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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.09.2021
Pronounced on	08.10.2021

CORAM

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

S.A.No.730 of 2009

R.Kandasamy

...Appellant/Defendant

Vs.

S.Natarajan
Rep. by his Power of Agent
Mr.S.V.Srinivasan
No.3, Sadasivam Street,
Gobichettipalayam Town,
Gobichettipalayam Taluk,
Erode District.

...Respondent/Plaintiff

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the judgement and decree dated 28.10.2008 made in A.S.No.68 of 2008 on the file of the Principal Sub-Judge of Gobichettipalayam, concurring the judgement and decree dated 17.06.2008 in O.S.No.162 of 2005 on the file of the District Munsif, Sathyamanglam and allow the second appeal.

For Appellants : Mr.Veerasamy
for Mr.M.Narayanaswamy

For Respondent : Mr.M.Karthik
for Mr.I.C.Vasudevan

JUDGEMENT

(Heard through video conferencing)

This Second Appeal has been preferred challenging the judgement and decree dated 28.10.2008 by the Principal Sub-Judge, Gobichettipalayam in A.S.No.68 of 2008.

2. The appellant was the defendant.



3. The averments of the parties in brief:-

The suit property was purchased by the plaintiff on 10.02.1997 from one Jayasingh. It was originally belonged to one Rangasamy, Palanisamy and Pommanaicker and they executed a sale deed in favour of Jayasingh on 10.05.1990. The defendant was totally a stranger to the suit property and he has got no right over that. The plaintiff is in enjoyment and possession of the same. Since the defendant wanted to purchase the suit property and failed in his attempt, he developed enmity towards the plaintiff and started to disturb the possession of the plaintiff over the suit property. Hence, the plaintiff has filed the suit for permanent injunction.

3.1 The plaintiff has filed the written statement by accepting that the suit property was originally belonged to one Jangan and the same was purchased by Rangasamy and Pommanaicker, sons of one Dhimmanaicker on 25.04.1988 under the registered sale deed. Another son of Dhimmanaicker by name Palanisamy, did not have any right over the suit property. Pommanaicker has sold his half share in favour of Rangasamy. The defendant has purchased the suit property from Rangasamy on 31.03.2005 and he is in enjoyment of the same. The revenue records have been mutated in the name of the defendant. It is false to state that the sons of Dhimmanaicker namely Rangasamy, Palanisamy and Pommanaicker had sold the suit property on 10.05.1990 in favour of one Jayasingh and the said document is a forged one. Hence, the sale made in favour of the plaintiff by Jayasingh on 10.02.1997 is also not valid and legally enforceable. Since there is cloud over the title of the plaintiff, he ought to have filed the suit for declaration and injunction. The cause of action pleaded by the plaintiff is false and hence, the suit has to be dismissed.

4. The following issues have been framed by the trial Court:-

(1) வாதிக்கு தாவாவில் கோரிய நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

(2) வேறு என்ன பரிகாரம்?

5. During the course of the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A9 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and Exs.B1 to B9 were marked. Exs.X1 to X7 were marked through a revenue witness who was also examined.

6. At the conclusion of the trial, the learned trial Judge has decreed the suit and granted the relief for permanent



injunction as prayed for. Aggrieved over that, the defendant has preferred the First Appeal and the First Appeal was also dismissed. Hence, the defendant has preferred this Second Appeal and the Second Appeal has been admitted on the following substantial questions of law:-

(i) Whether the Lower Appellate Court is correct in law in upholding the order of the trial Court when the appellant/defendant has disputed the title of the plaintiff over the suit property and specifically when the plaintiff/respondent has not prayed for declaration of title?

(ii) Whether Exs.B-2 to B-9 categorically prove that the appellant/respondent is in possession of the suit property, whether the Lower Appellate Court and the trial Court are correct in law in eschewing the same?

7. Heard the arguments of the learned counsel appeared for the appellant and the respondent.

8. The learned counsel for the appellant cited the decision reported in (2019) 17 SCC 692 in the case of 'Jharkhand State Housing Board Vs. Didar Singh and another' in support of his contention that the suit itself was not maintainable without the relief of declaration. In the said judgement, it is held as under:-

....

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

9. The suit property is an extent of 2 acres 42 cents in S.No.469/2C in Thingalur Village, Sathyamanglam Taluk. The fact that the suit property was originally belonged to one Jangan and the sons of Dhimmanaicker have purchased the same from Jangan on 25.04.1988, was not in dispute. It is claimed by the respondent/plaintiff that his predecessor in title namely Rangasamy and Pommanaicker, who were the sons of Dhimmanaicker had purchased the same on 25.04.1988 by virtue of Ex.A8 - sale deed. The appellant had submitted that another son of Dhimmanaicker by name Palanisamy, did not have any right over



10. Despite it is pleaded specifically by the appellant that Pommanaicker has given away his half right in favour of Rangasamy on receiving a consideration of Rs.3050/-, no documents is produced to show the alleged conveyance. The said Rangasamy who is said to have executed a sale deed in favour of the defendant in the year 2005 had already sold the same in favour of the respondent/plaintiff on 10.05.1990 through Ex.A9 - sale deed. However, it is claimed by the appellant that the said sale deed itself is a forged one and the suit property was continued to be in the enjoyment of Rangasamy and from whom he had purchased and got title. What was conveyed through Ex.A9 - sale deed is a larger extent of 4 acres 87 cents. The remaining extent other than the suit extent comprised in Ex.A9 - sale deed, was purchased by the vendors of the plaintiff (namely Rangasamy and Palanisamy) by virtue of an another sale deed (Ex.A7) dated 19.04.1988 from one Sivamadhappa.

