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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.09.2021

Coram:

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

S.A.No.103 of 2013

and

M.P.No.1 of 2013

1.Radhakrishnan

2.Sasikala

..Appellants/defendants

/versus/

Sivanesan

..Respondent/plaintiff

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code, praying allow the appeal and set aside the judgment and decree dated 27.11.2012 made in A.S.No.92 of 2011 on the file of Subordinate Judge, Nagapattinam reversing the judgment and decree dated 16.09.2011 made in O.S.No.199 of 2008 on the file of District Munsif Court, Nagapattinam.

For Appellants :Mr.M.S.Palaniswamy

For Respondent :Mr.S.Balasubramanian

J U D G M E N T

(The case has been heard through video conference)

The defendants are the appellants in the second appeal. Originally, the plaintiff/respondent herein filed a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property.

2.According to the appellants/defendants, the predecessor of their vendor namely, Govindasamy, was granted residential patta under Act 40/1971 on 15.01.1972 in S.No.136/1D, measuring to an extent of 4 cents. Later, the said Govindasamy died on 20.07.1973 leaving behind his daughters namely, Kavery and Chakkubai as his legal heirs. Both of them were enjoying the property. While so, in the year 1997, S.No.136/1B and S.No.136/1D got merged and on resurvey, it was allotted



R.S.No.172/6 and it was entered into the "A" Register. Thereafter, on 10.07.1993, the appellants/ defendants entered into a sale agreement with the legal heirs of late Govindasamy in respect of the property in S.No.136/1D measuring to an extent of 0.4 cents. While so, during the pendency of the sale agreement, on 22.01.1996, the respondent/plaintiff was granted UDR patta in respect of the very same S.No.136/1D. The appellants/defendants took possession of the property purchased by them. The respondent/plaintiff filed the above suit for permanent injunction on the basis of UDR patta granted in his favour.

3.The trial Court, after elaborate trial, dismissed the suit. Aggrieved by the judgment of the trial Court, the plaintiff preferred an appeal. The first appellate Court has reversed the finding of the trial Court and decreed the suit.

4.Aggrieved by the same, the defendants preferred Second Appeal and it was admitted and the following Substantial Questions of Law were framed for consideration:-

(i)Whether the lower appellate court can substitute a new case for the respondent/plaintiff without pleadings or evidence?

(ii)Whether the lower appellate Court can go into the question of title when the respondent/plaintiff has limited himself only to a prayer for injunction?

(iii)Whether the lower appellate Court can go beyond the pleadings and evidence and create a new case for the respondent/plaintiff?

(iv)Whether the lower appellate Court can pronounce a judgment that Ex.B3 the sale deed in favour of 1st appellant is corrected and substituted the words after registration when the same was not even suggested to the 1st appellant?

(v)Whether the lower appellate Court can sit on judgment over the order by the Revenue Divisional Office and set aside the same in favour of the respondent/plaintiff?

5.According to the learned counsel for the appellants/defendants, the judgment of the trial Court is well considered one and the first appellate Court had erroneously



touched upon the issue of title, which was not an issue in the suit and acted as an appellate authority over the order of Revenue Divisional Officer.

6.He would buttress his arguments, taking support of the judgments of this Court in (i) Devendran v. Ramalinga Padayatchi and others reported in [2012 (2) CTCOL 435 (Mad)] and (ii) Syed Dhasthakeer v. Navab John reported in 2012-5 LW 466.

7.Per contra, the learned counsel appearing for the respondent/plaintiff would contend that, the lower Appellate Court has clearly given its finding, on the basis of the title of the property, though the plaintiff has filed the suit for permanent injunction and he has paid appropriate Court fee under Section 27(a) of the Tamil Nadu Court Fees and Suits Valuation Act. Once the suit is filed under Section 27(a) of the Tamil Nadu Court Fees and Suits Valuation Act, the Civil Court is entitled to discuss the title and decide the consequential relief of permanent injunction in favour of the plaintiff. Further, the documents relied on by the defendants were post suit documents which came into existence after filing of the suit, which is the subject matter of revision before the District Collector. During pendency of the proceedings, the Civil Court ought not to have relied on the subsequent order of the Revenue Divisional Officer.

8.He would also contend that, when there is a dispute over the title between the parties and the Civil Court has seized of the matter, the Revenue Authority namely, Revenue Divisional Officer shall not interfere with the same and cancel the patta, as held by this Court in Vishwas Footwear Company Ltd., A-2, Third Phase, Guindy, Industrial Estate, Chennai-32 rep by Director, V.Ravi v. 1.The District Collector, Kancheepuram and others reported in [2011 (5) CTC 94]. Therefore, the finding of the first appellate Court that the property purchased by the defendants falls in S.No.136/1D. Whereas the plaintiff's claim is in respect of S.No.136/1B and such finding shall not be interfered with.

9.I have considered the rival submissions.

