



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 27.04.2021

PRONOUNCED ON ::
13.05.2021

CORAM ::

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1418 of 2011
and
CMP.Nos.5420 and 6472 of 2021

E. Venkatesan
Represented by his
Power of Attorney
E. Kalaimani

...Appellant

Vs

VGP Investments,
A Registered Partnership Firm.
Represented by its Partner
V.G. Santhosham,
VGP Square, Saidapet,
Chennai.

...Respondent

Prayer : Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 13.06.2011 made in A.S.No.38 of 2009 on the file of the Sub Court, Kanchipuram confirming the judgment and decree dated 10.07.2009 made in O.S.No.546 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur by allowing this Second Appeal.

For Appellant : Mr. N. Manoharan

For Respondent : Mr. Suresh

J U D G M E N T

The unsuccessful plaintiff before the courts below is the appellant before this Court. The relief in the suit, which is the subject matter of this appeal, is for an injunction restraining the defendant from interfering in any portion of the



suit property which is in the exclusive possession and enjoyment of the plaintiff. The suit property measures 1.06 acres and is situate in Sriperumbudur Village comprised in S.No.1626/1I2 - measuring 31 cents, S.No.1626/1I4 - measuring 41 cents and S.No.1626/1I5 - measuring 34 cents. The parties are referred in their same rank as in the suit.

2. Plaintiff's Case:

2.1. The case of the plaintiff is that the suit property was owned by his vendor Mr. C. Raji, son of Chinnaswamy. The said Raji had executed a power of attorney in favour of one E.Kalaimani son of S. Elumalai. The said Kalaimani had sold the property to the plaintiff under a registered sale deed dated 08.09.1997, as the power of attorney of one Raji.

2.2. The plaintiff would further submit that he and his predecessor-in-title were in open, continuous and uninterrupted possession of the suit property. While so, on 15.09.1997, the defendant attempted to encroach into the suit property and form a road, which was successfully thwarted by the plaintiff. As the defendant firm is very powerful, the plaintiff apprehends that they would somehow enter into the suit property. Hence the suit.

3. Written statement of the defendant:

3.1. The defendant had filed the written statement initially denying the sale in favour of the plaintiff and that the property belonged to Raju. They also denied the alleged trespass on 15.09.1997. It was their case that the suit survey number was originally part of S.No.1626/2 - measuring a total extent of 2.52 acres. These lands belonged to one Kesava Ramanuja Reddiar, who had sold the property to one Balakrishna Chowdary, under a sale deed dated 17.05.1958. Thereafter, the said Balakrishna Chowdary had sold the property to Chinammal under a sale deed dated 06.02.1967. The U.D.R patta was issued in the name of Chinammal and her two sons Gopu and Nithyanandam. Since the plaintiff's vendor Raju was attempting to trespass into the property, Chinammal and her two sons had filed O.S.No.502 of 1992. They had also taken out an interlocutory application in I.A.No.953/92, restraining the said Raju from interfering with their peaceful possession and enjoyment of the property. This Court had also granted an interim order and the said suit is still pending, consequently the interim order as well.

3.2. On 19.12.1990, Chinammal had executed a Power of Attorney in favour of the defendant and put them in possession of the property. During the pendency of the suit O.S.No.502 of



1992, and the subsistence of the injunction order, Raju had clandestinely obtained mutation of the revenue records in his favour by an order dated 12.05.1994. This order came to be passed without notice to the owner of the property. On the basis of this patta, the said Raju had executed a Power of Attorney in favour of one R.Vijayaraghavan. Thereafter, Chinnammal and her two sons filed O.S.No.40 of 1995 for a declaration of their title to the suit property and the same is pending. Thereafter, the defendant had filed an additional written statement in which they would contend that the suit properties are the ancestral properties of one Gowri Pandi alias Solai Bandiappan and the patta number allotted in respect of the property was patta No.161. On 14.11.1991, Gowri Pandi and his children had executed a Power of Attorney in favour of V.G. Rajidoss, V.G.P. Rajadoss and V.G.P. Babu Doss, in respect of item Nos.1 and 3 of the suit property and on 16.10.1992, they had executed a Power of Attorney in respect of item No.2. The defendant would submit that the suit properties have been plotted out and the adjacent property had been sold out to persons who have not been made party to the suit. They therefore sought to have the suit dismissed.

