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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.07.2021
Pronounced On	19.07.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.1112 of 2012
and
M.P.No.1 of 2012
(Through Video Conferencing)

C.Saraswathiammal ... Appellant
Vs.

Dhanush Naicker ... Respondent

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 10.04.2012 passed in A.S.No.1 of 2012 by the Principal Sub Judge, Chengalpattu, by confirming the Judgment and Decree dated 23.12.2011 passed in O.S.No.78 of 2008 by the District Munsif cum Judicial Magistrate, Thirukazhukundram.

For Appellant : Mr.Rajendran for
M/s.Norton and Grant

For Respondent : Mr.K.V.Babu

J U D G M E N T

The unsuccessful plaintiff is the appellant in this Second Appeal. The appellant is aggrieved by the impugned Judgment and Decree dated 10.04.2012 passed by the Court of Principal Sub Judge, Chengalpattu (hereinafter referred to as First appellate Court) in A.S.No.1 of 2012.

2. By the impugned Judgment and Decree dated 10.04.2012, the First Appellate Court had dismissed the appeal of the appellant against Judgment and Decree dated 23.12.2011 passed by the Court of District Munsif cum Judicial Magistrate, Thirukalukundram (hereinafter referred to as Trial Court) in O.S.No.78 of 2008.



3. The appellant herein claims to be the owner of the suit schedule property viz., land measuring an extent of 1 Acre which was purchased vide Ex.A1 dated 14.03.1984 from the one Balakrishna Naidu. Before the Trial Court, the appellant had marked Ex.A2 Patta, Ex.A3 Chitta, Exs.A4 to A6 Kist receipts and Ex.A20 - Fasli to establish the possession of the suit schedule property.

4. The case of the appellant before the Trial Court was that the respondent along with few others encroached on a portion of the suit schedule property and had excavated soil for use in his brick chamber situated in the same Survey Number.

5. The appellant filed the above suit for a permanent injunction to restrain the respondent from interfering with the peaceful possession and the enjoyment of the suit schedule property purchased by the appellant vide Ex.A1 dated 14.03.1984 from her vendor Balakrishna Naidu.

6. The respondent, on the other hand, had put up the defence stating that the respondent had purchased an extent of 2.03 Acres of land from different owners vide Exs.B2 to B6 and that the land in Survey No.35/1 (New Survey No.35/1A) originally measured a total extent of 7.36 Acres, out of which, 4.63 Acres was acquired under the Land Acquisition Act by the Public Works Department, Government of Tamil Nadu for the purpose of supplying water to Madras Atomic Power Station, Kalpakkam and that a portion of land, over which the appellant claimed rights, had been actually acquired by Public Works Department, Government of Tamil Nadu for the aforesaid purpose and that there was no encroachment by the respondent.

7. It was further stated that the appellant's vendor had title to only 60 Cents of land and 1 Acre (100 Cents) of land and therefore, the appellant cannot claim rights over 1 Acre of land in excess of the land owned by the vendor of the appellant.

8. The Trial Court, after examining the records and after considering the deposition of the witnesses who deposed the evidence on behalf of the appellant and the respondent respectively, concluded that the appellant was indeed the owner of the land to the extent of 1 Acre equivalent to 40.5 Hectares.

9. At the same time, the Trial Court dismissed the suit filed by the appellant with the observation that in the plaint, the appellant has admitted that the respondent was in the possession of the property and therefore the suit for a permanent injunction and for peaceful and enjoyment of the suit



schedule property was not maintainable.

10. On further appeal, the First Appellate Court has affirmed the views of the Trial Court and held that the appellant had filed the suit without a prayer for a declaration of the title to the suit and therefore it cannot be construed that the appellant was in possession of the suit schedule property.

11. The learned counsel for the appellant has placed reliance on the decision of the Hon'ble Supreme Court in Anathula Sudhakar Vs.P.Buchi Reddy, CDJ 2008 SC 603 : (2008)4 SCC 594.

12. In this connection, the learned counsel for the appellant has drawn attention to paragraph 17, wherein, the Hon'ble Supreme Court after referring to several other authorities has summarised the law in respect of suit for prohibitory injunction relating to immovable property. Para 17 from the decision of the Hon'ble Supreme Court is reproduced below:-

"17. (a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be



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recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implead as noticed in *AnnaimuthuThevar** (2005) 6 SCC 202 (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

13. The learned counsel for the appellant submits that the appellant's case is squarely covered by the situation contemplated in (b) and (b) and therefore submits both the Trial Court and the First Appellate Court erred in dismissing the suit and the appeal filed by the appellant and therefore prays for allowing this appeal by remitting the case back to the Trial Court.

