vague is baseless.

8.8. The counsel would draw the attention of the Court to the finding of the Trial Court that the description of the property as provided in the sale deed produced on the side of the defendants namely Exs.B2 to B9 would clearly establish that the property in question is not the suit property. The properties covered under these sale deeds have been described



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not only within boundaries but also the Survey Number. Therefore, the contention of the defendants that the Survey Number has been wrongly described is incorrect as the boundaries have clearly described the properties subject matter of each of these deeds.

8.9. The learned Counsel would submit that the argument that a suit for bare injunction without the relief of declaration is not maintainable will not apply to the instant case since the cloud on title is not based on any defect in the documents of the plaintiffs nor has the defendants proved that the suit property belongs to them absolutely. On the contrary, a mere reading of the description of the properties that are the subject matter of Exs. B2 to B9 would clearly show that the defendants are in no way connected with the properties comprised in S.No.88/5. The counsel would further submit that S.No.88/5 measures a total extent of 34 cents and out of this, an extent of 12 1/2 cents has been purchased by the plaintiff immediately abutting the Pattai on the East and the MarimmanKoil towards the Southern end. As regards possession, learned counsel would submit that the property in question is a vacant site and P.W.2 who is a local resident has clearly deposed to the fact that possession is with the plaintiff and when defendants 6 and 7 attempted to trespass, the villagers had joined together and forced them to move out of the suit property. He would rely on the judgment reported in "[AIR 1963 Mad 147], Dharmakanny Nadar Siviseshmuthu and Ors vs, Mahalingam Nadara Gopalakrishna Nadar and Ors", in support of his contention that where there is an iota of doubt about survey number and where the boundaries are specific and definite then boundaries would prevail.

8.10. The dispute in that case was whether boundaries should prevail over the area sold. The learned judge had observed that where boundaries are vague and indefinite then area would prevail but where boundaries are specific and definite then boundaries would prevail. He would also rely on the judgment reported in "[(2020) 3 MLJ page 466], J. Ajandhavalli vs V.M. Balamohanthambi)", once again in support of the argument that where survey number and boundaries are given, boundaries would prevail.

9. Heard the counsel and perused the papers.



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declaration would be necessary which is extracted hereinbelow:

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raised a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient."

10.5. When the documents of title filed on the side of the defendants are considered, it is clearly evident that the property purchased by them is comprised in S.No. 88/4 and the description of the Survey Number given by no stretch of imagination can be stated an oversight/error since the boundaries to the property subject matter of each of these deeds does not coincide with description of the suit property as indicated in the plaint Ex.A1 and in Ex.C4 Plan. The 3rd defendant as D.W.1 has conceded that the vendor of the plaintiff owned properties not only in S.No.88/5 but that they also owned properties in S.Nos.88/3, 88/4, 88/5. The property comprised in S.No.88/4 measured a total extent of 12 cents. In this property one Uthandi Padayachi had purchased property measuring an extent of 4 cents and it is this property which he conveyed to his wife Thayarammal under a sale deed dated 30.08.1944. The western boundary is described as Shaik Kadar's property. The southern boundary is described as Pattai and the North boundary as that of Palani padayachi whereas the suit property has the



lands in S.No.88/6 as its southern boundary and the remaining extent of land belonging to Shaik Abdul Haq on their northern as well as western boundaries. The Eastern boundary is the Pattai. Ex.A2, patta would also show that the family of Shaik Abdul Haq owned an extent of 32 and odd cents in S.No.88/5. Ex.A3 which is the adangal extract also confirms the same and shows that S.No.88/5 has been renumbered as S.No.88/5 A. Ex.A2 also confirms the fact that the family of Shaik Abdul Haq owns lands in S.No.88/4 as well. Therefore, it is Crystal clear that the defendants have no right, title and interest to the suit schedule property. Considering the failure to seek the relief of declaration is not fatal to the suit, since B2 to B9 does not relate to the suit property, the defendants have no right, title or interest to the lands comprised in S.No.88/5. Further the documents filed on the side of the defendants would clearly prove that they have no semblance of a right or interest to the lands comprised in S.No.88/5 and consequently the suit property.

10.5. As regards the arguments with reference to possession, the suit schedule property is a vacant site and the plaintiff has examined as P.W.2 who has in a very cogent fashion depose that it is the plaintiff who is in possession of the suit property. This evidence has not been rebutted by the defendants. Considering the fact that the plaintiff has proved their title to the property and as the same is a vacant site, the principle possession follows title would apply.

10.6. I do not find any infirmity in the judgment and decree of the Courts below. The substantial question of law is therefore answered against the defendants/appellants. In fine, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

mrn

To

1.The Subordinate Judge,
Chidambaram.



2.The District Munsif,
Parangipet.

Copy To

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

+1cc to M/s.T.Dhanasekaran, Advocate SR.No.26599

S.A.No.93 of 2008

SJ(CO)
RVM(30/09/2021)