



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.802 of 2012

&

M.P.No.1 of 2012

Angamuthu

...Appellant/Appellant/Defendant

Vs.

M.S.Mahalingam

...Respondent/Respondent/Plaintiff

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment dated 30.01.2012 made in A.S.No.3 of 2011 on the file of the Sub Court, Tiruchengode confirming the judgment and decree dated 09.11.2010 made in O.S.No.236 of 2006 on the file of the Additional District Munsif Court, Tiruchengode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.T.Arockia Doss

J U D G M E N T

Aggrieved over the concurrent findings of the Court below, the defendant has preferred the above Second Appeal.

2. For the sake of convenience, the parties are called as per their rank in the suit.

3. Originally the plaintiff filed a suit for permanent injunction against the defendants restraining them from trespassing or interfering with the peaceful possession and enjoyment of the suit property. The plaintiff claim title to the property by virtue of a final decree passed in I.A.No.442 of 1963 in O.S.No.118 of 1961 dated 08.12.1965 on the file of Sub Court Salem. The defendant filed a detailed written statement denying the title of the plaintiff and the binding nature of the final decree, where he was not a party to the said partition suit. The defendant submitted that there are variations in



measurements and that when the surveyor surveyed the property and laid the stones to mark the boundary lines, the plaintiff without waiting for the regular process to get over, has rushed to the Court on untenable grounds. The defendants claim title to the property through his maternal grand aunt (maternal grand mother's sister). According to him his maternal grand aunt purchased the property and was in possession and enjoyment of the property till her death in 1951. At that time the property was a thatched shed. She died intestate and after her death he inherited the property and was enjoying the same. He was using the northern side property for storing dry woods, taking bath and washing clothes. The plaintiffs property is lying further north on the northern side of the disputed portion. The defendant is using the entrance to the house as well as the entrance to the disputed portion whereas the plaintiff has only one entrance. Therefore, the claim for permanent injunction cannot be granted. The measurements vary in Exs.A1, A3, A5 and A18 marked by the plaintiff for a property reveal varying measurements. The discrepancy in the measurements on the documents relied on by the plaintiff itself will disentitle the plaintiff to get the relief sought for.

4. The Trial Court framed appropriate issues and after elaborate trial decreed the same. The Lower Appellate Court confirmed the decree and judgment of the Trial Court.

5. Aggrieved over the same, the present Second Appeal has been preferred.

6. According to the learned counsel for the appellant, the Courts below have erred in recognizing the title obtained through a partition decree. The issue of partition is an internal matter among the family members and it is not a judgment in rem and therefore it will not confer any title, much less a declaration against the true owner who is not a party to the partition suit. The defendant/appellant has derived title to the property through his ancestor and he has let in cogent evidence to show that he inherited the property from his maternal grand aunt and in so far as possession is concerned, it is clearly pleaded and proved that the property was enjoyed by the defendant for the purpose of storing water in cement tanks, storing fire wood, taking bath and washing clothes. When it is clearly proved that the disputed portion of the property is in possession of the appellant/defendant the Courts below ought not to have granted injunction against the true owner. Further even though a specific ground was raised on the basis of exhibits marked by plaintiff vide Exs.A1,A3,A5 and A18 that there is



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variation in measurements and identity of the property is not clearly proved, granting a decree of permanent injunction is not correct. The Court's below have failed to appreciate the evidence in proper perspective and therefore the decree and judgment of the Courts below are to be interfered with.

7. Per contra, learned counsel appearing for the respondents would contend that the defendant did not prove his title in the manner known to law. Before the trial Court defendant failed to prove even the title of his maternal grand aunt by producing valid documentary evidence. Even the death of his ancestor Viz., Angayammal through whom he claims title was not proved. Secondly, legal heir certificate was also not produced to prove that he is a legal heir of the so called title holder. Without producing any document to show that the property originally belonged to Angayammal and that she died and on her death the defendant has inherited the same as her legal heir, the defendant is not entitled to claim any title, further he cannot deny the title of the plaintiff. Once the plaintiff traces his title through a registered sale deed marked as Ex.A18 through which his father purchased the property, which indicates the Door Nos.28 and 29 as two items of property in the schedule which includes the disputed portion also, the onus is cast upon the defendant to prove his possession and disprove the plaintiff's claim by establishing his title. The partition decree was granted on the basis of Ex.A18, and the same has become final. If at all the defendant had right, he must have either proved his title or obstructed the possession. It is well settled principle that possession follows title. In the instant appeal when title to the property is established possession automatically follows and therefore the defendant who is a stranger cannot setup a rival claim against the title holder. Further, the learned counsel would draw the attention of the Court that in the cross examination of P.W.2, a suggestion was made by the defendant the said Angayammal from whom he derived title has a son living abroad. The said suggestion made by the defendant himself would raise a suspicion that the defendant is not the legal heir and he cannot prevail over the right of a first class legal heir. Further, there is no proof of adverse possession against the plaintiff. The Court below after discussing the issue that the plea of adverse possession amounts to admission of title of other side and that the Court below have elaborately discussed that when title is proved, the discrepancy in measurements will not take away the right of the title holder and therefore she is entitled to permanent injunction.



