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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.08.2021

Judgment Pronounced on: 27.08.2021

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

S.A.No. 873 of 2007

and

M.P.No. 1 of 2007

1.M.L.Veerabathiran (Died)
2.Indirani
3.V.Nanjammal
4.V.C.Chandrakanthan
5.V.Mangala Gouri
6.V.Babu Rajasekaran
7.V.Nagarathinam
8.V.Sridharan
9.V.Saraswathi

..Appellants/Defendants

(Appellants 3 to 9 brought on record as LRs of the deceased 1st Appellant viz., M.L.Veerabathiran vide Order of this Court dated 27.01.2021)

Vs

Kothandaraman,
S/o Kandasamy,
Rep.by his power agent,
Ragan,

..Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 13.06.2007, made in A.S.No. 41 of 2006 on the file of the Sub-Court, Tirupattur in reversing the judgment and decree dated 06.02.2006, made in O.S.No.1328 of 1993 on the file of the District Munsif Court, Tirupattur.

For Appellants : Ms.Abirami
for V.Raghavachari

For Respondent : Mr.K.Dharnidharan



JUDGMENT

This Second Appeal has been filed challenging the reversal findings given by the lower appellate court namely Sub Court, Tirupattur by judgment and decree dated 13.06.2007 passed in A.S.No. 41 of 2006 by which the findings of the trial Court namely District Munsif Court, Tirupattur by judgment and decree dated 06.02.2006 in O.S.No. 1328 of 1993 was reversed and the suit came to be decreed in favour of the plaintiff.

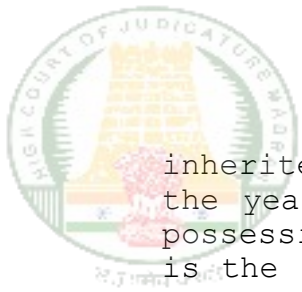
2. The appellants 3 to 9 are the legal representatives of the deceased 1st appellant who is the 1st defendant in the suit in O.S. No. 1328 of 1993 on the file of the District Munsif Court, Tirupattur. The 2nd appellant is the 2nd defendant in the said suit. The suit was filed by the respondent/plaintiff against the defendants for permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the property situated in North Arcot District, Tirupattur Taluk, Amman Kovil Village and comprised in survey no. 168/A1 measuring to an extent of 0.30 acres out of 2.22 acres, hereinafter referred to as the suit schedule property.

3. In the forth coming paragraphs the parties are described as per their litigative status in the suit.

4. The case of the plaintiff is that the suit schedule property along with other properties originally belonged to Poova Chettiar, S/o. Nallappa Chettiar, he having got the same under a sale deed dated 20.11.1933 registered as document No. 3587/1933. It is the case of the plaintiff that Poova Chettiar after his purchase was in possession of the suit schedule property by paying the Kist.

5. It is the case of the plaintiff that during the lifetime of Poova Chettiar, the properties belonging to him were divided orally between Poova Chettiar and his sons and Poova Chettiar was allotted the land measuring 1.46 acre in Survey No.1687/A1.

6. It is the case of the plaintiff that after the death of Poova Chettiar, his three sons namely 1. Arunachalam, 2. Kandasamy and 3. Kanniyappa Chettiar inherited his properties as his legal heirs. According to the plaintiff, the sons of Poova Chettiar namely Arunachalam, Kandasamy and Kanniyappa Chettiar have partitioned the properties orally in the year 1976. According to the plaintiff, under the oral partition, Kandasamy Chettiar was allotted 0.60 Cents in Survey No. 168/A1. After the death of Kandasamy Chettiar, his two sons namely Kothandaraman and Panbanathan orally partitioned 60 cents (0.30 cents each)



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inherited by them from their late father Kandasamy Chettiar in the year 1980. According to the plaintiff, Kothandaraman is in possession and enjoyment of 30 cents in survey no. 168/A1, which is the suit schedule property and he has absolute right over the same.

7. It is the case of the plaintiff that K. Kothandaraman executed a General Power of Attorney on 22.09.1993 in his favour for disposing of the suit schedule property by executing a sale deed and receiving sale consideration. According to the plaintiff ever since the date of execution of the power of attorney dated 22.09.1993, he has been in possession and enjoyment of the suit schedule property. But according to him, on 29.09.1993, the defendants attempted to trespass into the suit schedule property and take forcible possession of the same from the plaintiff. In the aforementioned circumstances, the plaintiff had filed the suit in O.S.No. 1328 of 1993 seeking for permanent injunction against the defendants not to interfere with his peaceful possession and enjoyment of the suit schedule property.