10.2 It is the duty of the revenue authorities to look into the earlier sale deed in favour of any individuals before effecting mutation of patta. Despite Exs.A7 & A8 - sale deeds relate to the suit property and they had been executed by Rangasamy, no enquiry has been made on this before mutating the patta in the name of the defendant. The respondent/plaintiff in whose name the earlier sale deed dated 10.05.1990 was executed, ought to have been given with notice before transferring the patta in the name of the appellant/defendant. It is submitted by



the respondent that despite the execution of Exs.A7 & A8 - sale deeds and the title of the property was conveyed in favour of the respondent/plaintiff, patta has not been changed in his name.

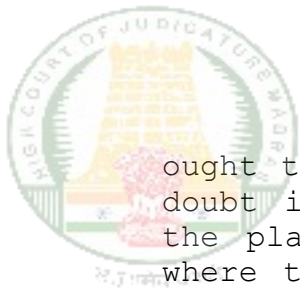
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10.3 The practice of giving application to change patta is in vogue at the time of registration of the sale deed. Since those applications are not processed immediately and the revenue records are not mutated in the name of the purchasers, the revenue records continued to stand in the name of the vendors. Once a purchaser is put into the possession of the property subsequent to the execution of the sale deed in his favour, many times he forgets to follow the change of revenue records in his name. Without knowing the ensuing danger, the revenue records are allowed to continue in the name of the earlier owner. In this case also, after the execution of the sale deed by the sons of Dhimmanaicker (who were the original owners of the suit property) in favour of the plaintiff and put him into possession, the plaintiff omitted to change the patta in his name. That had emboldened his vendor namely Rangasamy to once again execute a sale deed in favour of the appellant herein, in the year 2005. After losing his title in the year 1990 itself, the said Rangasamy cannot pass title once again in favour of the appellant/defendant. The appellant also took advantage of the revenue records standing in the name of Rangasamy and got them mutated in his name.

11. Any bonafide purchaser would not proceed to purchase a property without verifying the encumbrances. Since the property has already been sold in favour of the respondent/plaintiff that would certainly reflect in the encumbrance certificate. The possession follows title. Without any title, even if the revenue records are mutated in the name of a person that alone will not confer on him any right or title over the property.

12. It is pleaded by the appellant that the sale deed in favour of Jayasingh, vendor of the plaintiff itself is not true. Before taking such a plea, the defendant is expected to state whether he had purchased the suit property in the year 2005 only after verifying the encumbrances. Despite the defendant's sale deed (Ex.B8) dated 31.03.2005 mentions about the sale deed dated 25.04.1988 and 19.04.1988 (Exs.A7 & A8), it is silent about Ex.A9 dated 10.05.1990 and Ex.A2 dated 10.02.1997. So it is a clear case where the appellant/defendant and one of the original owner Rangasamy took advantage of un-updation of revenue records and executed a sale deed in favour of the appellant/defendant.

13. It is contended by the learned counsel for the appellant that where a cloud is cast on the title of the plaintiff, he



ought to have filed a suit for declaration. Though there is no doubt in the said proposition of law, it is not necessary for the plaintiff to seek the relief of declaration in every case where the defendant disputes the title of the plaintiff. Only when the defendant raises a genuine claim on the property then the plaintiff would be compelled to pray for a relief of declaration. If the defendant created fraudulent title deeds and dispute the title of the plaintiff, the plaintiff is not obliged to seek a relief of declaration.

14. The judgement above cited by the appellant itself would confirm the above said legal position only. The Courts below have clearly analysed the evidence and recorded a finding that the suit property has already been sold in favour of Jayasingh by the sons of Dhimmanaicker and Jayasingh in turn, sold the suit property to the plaintiff. The appellant/defendant had once again got a sale deed from one of the original owner Rangasamy by being indifferent to the earlier transactions. Such false claim made by the appellant on the basis of invalid title deed will not cast any cloud on the title of the respondent/plaintiff. Hence, I do not find any reason to interfere with the judgement of the trial Court. Accordingly, the substantial questions of law are answered against the appellant/defendant.

In the result, this Second Appeal is dismissed and the judgement and decree dated 28.10.2008 passed by the Principal Sub-Judge, Gobichettipalayam in A.S.No.68 of 2008 is confirmed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Principal Sub-Judge,
Gobichettipalayam.
2. The District Munsif,
Sathyamanglam.



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

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PA (CO)
K.RK. (25.11.2021)

Judgement in
S.A.No.730 of 2009