14. Defending the impugned Judgment and Decree, the learned counsel for the respondent submits that the decision of the Trial Court and that the First Appellate Court were well reasoned and require no interference in this appeal.



15. The learned counsel for the respondent submits that the total extent of the land in Survey No.35/1 was 7.36 Acres and 4.63 Acres was taken by P.W.D., Government of Tamil Nadu for supplying water to Madras Atomic Power Station, Kalpakkam.

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16. It is therefore submitted that there was only a balance of 2.73 Acres in the aforesaid Survey Number. He submits that the vendor of the appellant had title only for 60 Cents of the land and that the remaining Cents of the land was owned by the respondent's vendor for 2.03 Acres of the land and 10 Cents by one Emperumal Naicker. In this connection, he refers to Ex.B8 Joint Patta issued in the name of the appellant, respondent and the said Emperumal.

17. The learned counsel for the respondent further submits that the Chitta and Kist receipts obtained by the appellant in 2008 which were marked as Exs.A4 and A6 Kist receipts and Ex.A20 - Fasali were just prior to the filing of the suit. He submits that they neither establish possession nor the title for 1 Acre of the land.

18. The learned counsel for the respondent further submits that once a doubt has been raised over the title to the land, it was incumbent on the part of the appellant to have either withdrawn the suit and/or amended the plaint. In this connection, he placed reliance on the decision of the Courts in the following cases:-

- i. Jharkhand State Housing Board Vs. Didar Singh, (2019) 17 SCC 692.
- ii. A. Subramanian Vs. R. Pannerselvam, (2021) 3 SCC 675.
- iii. M. Ramamoorthy Vs. R. Thirunavukarasu, CDJ (2015) 594.

19. The learned counsel for the respondent also placed reliance on the same decision of the Hon'ble Supreme Court in Anathula Sudhakar Vs. P. Buchi Reddy, (2008) 4 SCC 594 which was also relied upon by the learned counsel for the appellant.

20. I have considered the arguments advanced by the learned counsel for the appellant and the respondent. I have also perused the impugned Judgment and Decree of the First Appellant Court, Judgment and Decree of the Trial Court and the Exhibits marked both by the appellant and the respondent.

21. O.S.No.78 of 2008 was filed by the appellant only for



a permanent injunction to restrain the respondent from disturbing the peaceful possession of the suit schedule property as per Ex.A1.

22. The land in question is a vacant land and there was no cultivation. The alleged encroachment in the plaint averments seems to indicate that there was a thwarting of fencing and barricading of the 1 Acre of land of the appellant from which the respondent was allegedly excavating the soil for his bricks chambers as is evident from the reading of the paragraph Nos.4 and 5 of the plaint, which reads as follows:-

4.The plaintiff states that, the defendant is the adjacent land owner of plaintiff land more fully described in the schedule hereunder and the plaintiff further submits that since she is residing at Chennai, the defendant without any prior request or demand have excavated the plaintiff's land soil for the purpose of putting bricks chamber in the defendant land and thereby the defendant have caused enormous damage by way of digging the plaintiff land and thereby created wastage in the plaintiff land and thereby the plaintiff land lost its fertility.

5.The plaintiff states that the defendant have also encroached into the plaintiff land and when the same was questioned by this plaintiff, the defendant abused the plaintiff in filthy language and also avoided and restrained the plaintiff to put up fencing in her own land.

23. On the other hand, the respondent has given only a general denial in his written statement which reads as follows:-

The allegations in para 4 to 6 of the plaint under reply are hereby specifically denied. This defendant has not aware of the survey done in September 2008. There is no fencing done in 12.09.2008 as alleged. After obtaining injunction order, she has trespassed into the defendant's property, and put up fencing on 03.11.2008. Hence, the plaintiff is the land grabber.

24. The case of the appellant before the Trial Court was that the appellant was an absentee landlord residing at Chennai and taking advantage of the absence of the appellant from the



land, the respondent excavated soil from the appellant's land for the use in his bricks chamber for manufacture of bricks.

25. The facts on records indicate that original total extent of land in Old S.No.35/1, Panangattucherry Village, Thirukkazhukundram Taluk and Kancheepuram District was 7.36 Acres.

26. The 7.36 acres of land was purportedly owned by Elumalai and 12 others. It must have thus included the appellant's vendor's father, namely Duraisamy Naidu and various vendors of the respondent.