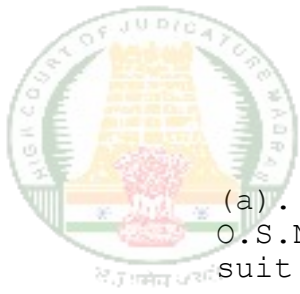
8. The defendants have filed written statement and denied the allegations of the plaintiff. According to the defendants, Arunachalam, Kandasamy and Kanniappa Chettiar and their descendants are in possession of other properties including the suit schedule property for more than 50 years. According to them, there was no oral partition in the year 1980 as alleged by the plaintiff in the plaint.

9. It is the case of the defendants that the plaintiff has concocted a false story only for the purpose of filing a false suit against the defendants. In the written statement, they have also denied that the power of attorney dated 22.09.1993 was executed by Kothandaraman in favour of Rangan/Plaintiff.

10. It is the case of the defendants that the 1st defendant has a flour mill in the suit schedule property ever since 1996 and he has been paying all the taxes for the suit schedule property.

11. It is also the case of the defendants that Kandasamy Chettiar had four children out of his 1st wife and two daughters out of his 2nd wife. One of the 2nd wife's child by name Panbanathan has not been made as a party to the suit and hence the suit has to be dismissed for non joinder of necessary parties.

12. The trial Court framed 12 issues and after trial, dismissed the suit in O.S.No. 1328 of 1993 by judgment and decree dated 06.02.2006 on the following grounds;



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(a). The suit filed by the plaintiff's father Kothandaraman in O.S.No. 1216 of 1993 was dismissed and hence filing a fresh suit in O.S.No. 1328 of 1993 for the same cause of action will amount to res-judicata.

(b). Ex.B36 to Ex.B51 marked on the side of the defendants will prove that the defendants are in possession of the suit schedule property. No documentary evidence has been produced by the plaintiff to prove his title over the suit schedule property and hence, the plaintiff who claims to be the power of attorney holder of Kothandaraman has no locus-standi to file a suit against the defendants in respect of the suit schedule property.

(c) In the deposition of DW1, he had deposed that Poova Chettiar's 2nd son Kandasamy had three wives. He had deposed that 1st wife of Kandasamy did not have any issues, the 2nd wife had 4 children namely Viswanathan, Sampoorammal, Manickammal and Chandra and through his 3rd wife, he had four children namely 2 sons and 2 daughters. Since the plaintiff had not cross examined on the aforementioned statement of DW1 relating to the legal heirs of Kandasamy, the trial Court has given a finding that the aforementioned persons are in fact the legal heirs of Kandasamy having interest over the suit schedule property and are necessary parties.

(d). Ex.B6 and Ex.B3 will prove that the suit schedule property has been allotted only to the family members of Arunachalam. Ex.B6 is the judgment dated 30.08.1991 passed in O.S.No. 714/1998. Ex.B3 is the judgment passed in O.S.No. 1216 of 1993 which is against the interest of the plaintiff and it pertains to the very same suit schedule property.

(e). The settlement deed dated 19.10.1992 has been executed by Radhammal in favour of Indirani/2nd defendant which has been marked as Ex.B28 which will reveal that the property in survey no. 168/1B/2D has been settled only in favour of the 2nd defendant.

(f). The plaintiffs have not filed any title deed standing in their name but only filed sale deed dated 20.11.1933 standing in the name of Poova Chettiar, which has been marked as Ex.A1 before the trial Court.

(g). The judgment and decree passed in O.S.No. 743/1988 and O.S.No. 1523 of 1991 which have been marked as Exs.A4 and A7 respectively have attained finality as the same have not been challenged by filing appeal. Ex.B6 reveals that the disputed property in the said suit bears patta no.264 and survey no.



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168/A/1B and the new survey number as survey no. 168/A/1B,2D and new patta number as 524 and the land in the suit schedule property in O.S.No. 1328/1983 is also situated in survey no. 168/A1/1B, 2B. Hence, the plaintiff cannot once again file a suit for the very same relief that was rejected earlier under Exs.B3 and B4.