8. Heard both sides.

9. The oral and documentary evidence clearly prove that there are three door numbers viz 27, 28 & 29. It is admitted that 27 belongs to the defendant and 29 belongs to the plaintiff. The dispute revolves around door No. 28 the portion lying between these properties door No. 29 and 27. The appellant herein as D.W.1 admits the fact that the northern side of his property was purchased by plaintiff's father vide Ex.A18. A reading of Ex.A18 shows that the schedule mentioned in Ex.A18 includes compound wall on all four sides. Hence the Courts below have given a finding that the property of the plaintiff was covered by compound wall on all four sides. The said property includes two door numbers viz 28 & 29. In the partition suit a final decree was passed in I.A.No.442/1963 in O.S.No.,118/1961 which is marked as Ex.A1. The sketch of the property is marked Ex.A3. There it was declared that the plaintiff is the owner of the property on the northern side of defendant's property. The defendant as D.W.1 would admit in his evidence that the property in dispute was purchased by the father of the plaintiff. As a natural corollary the title of the plaintiff stands proved and hence a suit for injunction is maintainable and declaration of title need not be prayed for.

10. Now that the proof as to the possession of the defendant has to be tested. According to the defendant, the appellant herein, the property was originally owned by his maternal grand mother one Angayammal. She died intestate in the year 1951. Her husband predeceased her. After his death, as her legal heir, the defendant inherited the property. The property was a thatched house in dilapidated condition. In the year 1975 he constructed house and it was assessed to tax. He left a vacant space on the northern side measuring 13 feet on the eastern side and 22 feet on the western side and constructed a cement tank and 5 cement tubs and filled up water through the hole on his northern wall through a water tap and was enjoying the same. There is a door next to his northern wall. He used the entrance for his ingress and egress to this disputed portion.

11. But in his evidence as D.W.1 as discussed above would admit the purchase of the northern side property by plaintiff's father vide Ex.A18. He would further admit the measurements to the said property in his cross examination. It is pertinent to note that the defendant inherited the property on the death of Angayammal in the year 1951. But till 1975 there is no whisper in the written statement as to who was in possession of the property. Interestingly the plaintiff's father purchased the



property in the year 1961 and it was passed on to the plaintiff in the year 1963 and said to have been in his continuous possession. To set up a rival claim, the defendant has marked documents which shows the sale deed in favour of Angayammal. But there is absolutely no evidence as to how the defendant inherited title to the property. It is more important to note that the proof of death of Angayammal, details of legal heirs of Angayammal, proof of defendant's claim as legal heir of Angayammal were not produced. The factum has been admitted by the defendant himself during cross examination. In that event it can be easily inferred that the defendant is making a frail attempt to set up a title in his favour without any basis. As contended by the learned counsel for respondent, the suggestion made by defendant to plaintiff's witness that there is a son born to Angayammal resides abroad doubles the suspicion as to the right of defendant to inherit the suit property.

12. The contention of the learned counsel for appellant that decree in partition suit will not confer title is concerned, D.W.1 has categorically admitted the purchase of property by plaintiff's father vide Ex.A.18 which includes Door No.28 & 29 and there is evidence on the side of plaintiff, the door numbers were merged in to one door number viz., Door No.29. Hence the decree of partition followed by a valid conveyance of title will entitle the plaintiff for a decree of injunction and it will bind the defendant. On the other hand evidence of D.W.1 leads to ownership of Door No.27 alone. Therefore, D.W.1 after having admitted the title of the plaintiff and the measurements of the property, cannot claim any possession or adverse possession against the plaintiff. The Courts below have categorically discussed the above issue.

13. In so far as the variation in measurement is concerned, as discussed the defendant as D.W.1 has admitted the measurements when it was confronted during his cross examination. The Courts below have categorically held that the measurement and extent claimed as per Ex.A.3 is lesser than that of Ex.A.18. Hence the variation in measurement is immaterial and it will not affect the claim of plaintiff for permanent injunction. I do not find any discrepancy in the finding also.

14. It is well settled principle that possession follows title. The plaintiff has proved his title and it is admitted by the defendant also. On the other hand the defendant did not prove either his title or possession over the disputed portion of the property.



15. Once the title and possession of the plaintiff is proved, it automatically follows that strangers cannot meddle with the same. The defendant is concerned is a stranger to the property and the Courts below have rightly granted decree in favour of the plaintiff. The concurrent findings of the Courts below do not require interference.

From the narration of the above factual events this Court is unable to find any question of law, much less any substantial question for admitting this Second Appeal. This Second Appeal merits no consideration and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Tiruchengode

2. The Additional District Munsif, Tiruchengode.

+1 CC to Mr.T.Arockia Doss, Advocate sr 42215

+1 CC to Mr.N.Manokaran, Advocate sr 42214.

S.A.No.802 of 2012
&
M.P.No.1 of 2012

GPL(CO)
SP(25/11/2021)