27. Out of total extent of 7.36 Acres of land in Old S.No.35/1, an extent of 4.63 Acres had already been acquired by the Public Works Department, Government of Tamil Nadu, for supply of water to the Madras Atomic Power Station, Kalpakkam. Thus, the balance that remained in the hands of the vendors of the appellant and the respondent was only 2.73 Acres (7.36 - 4.63).

28. The appellant purchased 1 Acre of land from Balakrishna Naidu, the son and the legal heir of the said Duraisamy Naidu vide Exhibit A1 dated 14.03.1984. Thus, the balance was only 1.73 acres in Old S.No.35/1, Panangattucherry Village, Thirukkazhukundram Taluk and Kancheepuram District at the time of purchase.

29. The respondent however claims to have purchased 2.03 Acres of land from various buyers vide Exs.B2 to B6 between 1985 and 1987 though only 1.73 Acres of land was available for sale.

30. The description of the suit schedule property in Ex.A1 is as follows:-

"Out of 2.73 Acres situated in No.186, Patta No.87, Pymass No.26-11, Dry land, S.No.35/1, in Panangattucherry Village, Thirukkazhukundram Sub-District, Chengalpattu Taluk, Chengalpattu Registration District, Chengalpattu District, only 1 Acre. This boundary is West of the Water Tank, South of the VayalurCannal, East of the Ponthakarikuppam Boundary and North of the River Bank.

31. In the plaint, the appellant had given a description of the suit schedule property as follows:-

All that piece and parcel of agricultural lands



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measuring about one acre or thereabouts comprised in Old Survey No.35/1, as per patta No.135, New sub-divided Survey No.35/1A2 of Old No.86, New No.81, Panagattucherry Village, Thirukkazhukundram Taluk and Kancheepuram District. Bounded on the:-

North by	: Vayalur Canal
South by	: River Bank
East by	: Water Tank, (Kalpakkam Water Pumping station)
West by	: Ponthakarikuppam Boundary

32. There is no variance between the description in the suit schedule and the description of the property in the Ex.A1 though they are worded differently.

33. The appellant therefore cannot be faulted for reproducing the description of the suit schedule property from Ex.A1 of the suit schedule property since the purchase of the property by the respondent vide Exs.B2 to B6 in the same survey number are subsequent to Ex.A1 Sale Deed. It was not for the appellant to give the exact extent of the respondent's property with the boundaries.

34. The defence of the respondent before the Trial Court that the appellant's vendor, namely Balakrishna Naidu, had only 60 Cents of land and that a Joint Patta came to be issued vide Ex.B8 in S.No.35/1 and Patta No.72 for the entire extent of 2.73 Acres of land as per Patta No.135, New sub divided S.No.35/1A2 of Old No.86, New No.81 with the name of the appellant, the respondent and one E.Emperumal ought to have been probed by the Trial Court. The respondent has not produced any evidence to substantiate that the appellants' vendors' father had only 60 cents of land.

35. The Trial Court has found fault with the appellant primarily on the ground that the suit for a permanent injunction was not maintainable as the respondent had allegedly encroached over the suit schedule property of the appellant even as per the averments in the plaint. In other words, as per the Trial Court, the appellant should have filed a suit for recovery of possession and a mere suit for permanent injunction was not sufficient.

36. The Trial Court has also referred to the contradictions elicited by the respondent regarding description



given in the plaint as the appellant failed to mention the new boundaries in the plaint. The Trial Court has also noted the contradiction in the evidence of P.W.1 (the husband of appellant), who has stated that the respondent's property was situated on the western side of the appellant's property, while, in the schedule to the plaint, on the western side, description given was Ponthakarikuppam Boundary. This was fatal to the prayer and relief sought for.

37. The Trial Court has also concluded that the possession over the land cannot be determined either by the appellant nor the respondent based on the Patta and Kist and that the title to the suit schedule property and possession can be determined only based on the other documents such as Settlement Register, Sale Deeds, Patta and Adangal.

38. The Trial Court has also recorded that the respondent has not established that the appellant's vendor had only 60 Cents of land. The Trial Court has therefore concluded that the appellant was the owner of 1 Acre of land.

39. It has merely relied on the contradictions elicited during the cross examination of P.W.1. The Trial Court has also found fault with the respondent that the respondent failed to establish how much portion of land was acquired by P.W.D., the Government of Tamil Nadu for supply of water from the vendors of the respondent since the respondent had admitted that some portion of land was acquired from his vendors.