(h).The plaintiff has not filed any documents before the Court to show as to how he became entitled to the suit schedule property. He has also not filed any documents to prove his possession over the suit schedule property. Since the defendants have denied the oral partition, the claim of the plaintiff that he is possession of the suit schedule property has to be rejected.

(i) The Judgment passed in O.S.No. 714/1988 and O.S.No. 1216/1983 and pata standing in the name of 2nd defendant (Ex.B29) will prove that the defendants are in possession of the suit schedule property.

(j)The other legal heirs of Kandasamy Chettiar have not been made as party defendants in the suit and therefore for non-joinder of necessary parties, the suit will have to be dismissed.

(k). Having not proved their title over the suit schedule property, the plaintiff is not entitled for permanent injunction as prayed for in the suit.

13. Aggrieved by the judgment and decree dated 06.02.2006 passed by the District Munsif Court, Tiruppattur in O.S.No. 1328 of 1993, the plaintiff in the said suit preferred a regular first appeal before the Sub Court, Tiruppattur in A.S.No. 41 of 2006. By judgment and decree dated 13.06.2007 in A.S. No. 41/2006, the lower appellate court namely Sub Court, Tiruppattur reversed the findings of the trial Court and allowed the appeal filed by the plaintiff and decreed the suit in favour of the plaintiff by giving the following reasons;

(a). The power of attorney holder Rangan and his father Kothandaraman are in possession of the suit schedule property as tenants and they are entitled to the relief of permanent injunction till they are evicted by following the due process of law.

(b). The lower appellate Court has relied upon Ex.A3 to Ex.A10 and came to the conclusion that the plaintiff is in possession of the suit schedule property.

(c) Even though the defendants have filed documents to show



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that ever since 1961, the descendants of Arunachala Chettiar have dealt with the property and there has been mutation of revenue records through Patta, Chitta, Adangal and Encumbrance Certificate and Tax receipts, the plaintiff who is in legal possession of the schedule property can be evicted only by due process of law.

(d) Since the plaintiff is in possession of the suit schedule property, he is entitled for grant of permanent injunction in his favour.

14. Aggrieved by the reversal findings of the lower appellate court in judgment and decree dated 13.06.2007 passed in A.S.No. 41 of 2006, the present Second Appeal has been filed.

15. At the time of admission of this Second appeal on 31.08.2007, the following substantial questions of law were formulated by this Court ;

1. Whether the suit filed by the plaintiff's power agent as against the true owner is maintainable in law, when admittedly the plaintiff's predecessor was held to have no interest over the suit property?
2. Whether the court below ought not to have rejected the claim of the plaintiff as barred by resjudicata in view of the judgment and decree in O.S.No.No.1216 of 1983?

16. The trial Court in its judgment and decree dated 06.02.2006 passed in O.S.No. 1328/1993 has categorically given a finding that the plaintiff has not proved his possession over the suit schedule property. Admittedly there were prior suits over the suit schedule property and as per the judgment and decree passed in O.S.No. 1216 of 1983 and O.S.No. 714 of 1988 which have been marked as Exs.B3 and B6, the said judgments are adverse to the interest of the plaintiff. No appeal has been filed as against those judgments and hence the findings given by the Court in those judgments have attained finality.

17. Before the trial Court, the plaintiff has filed 10 documents, which have been marked as Exs.A1 to A10 and the defendants have filed 51 documents, which have been marked as Ex.B1 to B51. The trial Court has considered the oral and documentary evidence and only thereafter, has come to the right conclusion that the plaintiff has not proved his possession over the suit schedule property and therefore he is not entitled to the relief of permanent injunction as prayed for in the plaint.

