



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A. No.1338 of 2005

1. Krishnan
2. Palaniammal ... Appellants/Appellants/Plaintiff

Versus

1. Palanisamy
2. Raja Gounder
3. Chinnammal
4. Thangavelu ... Respondents 1 to 4/ Respondents 1 to 4/
Defendants 2 to 5
5. Kanthayee
6. Palanisamy
7. Thangavelu
8. Yethu (alias) Raji
9. Raja
10. Chinnathayee
11. Govindammal
12. Madesh
13. Balusamy ... Respondents 5 to 13/ Respondents 5 to 13

(Respondents 4, 12 & 13 given up as
un-necessary parties to this Second Appeal)

Second Appeal filed under Section 100 of the Civil Procedure code, against the judgment and decree dated 22.01.2004 made in A.S.No.42 of 2001 (on the file of the subordinate Judge, Sankari) confirming the judgment and decree dated 29.08.2000 made in O.S. No.342 of 1996 on the file of the District Munsif Court, Sankari.

For Appellants : M/s. Zeenath Begum

For Respondents : Mr.B.Singaravelu
for R1, R2, R3, R5, R8, R9 to R11
R4, 12, & 13 - Given up
R6 & R7 - Served - No appearance

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The appellants are the plaintiffs in the suit O.S. No.342 of 1996 on the file of the District Munsif Court, Sankari. They filed the suit



against the respondents / defendants seeking for permanent injunction restraining the respondents /defendants from interfering with their peaceful possession and enjoyment of the suit schedule property.

WEB COPY

2. The case of the appellants / plaintiffs is that the appellants /plaintiffs father had purchased the suit schedule property under the sale deed dated 18.11.1964, which has been marked as Ex.A1 before the Trial Court. It is the contention of the appellants/ plaintiffs that the suit schedule property was the self acquired property of their father, which was later on inherited by them after his death. However as seen from the Written Statement filed by the respondents / defendants before the Trial Court, they have disputed that it is a self acquired property of the appellants/plaintiffs father. According to them, it is a joint family property. It is also their case that the appellants / plaintiffs are also parties to the partition deed, dated 17.06.1998, which has been marked as Ex.B4 before the Trial Court and the subject matter of the said partition included the suit schedule property also.

3. Issues were framed by the Trial Court and thereafter, after trial, the Trial Court by its judgment and decree dated 29.08.2000 passed in OS No.342 of 1996 dismissed the suit filed by the appellants /plaintiffs.

4. Aggrieved by the judgment and decree dated 29.08.2000 passed in OS No.342 of 1996, the appellants / plaintiffs filed an appeal before the Sub Court Sankari in A.S. No.42 of 2001.

5. By judgment and decree dated 22.01.2004, the Lower Appellate Court in A.S. No.42 of 2001 confirmed the findings of the Trial Court and dismissed the appeal.

6. Aggrieved by the same, the present Second Appeal has been filed by the plaintiffs in the suit.

7. Heard Ms. Zeenath Begum, learned counsel for the appellants and Mr.B.Singaravelu, learned counsel for the contesting respondents.

8. This Court perused and examined the materials and evidence available on record.

9. This Court while admitting the Second Appeal on 15.12.2005 formulated the following substantial questions of law :



WEB COPY

1. When Ex.B4, partition deed shows that in that partition, the land situated in Survey No.106/2 alone was allotted to the defendants' branch and when the suit for injunction is laid only in respect of the property situated in Survey No.104/1, for which the title deed Ex.A1 stands in the name of the first plaintiff's father, have not the courts below committed an error of law in misreading the said partition deed to conclude that the suit property stands allotted to the defendants' branch?

2) Is not the judgment of the courts below vitiated in law when it failed to appreciate the documentary evidence filed on behalf of the plaintiffs marked as Ex.A3 to A6, which relate to the suit property, when compared to Ex.B8 to B12 which relate to the property in Survey No.102/6 in their proper perspective and consequently finding that the plaintiffs have not established possession?

10. As seen from the pleadings of the respondents / defendants as well as the Exhibits, which were marked on the side of the respondents / defendants, they have disputed that the suit schedule property is a self acquired property of the appellants / plaintiffs father. According to the respondents/ defendants, even though the sale deed dated 18.11.1964 stands in the name of the appellants / plaintiffs father, the said property was purchased only out of the joint family funds. Further it is their case of the respondents / defendants that the appellants / plaintiffs were parties to the subsequent partition effected under a partition deed dated 17.06.1998 which has been marked as Ex.B4 before the Trial Court which also included the suit schedule property also. The Trial Court as well as Lower Appellate Court has concurrently held that in view of the fact that there is a cloud over the title, a simple bare injunction suit is not maintainable and the only remedy available to the appellants/ plaintiffs is to file a suit for declaration claiming ownership of the suit schedule property.

11. This Court is of the considered view that the concurrent findings of the Courts below is a correct finding as it is in accordance with the settled law laid by the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. Buchi Reddy reported in AIR 2008 SC 2033, wherein it has been made clear that whenever there is a cloud over a title, a bare injunction suit is not maintainable without seeking a declaratory relief for ownership.

12. This Court does not find any infirmity in the findings of the Courts below. There is no substantial questions of law involved in this Second Appeal and



substantial questions of law formulated by this Court on 15.12.2005 at the time of the admission of the Second appeal are answered against the appellants / plaintiffs. Accordingly, the Second Appeal is dismissed. No costs.

WEB COPY

Sd/-

Deputy Registrar(Accounts)

//True copy//

Sub Assistant Registrar

vsi2

To

1. The Subordinate Judge, Sankari

2. The District Munsif, Sankari.

+1cc to M/s. Zeenath Begum, Advocate SR.No.32472

+1cc to Mr.B.Singaravelu, Advocate SR.No.32529

S.A. No.1338 of 2005

PMK(CO)

GMV(18/11/2021)