4.Rejoinder:

4.1. The plaintiff had filed a rejoinder inter-alia contending that Gowri Pandi had died as early as in the year 1923. Therefore, there was no question of Gowri Pandi executing a Power of Attorney in the year 1991-1992.

4.2. Pending the proceedings, an Advocate Commissioner was appointed to visit the suit property and note down the physical features. The Commissioner had also visited the property on 25.01.2003 along with the help of a Surveyor. The Surveyor had located the suit property and a sketch was attached to the report. The Advocate Commissioner had reported that in the suit items, a mud road to a length of 40 feet East to West was in existence in the Eastern portion of suit items, which runs towards north and south. The Surveyor found that the suit properties had been plotted as per 'A' Register. The properties stood in the name of one K.Gowri Pandi. The property in old Survey No.1626/2 stands in the name of Chinnammal, Gopu and Nithyanandham in Old Patta No.674. This property has now been sub divided as 1626/2A, 2B, 2C, 2D, 2E and 2F. These properties have been shown as the southern boundary of the property comprised in S.No.1626/I 13, 1626/I 14 and 1626/I 15, on the north western corner of S.No.113, the property comprised in S.No.1626/112 is situate.



5. Trial Court:

5.1. The District Munsif -cum- Judicial Magistrate, Sriperumbudur on considering the pleadings framed the following issues:

- "1) Whether the suit is bad for non joinder of parties?
- 2) Whether the plaintiff has got a valid title over the suit property?
- 3) Whether the Power of Attorney dated 02.05.1999 is enforceable?
- 4) Whether the plaintiff is entitled for the reliefs as prayed for?
- 5) Whether the defendant got availed a genuine right over the suit property?
- 6) To what other reliefs the plaintiff is entitled to."

5.2. On the side of the plaintiff, one E.Kalimani has examined himself as P.W.1. Kalaimani was the Power of Attorney of the earlier vendor Raji. Apart from Kalaimani, Raji, the previous owner was examined as P.W.2 and one Selvam was examined as P.W.3. The Police officer who has enquired into the complaint lodged by the plaintiff was examined as P.W.4. The plaintiff had marked exhibits A1 to A16.

5.3. The Manager of the first defendant had examined himself as D.W.1 and marked Exs.B1 to B11. The Commissioner's report, rough sketch and sketch of Tahsildar have been marked as Courts Exs.C1 to C3. The learned District Munsif by his judgement and decree dated 10.07.2009 had dismissed the suit. Challenging the same, A.S.No.38 of 2009 was filed on the file of the Subordinate Judge, Kanchipuram. The learned Subordinate Judge by her judgement and decree dated 13.06.2011, had dismissed the appeal, confirming the judgement and decree of the learned District Munsif cum Judicial Magistrate, Sriperumbudur. Challenging the same, the appellant is before this Court.

6. Questions of law:

6.1. On 05.07.2013, the Second Appeal was admitted on the following substantial questions of law:

- "1) Whether the courts below were justified in dismissing the suit by giving a finding in favour of the defendant without any evidence to show that K. Gowri Pandi, whose name is found in Ex.X1 in respect of S.Nos.1624/1, 1624/I12, 1624/I13, 1624/I14



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and 1624/I15, was Solai Pandi, and his father's name was Arumugam?

2) Whether the findings in favour of the defendant rendered by both the fora below were not surprised by any ancient/old revenue records and documents?

3) Whether the findings given by the courts below in giving a finding against the plaintiff or reading of the oral and documentary evidence on the side of the defendant ?

7. Submissions:

7.1. Mr. N. Manoharan, learned counsel for the appellant/plaintiff would contend that the defendant had taken two different stands one in the written statements and another in the additional written statement. In the original written statement, they had contended that the suit property which forms part of S.No.1626/2 totally measuring 2.52 acres originally belonged to Kesava Ramanuja Reddiar and the same had changed hands and were finally purchased by Chinnammal in the year 1967 and she had been allotted patta No.674 under the UDR scheme not only in her favour but also in favour of her two sons Gopu and Nithyanandam. It is Chinnammal, who had executed a Power of Attorney in favour of the defendant on 19.12.1990. This narrative has been given a go-by in the additional written statement, where the defendant would contend that the suit property belonged to one Gowri Pandi alias Solai Bandiappan and this Gowri Pandi had executed two power of attorneys-one dated 14.11.1999, in respect of the first and third items of the suit property and the second on 16.10.1992, in respect of the second item of the suit property.