18. Before the trial Court, the defendants have filed various documents which includes Kist receipts, Patta standing



in the name of the 2nd defendant for the suit schedule property and house tax receipts for the suit schedule property. The defendants have also filed a copy of judgment passed in O.S.No.714 of 1998 and in O.S.No. 1216 of 1983 and the findings given in those judgments are adverse to the interests of the plaintiff. As seen from the evidence available on record, there is a cloud over the title of the suit schedule property. The Lower appellate Court in its judgment and decree dated 13.06.2007 passed in A.S.No. 41 of 2006 has reversed the findings of the trial Court despite the findings given by the trial court that several documents have been filed by the defendants to prove their title over the suit schedule property. The lower appellate court has reversed the findings of the trial court only on the ground that the plaintiff who is in legal possession of the suit schedule property can be evicted by the defendants only by following due process of law. The Lower Appellate Court without any pleadings to that effect in the plaint, has erroneously treated the plaintiff and his father Kothandaraman as tenants in the suit schedule property. The plaint averments will clearly reveal that the plaintiff is not a tenant. When there is absolutely no pleading that the plaintiff is a tenant, the lower appellate court has erroneously by total non application of mind to the pleadings and evidence available on record, has reversed the well considered findings of the trial Court in its judgment and decree dated 06.02.2006 passed in O.S.No.1328 of 1993. The trial Court has framed 12 issues based on the pleadings and has given its well considered findings holding that the plaintiff is not in possession of the suit schedule property.

19. In Anathula Sudhakar Vs. P.Buchi Reddy (Dead)by LRs and Others reported in (2008) 4 SCC 594 the Hon'ble Supreme Court held that when cloud is raised over the plaintiff's title and he does not have possession, suit for declaration and possession with or without consequential injunction is the remedy and a simple suit for bare injunction is not maintainable.

20. In the case on hand, it is seen from the evidence available on record, that the plaintiff has been unable to prove that he is in possession of the suit schedule property. On the other hand, the defendants have produced various documents which have been marked as Exs.B1 to B51 before the trial Court in support of their contention that they are the owners and in possession of the suit schedule property. Unless and until a comprehensive suit for declaration of title is filed by the plaintiff, in a simple suit for bare injunction that too when there is a cloud over his title and possession, the plaintiff is not entitled to seek for injunction alone without seeking a declaratory relief.



21. The judgment relied upon by the learned counsel for the respondent in the case of A.S.Subramanian and another, appellant versus R. Pannerselvan, respondent rendered by the Hon'ble Supreme Court in Civil Appeal No.9472 of 2010 on 8.02.2021 does not have any bearing for the facts of the instant case as in the instant case, the plaintiff has been unable to prove through documentary evidence that he is in possession of the suit schedule property. In the case of A.Subramanian and another relied upon by the learned counsel for the respondent, referred to supra, the possession of the plaintiff over the property was established and admitted by the defendants which is not so in the case on hand.

22. For the foregoing reasons, the substantial questions of law formulated by this Court at the time of admission of this Second Appeal are answered in favour of the appellants/defendants by holding that the suit filed by the respondent/plaintiff for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property is not maintainable in view of the fact that the pleadings and the documentary evidence produced by the defendants conclusively proves that there is a cloud over the title of the suit schedule property and therefore the only remedy available to the plaintiff is to file a suit for declaratory relief to declare himself as the absolute owner of the suit schedule property and having not chosen to file such a suit, the present suit seeking for bare injunction alone is not maintainable. The judgment passed in O.S.No. 1216 of 1983 which is adverse to the interest of the plaintiff has also not been pleaded in the plaint and the plaint was also not amended subsequent to the filing of the written statement to incorporate the plaintiff's case insofar as the other suit in O.S.No. 1216 of 1983 is concerned. Hence this Court is of the considered view that the lower appellate court ought not to have reversed the well considered findings of the trial Court in judgment and decree dated 06.02.2006 in O.S.No. 1328 of 1993 and therefore the impugned judgment of the lower appellate court has to be set aside by this Court. By total non application of mind to the materials and evidence available on record as well as to the settled law as laid down by the Hon'ble Supreme Court in Anathula Sudhakar's case, the lower appellate court has erroneously reversed the findings of the trial court by decreeing the suit in favour of the plaintiff.

23. In the result, the impugned judgment and decree dated 13.06.2007 passed by the lower appellate Court viz., Sub Court, Tiruppatur in A.S.No. 41 of 2006 is hereby set aside and the Second Appeal is allowed by confirming the findings of the trial court dated 06.02.2006, made in O.S.No.1328 of 1993 on the file



of the District Munsif Court, Tirupattur, which has dismissed the suit. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(J)

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Sub Assistant Registrar

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To

1. The Sub Court,
Tirupattur.
2. The District Munsif Court,
Tirupattur.

Copy to:

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.43332

S.A.No. 873 of 2007
and
M.P.No. 1 of 2007

PP(CO)
SU(11/11/2021)