40. The First Appellate Court also affirmed the views of the Trial Court in its impugned Judgment and Decree dated 10.04.2012 in A.S.No.1 of 2012.

41. In the above background of factual matrix of the case, the substantial questions of law for consideration in this appeal is whether the appellant was required to file a suit for recovery of possession or whether the appellant was required to file a suit for declaring the title as was argued by the learned counsel for appellant and the respondent?

42. The respondent has not challenged the findings of the Trial Court which was affirmed by the First Appellate Court as far as the title to 1 Acre of land of the appellant is concerned. Thus, title of the appellant to an extent of 1 Acre of land stands confirmed. The respondent has also not produced any records, particularly the parent documents based on which the Exs.B2 to B6 were executed in favour of the respondent to



substantiate that the respondent's vendor had title to 2.03 Acres of land.

43. The Trial Court has not examined the respondent's claim over a total extent of 2.03 Acres of land in Old S.No.35/1 vide Exs.B2 to B6 with reference to the boundaries. The Trial Court has also not given findings as to whether the entire extent of 2.03 Acres of land allegedly purchased vide Exs.B2 to B6 fell within Panangattucherry Village, Thirukkazhukundram Taluk and Kancheepuram District.

44. The alleged encroachment as per the appellant was just prior to the filing of the suit when the appellant attempted to fence 1 Acre of land when the respondent resisted it and therefore, the appellant filed the suit only for a permanent injunction to restrain the respondent from interfering with the peaceful enjoyment of the suit schedule property.

45. It is evident from the cumulative reading of the Judgment and Decree of both the Trial Court and the First Appellate Court that the appellant is the owner of the 1 Acres of land out of 2.73 Acres of land in Ex.A1. If that he so, only 1.73 Acres of land in S.No.35/1 was in the name of respondent and Emperumal. This ought to have been determined by the Trial Court.

46. The Trial Court ought to have appointed an Advocate Commissioner to give a report with the help of a Surveyor to the Court regarding boundaries by comparing the Parent documents, Settlement Register, Sale Deeds Ex.A1 and Ex.B2 to B6 and the location of alleged encroachment, if any.

47. The purpose of trial is to ascertain the truth. The truth has not triumphed in this case. Instead, the Trial Court has allowed the respondent to cross examine the P.W.1 on the content of Ex.A1 when indeed there cannot be any dispute regarding the same. Boundary in Ex.A1 is the same boundary in the suit schedule. The provisions of the Indian Evidence Act, 1872 also prohibited the respondent to elicit any oral evidence as to the content of the document.

48. Therefore, this Court is of the view that the impugned Judgment and Decree dated 10.04.2012 passed by the First Appellate Court and the Judgment and Decree dated 23.12.2011 passed by the Trial Court are liable to be set aside by restoring the suit to the file of the Trial Court, i.e. District Munsif cum Judicial Magistrate Court, Thirukalukundram,



to conduct fresh trial after framing additional issues to determine the correct extent of the properties of the appellant and the respondent and the Emperumal and the exact location of the alleged disturbance of the peaceful possession of the property of the appellant and alleged encroachment by the respondent.

49. Since the respondent has himself raised cloud over the title of the property in Ex.A1 in favour of the appellant, the Trial Court may also re-examine from the records and come to a correct conclusion as to the title on the same in the light of the decision of the Hon'ble Supreme Court in Anathula Sudhakar Vs. P.Buchi Reddy, CDJ 2008 SC 603 : (2008) 4 SCC 594. The Trial Court may thereafter frame additional issues if required to arrive at the correct conclusion on facts.

50. Since the dispute is of the year 2008, the Trial Court shall endeavour to complete the process and pass a final Judgment and Decree on merits in accordance with law, preferably within a period of 15 months from the date of receipt of a copy of this Judgment.

51. The impugned Judgment and Decree of both the Trial Court and the First Appellant Court are set aside and O.S.No.78 of 2008 is restored to the file of the District Munsif cum Judicial Magistrate Court, Thirukalukundram. Thus, this Second Appeal stands allowed by way of remand with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Sub Judge,
Chengalpattu.

2.The District Munsif cum Judicial Magistrate,
Thirukazhukundram.



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

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+1cc to Mr.K.V.Babu, Advocate SR.No.34831

+1cc to Mr.Norton and Grant, Advocate SR.No.34457

S.A.No.1112 of 2012
and M.P.No.1 of 2012

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