7.2. The learned counsel would submit that the suit in question is one for bare injunction. He would highlight the evidence of P.W.1 in his cross examination, wherein P.W.1 who is the Power of Attorney, had clearly stated that the property belonged to Gowri Pandi whose son was Chinnaswamy, father of Raju. He would also invite the Court's attention to the deposition of D.W.1, wherein the witness had admitted that they had not produced the decree in O.S.No.40 of 1995, which was filed to decide the title of the property that was the subject matter of the said suit and therefore, the witness has burked the best evidence from the court. The cross examination of this witness particularly with reference to Ex.B10, death certificate of Solai Bandiappan would clearly show that the claim of the defendant that Gowri Pandi and Solai Pandi are one and the same is disproved by this document as the name therein is only that



of Solai Pandi. Ex.B11 would describe the person as Gowri Pandi. The voters list Ex.B6 also does not indicate that Solai Pandi and Gowri Pandi are one and the same. He would therefore argue that the defendant have not established the fact that Gowri Pandi and Solai Pandi are one and the same. He would submit that the defendant have not provided any proof to show the date on which Gowri Pandi had passed away. The revenue records had come into existence when the suit was pending. The defendant is basing their entire claim only on the basis of a Power of Attorney, whereas the appellant has established title and possession through documents.

7.3. The learned counsel would submit that the Courts below have totally brushed aside Ex.A.15 complaint, particularly Ex.A16, the undertaking given by the supervisor of the respondent company dated 16.03.2006, before the Inspector of Police, Sriperumbudur, wherein he had admitted that the plaintiff has property next to their property which is situate in 1626/2 measuring 2.5 acres. He would contend that this admission would clearly prove the case of the plaintiff, particularly, when he would submit that the impleading petitions which are now taken out by the third parties in C.M.P.Nos.5420 and 6472 of 2021 are totally redundant and there is no necessity to implead the parties. In fact, a similar issue was framed in Trial court and the Trial Court had rejected the request by stating that there was no necessity to implead the third parties as the relief was only against the company. He would rely on the judgement of Supreme Court reported in "(2008) 7 SCC page 144, Usha Sinha vs Dina Ram and Others", in support of his arguments that the bogus sale deeds had been executed totally ignoring the interim orders of this Court. He would also rely upon the judgement reported in "(2019) 5 CTC page 359, Rengan Ambalam and another vs. Sheik Dawood", in support of his contention that the judgement and decree of the Courts below is perverse since they have not considered the oral and documentary evidence now available before the court.

7.4. Per contra, Mr.V. Suresh, learned counsel appearing on behalf of the defendant/respondent would submit that the plaint is absolutely silent about the predecessor-in-title of the plaintiff's vendor. The suit simply proceeds on the foot that the property is ancestral and belongs to one Raji, son of Chinnammal. He would further submit that the appellant/plaintiff had not taken any steps whatsoever to amend the suit as one for declaration, especially when the title of the plaintiff has been questioned by the defendant.

7.5. He would further submit that in the earlier suit O.S.No.40 of 1995, the title of the defendants have been recognised and decreed, and the predecessor-in-title of the



plaintiff and the plaintiff were parties to that suit. Ultimately Chinammal, Gopu and Nithyanandam were declared to be the absolute owners of that suit property. Therefore, in view of the Decree which has not been appealed against this Court is hit by principles of res judicata.

7.6. A reading of the defense taken in that suit would clearly indicate that the very same averments are contended in the instant suit. The learned counsel would further submit that the patta and kist have been manipulated and obtained just before the filing of the suit and that none of the documents pertaining to earlier period have been produced particularly when the plaintiff came forward with a case that the property has been with his vendor and his ancestors for a very long period. Therefore, he would contend that the documents filed by the plaintiff cannot be looked into.

7.7. He would further contend that old Patta No.674 was converted as 159 and therefore, it would be Patta No.662 which is now shown as Patta No.161. Even Ex.A1 sale deed does not trace the title to the property nor contain a patta number. The death certificate of Gowri Pandi marked as Ex.A13, cannot be relied upon since the name of the deceased's father is not available on the document.

7.8. He would submit that the Courts below which are the Courts of fact have already traversed through the evidence let in by the plaintiff as well as the defendant and non suited the plaintiff. Therefore, this Court sitting in Second Appeal under Section 100 of the Civil Procedure Code cannot be permitted to once again re-appreciate the evidence, especially, since there is no perversity in the reasoning of both the courts below. He would rely on the following judgements in support of his arguments.