10.It is a suit for permanent injunction. The plaintiff filed the suit on the strength of Ex.A4-UDR patta granted in favour of the plaintiff on 22.01.1996 for the house site in S.No.172/6. But it is to be noted that for the very same property, patta was issued by the Revenue Authority as early as in the year 1972 vide Ex.B2 measuring to an extent of 0.2 cents.



This fact was not disputed. This patta devolved upon the daughters of the original pattadhar Govindasamy and after his demise on 20.07.1973, his daughters namely, Kavery and Chakkubai had enjoyed the property and entered into the sale agreement on 10.07.1993. It is also to be noted that, after grant of patta in favour of the plaintiff on 22.01.1996 vide Ex.A4, the appellants/defendants preferred an appeal before the Revenue Divisional Officer. The undisputed fact remains that the patta granted in favour of Govindasamy on 15.01.1972 was not cancelled. The Revenue Divisional Officer, by his order dated 31.03.2010 vide Ex.B1 cancelled the patta. This cancellation order was passed, after considering the fact that the property was sold by Kavery and Chakkubai in favour of the appellants/defendants by virtue of registered sale deed Ex.B3 dated 23.03.2008. The grievance of the respondent/plaintiff is that, the Revenue Divisional Officer should not have entertained the appeal filed by the appellants, during the pendency of the suit.

11.It is well settled that in a suit for injunction, the primordial consideration of the Court is the materials proving the possession of the property. In that view of the matter, the trial Court has considered the documents filed by the plaintiff viz., Ex.A1 to Ex.A9 and found that except Ex.A4 and Ex.A5, all other documents are only in the nature of complaints and receipts, which do not prove possession, particularly, Ex.A8 and Ex.A9 were the house tax receipts for the year 1976 and 1974. Whereas the patta was issued only on 22.01.1996 in favour of the respondent/plaintiff. Therefore, they cannot be relied on. Ex.A1-the police complaint; Ex.A2-is the representation sent to the District Collector; Ex.A3 is the acknowledgement; Ex.A6 is the family card; and Ex.A7 is the notice issued on 18.03.2010 by the Revenue Divisional Officer. These documents obviously do not prove the possession. Therefore, the trial Court has rightly considered Ex.A4 and Ex.A5. Ex.A4 is the UDR patta granted in favour of the plaintiff, which is under appeal vide Ex.A7. Ex.A5 is the adangal. Both the documents (Exs.A4 and A5) were issued in favour of the plaintiff only on 22.01.1996 and that is not a concrete proof to show that, the plaintiff was in physical possession of the property.

12.On the other hand, the patta issued in favour of Govindasamy vide Ex.B2 dated 28.12.1972 is still intact and admittedly, that has not been cancelled sofar. The only contention of the plaintiff is that, the patta issued in favour of Govindasamy was in respect of S.No.136-1D and not in respect of S.No.136/1B. But, the documentary evidence shows that, the



patta was issued in favour of Govindasamy in S.No.136/1D the corresponding Survey Number is 172/6. The certified copy of the sale deed marked as Ex.B3 also mentions the survey number as 136/1B. Therefore, it is a clear case that from the year 1972, Govindasamy and his successors are enjoying the property under S.No.136/1D. In that event, it is further substantiated by the order passed by the Revenue Divisional Officer dated 31.03.2010 vide Ex.B1 where it is clearly explained that the said Govindasamy was allotted with the Residential Patta and A4 was wrongly issued in the name of the respondent/plaintiff. In that event, the possession of property stands proved by Govindasamy and his successors. Till the order of Revenue Divisional Officer is set aside, on revision filed by the respondent/plaintiff, that order will remain in force. When the patta itself is cancelled, the plaintiff cannot have any basis for seeking the relief of injunction. If at all the plaintiff wants to establish his title over the property, he should have filed the suit for declaration of title and consequential injunction. When the rival claim was submitted by way of written statement by the appellants/defendants, he should have gone for larger relief of declaration of title as held by this Court in *Devendran v. Ramalinga Padayatchi and others* reported in [2012 (2) CTCOL 435 (Mad)], wherein it is observed at para 13, which is extracted as below:-

"13. He seeks in aid of the decision of this Court *Chinna Nachiappan and another v. PL.Lakshmanan*, 2007 (4) CTC 70, wherein it is held that when plaint itself refers to serious title disputes between the plaintiff and the defendant, plaintiff cannot seek for a bare permanent injunction and ought to pray for declaration of title also and that the suit is bad for absence of prayer for declaration of title."

and this Court in *Syed Dhasthakeer v. Navab John* reported in 2012-5 LW 466, observed at para 11, as extracted below:

"11. A comparative study of the relevant provisions of the Specific Relief Act, 1963, and the Tamil Nadu Court Fees and Suits Valuation Act, 1955, will show that there cannot be a blanket principle that when the title is denied a suit for bare injunction without a prayer for declaration shall be dismissed as not maintainable. Even the judgment relief on behalf of the appellant does not say that a suit for bare