- 1) "Ananthula Sudhakar vs P. Buchi Reddy (dead) By LRS. and Others reported in (2008) 4 SCC page 594)"
- 2) "Nazir Mohamed vs J. Kamala and Others reported in [2020 SCC online SC 676]"

7.9. Mr. Manoharan by way of a reply would submit that the non mentioning of the name of Gowri pandi in the pleadings is very insignificant and does not in any way effect the plaintiff's case.

7.10. He would rely on the following judgements,

- 1) "S. B. Noronah vs Prem Kumari Khanna reported in [1980 (1) SCC 52]"



2 . "Des Raj & Ors vs Bhagat Ram (Dead) By Lrs. & Ors reported in [2007 (9) SCC 641]" in respect of the contention as to what should constitute a pleadings.

7.11. He would further submit that the property belonging to Chinnammal comprised in S.No.1626/2 is not the subject matter of the present suit. He would further submit that when Ex.A13, death certificate of Gowri pandi was marked, there was no objection for the same and therefore the defendant cannot object to the same now. In support of this argument, he would rely on the judgement "R.V.E. Venkatachala Gounder vs Arulmigu Viswesaraswami & V.P. Temple & AR, reported in (2003) 8 SCC page 752".

7.12. He would further submit that this Court sitting in Second Appeal under Section 100 of the Code of Civil Procedure cannot once again analyse the factual aspects. For this preposition, he would rely on the judgement "Rengan Ambalam & Another vs, Sheik Dawood & others reported in 2019 (5) CTC page 359)".

8. Discussion:

8.1. The suit is one for a bare injunction in respect of the properties comprised in three survey numbers and totally ad-measuring 1.06 acres. The plaintiff has come forward with a specific case that the property is the ancestral property of his vendor and that they have been in possession of the same for a very long time. The defendant had originally filed a written statement tracing the title of the suit property to one Kesava Ramanuja Reddiar and stating that the suit property was part of S.No.1626/2. They would state that this property was ultimately purchased by Chinnammal, who had given the Power of Attorney to the defendant. After the filing of the original written statement, an Advocate Commissioner had visited the property along with the help of the Surveyor and in his report, which has been marked as Ex. C1, the Advocate Commissioner has stated that the property comprised in S.No.1626/2 had been sub divided as 1626/21 to 2F and this property stands in the name of Chellammal, Gopu and Nithyanandam. This property is situate to the South of the suit schedule item Nos. 1626/1I4, 1626/1I5, 3 and 1626/1I3. This property stands in the name of one K. Gowri Pandi. The defendant have thereafter filed an additional written statement in which they would contend that the suit property was the ancestral property of Gowri Pandi and the patta in respect of the same was patta No.161. Gowri pandi and her children had executed a Power of Attorney dated 14.11.1991, in favour of V.G. Rajidoss, V.G.P. Rajadoss and V.G.P. Babu Doss in respect of item Nos. 1 and 3 of the suit property and a Power of Attorney dated 16.10.1992 in respect of the second item of the



suit property in favour of the very same person. Therefore, the tracing of title to Chinnammal is not with reference to the suit property but with reference to the property situate to the South of the suit property.

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8.2. Let us now examine the documents filed on the side on the plaintiff to prove possession of the suit properties. The plaintiff has, apart from the sale deeds and power of attorney of the year 1999, filed a patta dated 30.05.1996 issued in favour of Raji, Ex.A3, Ex.A4, Kist, Ex.A5, 'A' Register dated 28.11.1997, Ex.A6, patta dated 29.12.1997, Ex.A7, Patta dated 02.09.2004, Ex.A8, Ex.A9 and Ex.A10, Kist receipts which are for the years 1998-2003 and 2004 respectively. That apart, Adangal extract for the fasli 1407, has been filed as Ex.A11. The suit in question has been filed on 18.09.1997. Therefore, the plaintiff who has come to Court with a case that he and his predecessor-in-title have been in possession and enjoyment of the property, openly, continuously and without obstruction has not taken steps to file the kist receipts, adangal extract, etc., prior to the date of the filing of the suit. Further, Ex.A3 patta has been granted by the Deputy Tahsidhar without notice to the title holder particular when patta in the name of Solai Bandiappan, son of Solai Arumugam has been issued way back in the year 1974 under Ex.B2, Ex.B11, Kist receipt, has been filed which is of the year 1991. Therefore, the defendant has filed documents much prior to the filing of the suit to show their vendor's possession of the suit properties. The documents filed on the side of the plaintiff is only post the filing of the suit.