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injunction in case of denial of title of the plaintiff by the defendant, is not maintainable. On the other hand, the Hon'ble Supreme Court in Anathula Sudhakar v. P.Buchi Reddy (dead) by LRs & others reported in 2008 (6) CTC 237=2009-2-L.W. 546 has held in clear terms that when the title of the plaintiff in a suit for bare injunction is disputed, the court can go into the matter. After categorising the cases, the Apex Court held that if the issue regarding the title is simple and not complicated, the same can be decided in the suit for injunction itself and on the other hand, if the Court is of the view that the issue is so complicated and it cannot be conveniently dealt with in the suit for injunction and a detailed and elaborate enquiry is needed, then the Court could relegate the parties to a regular suit for declaration to establish title and consequential relief of injunction. It must be noted that even in the said case dealt with by the Apex Court, the Apex Court, after holding that the question of title involved in the said case was not simple one and it was complicated requiring detailed and elaborate enquiry, the Apex Court allowed the appeal and gave leave to the plaintiff therein to file a suit for declaration and consequential reliefs. Only as a rule of convenience for the Court, the prayer for bare injunction in respect of immovable property are to be denied relegating the parties making the claim to seek declaration of title and injunction as a consequential relief."

13. In a suit for injunction, the Court shall not conduct a broad based roving enquiry in respect of title. All the more, the Courts below can grant liberty to the party to file a comprehensive suit for declaration of title. The issue involved in a suit for injunction, it is presumed that the plaintiff is the title holder and the task is to find out as to who proves to be in possession of the property as on the date of filing of the suit. In that process, the finding of title over the property shall not be recorded by the Courts. As held by the Hon'ble Supreme Court in Anathula Sudhakar v. P.Buchi Reddy (dead) by



LRS and others reported in [2008 (6) CTC 237], when the title of the plaintiff in a suit for bare injunction is disputed, the Court shall not enter into the issue of title, but could relegate the parties to seek declaration. In the instant case, the defendants have produced the earliest order of the competent authority viz., order passed in 1972 and the subsequent document pursuant to the same. The document produced by the plaintiff vide Ex.A4 was in respect of the same property. The competent authority declares that it was mistakenly issued. In that event, proof of legitimate possession of the property cast upon the plaintiff. But the first appellate Court in order to grant the relief, picked up holes in the sale deed executed by the original allottee and strived to disprove the title of the defendants. The issue of title is not relevant unless it is seriously disputed. But, the title of defendants has been seriously examined without any material in order to confer title and relief in favour of the plaintiff. Thus, the first appellate Court, while deciding the issue of injunction, had exceeded the jurisdiction and ventured into the issue of title and had given declaration of title and also set aside the finding of the Revenue Divisional Officer in respect of issuance of patta. This finding of the first appellate Court declaring the title of plaintiff in a suit for bare injunction is beyond the scope of the suit. It is well settled that issue of grant of patta falls within the exclusive jurisdiction of the revenue authority. The mechanism provides for an appeal and revision. When the matter is sub judice before the appellate authorities of the revenue department, the first appellate Court had usurped the jurisdiction of an Appellate Authority over the order of Revenue Divisional Officer. In such a view of the matter, the order of the first appellate Court is contrary to the principles laid down by the Hon'ble Supreme Court and this Court and rely the decree and judgment of the first appellate Court is beyond the scope of the suit itself. Therefore, the Substantial Question of Law Nos.2 and 5 are answered in favour of the appellants.

14.The Substantial Question of Law Nos.1, 3 and 4 are concerned, it is noted that in a suit for injunction, the lower appellate Court has conducted roving enquiry and gone into the identity of the property in S.No.136/1B and S.No.136/1D. On assumption of facts, the first appellate Court ventured into validity of the sale deed without there being any legal evidence to do so. The plaintiff himself has not stated that the defendants have purchased the property in S.No.136/1D and that by wrong identification of the property, they have mistakenly interfered with the possession of S.No.136/1B. The District Judge has gone into the facts, which were not pleaded and proved



before the Court and decided the case entirely on different basis. Thus, the first appellate Court substituted a new case on its own imagination. As already discussed, the first appellate Court exceeded the jurisdiction and went beyond the scope of the suit and therefore, the Question of Law Nos.1, 2 and 4 are answered in favour of the appellants.

15. In fine,

This Second Appeal is allowed giving liberty to the respondent/plaintiff to file a comprehensive suit for declaration of title, subject to the result of order to be passed in revision against the order of the Revenue Divisional Officer. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

- 1.The Subordinate Judge, Nagapattinam.
- 2.The District Munsif, Nagapattinam.
3. The Revenue Divisional Officer, Nagapattinam

Copy to

The Section Officer
VR Section
High Court, Madras 104.

- +1 CC to Mr.M.S.Palaniswamy, Advocate sr 47622
+2 Ccs to Mr.S.Balasubramanian, Advocate sr 48024

S.A.No.103 of 2013
and
M.P.No.1 of 2013

KV(CO)
SP(14/03/2022)