8.3. The plaintiff have sought to rebut the claim of defendants that the property belonged to Gowri Pandi and that Gowri Pandi's sons had executed a power of attorney by stating that the Gowri Pandi had died in the year 1923. To prove the same, a death certificate has been marked as Ex.A13. This death certificate does not indicate the name of Gowri Pandi and name of the deceased was shown as Pandi. The column regarding the father's name of the deceased is blank. The Courts below have rightly come to the conclusion that this document does not by any stretch of imagination prove the plaintiff's case that Gowri Pandi had died in the year 1923 and therefore the claim of the defendant is false. Being a suit for bare injunction, it is for the plaintiff to prove his possession of the suit property. The documents produced on the side of plaintiff are post the filing of the suit and the same would not in any manner support the plaintiff's claim. That apart, the evidence of P.W.1 would show that the properties around the suit property have all been plotted out and sold out to parties. The witness would state that he has only now come to learn that Raju is the son of Chinnammal and that he has no personal knowledge about the same.



He has however admitted that the property belonged to Gowri Pandi and after his demise, the property belong to his son Chinnaswamy. PW1 who says that his vendor paid the kist even prior to his purchase has not produced the same before this Court. Therefore, adverse inference has to be drawn against the plaintiff.

8.4. That apart, PW1 who says that even prior to the issue of Ex.A6, patta stood in the name of his vendor, Raju, has not produced this document. On the contrary, the defendant has filed proof to show his possession by filing the patta passbook of the year 1974 and the kist receipts of the year 1991 much prior to the filing of the instant suit. It is an axiomatic principle of law that the plaintiff has to win or lose on the strength of his case and not the weakness of the defense.

8.5. The Courts below have dismissed the suit on the ground that the plaintiff has not established his case of possession and was therefore not entitled to a permanent injunction. That apart, the vendor of the plaintiff who was examined as P.W.2 has got into the box and deposed that even after the sale, he was in possession of the property by cultivating the lands. The defendant had raised the plea that the suit for bare injunction is not maintainable without the prayer for declaration and issues had been framed by the Trial Court as to whether the plaintiff had got a valid title over the suit property which had not been objected to by the plaintiff and ultimately on that basis, the courts below have held that Ex.A1 sale deed does not trace the title to the property except for contending that the same is an ancestral one. However, the statement that it is an ancestral one is not accompanied by documents showing proof of possession prior to the suit. The order of the Deputy Tahsildar dated 30.05.1996 marked as Ex.A3 is an order which has been passed without notice to the title holders. P.W.1 in his cross examination has admitted that no enquiry was conducted prior to the issue of Ex.A6. Therefore, reliance cannot be placed on the same.

8.6. The learned counsel for the respondent has relied upon the judgement reported in (2020) SCC online SC 676, Nazir Mohamed vs J. Kamala and Others), in support of his arguments that the Courts exercising the jurisdiction under Section 100 of Code of Civil Procedure can do so only if the case involves a substantial question of law and not merely a question of law. For the question of law to be substantial it has to be

(a) that has not been previously settled by the law of the land or binding precedent;



(b) where no such question of law only a question of law was urged before the Trial Court or the first appellate Court consequently cannot be entertained.

8.7. The learned Judges had enunciated and summarised the principles relating to Section 100 of Civil Procedure Code as follows: :

"(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered 5 AIR 1963 SC 302 on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-



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recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence;

(ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

8.8. The questions of law raised in the instant case are questions of fact and involves re-appreciating evidence which has already been appreciated by both the courts below. As already submitted, the suit in question is a suit for bare injunction, in which the plaintiff is bound to prove possession, which in the instant case has not been established. The Substantial Questions of Law are answered against the plaintiff and the Second Appeal is dismissed. In the light of the Judgement passed in the above Second Appeal, the Civil Miscellaneous Petitions are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn/mps

To

1) The Sub Court,
Kanchipuram.

2) The District Munsif -cum- Judicial Magistrate,
Sriperumbudur.

+1cc to Mr.N.Manokaran, Advocate,Sr.27220

+7ccs to Mr.Micheal Amalraj, Advocate,Sr.27242

S.A.No.1418 of 2011
and CMP.Nos.5420 and
6472 of 2021

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