



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22 / 10 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SECOND APPEAL NO.443 OF 2017

Premananda (Died)

1.Lakshmi ammal

2.Goutham

3.Prathap

... Appellants

Vs.

Rajeswari ammal (Died)

1.Sivaprakasam

2.Nithyakalyani

3.Anjalakshi

4.Paramasivam

5.Kalaivani

6.M/s.VVA Properties Pvt. Ltd.,

Represented by its Director

Having Registered Office at

No.9, Crescent Street,

ABM Avenue, Chennai - 600 028.

(The petitioner in CMP No.11397/2021

impleaded as R6 vide Court order dated

30.09.2021 made in CMP No.11397/2021

in SA No.443/2017)

... Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.08.2016 passed in A.S.No.75/2009 (CPPT SC A.S.No.119/2005 dated 26.08.2016 on the file of the Subordinate Judge Court at Tambaram) confirming decree and judgment in (O.S.No.403/1984 on the file of District Munsif Court, Poonamallee, re-numbered as O.S.No.85 of 1997 order dated 29.10.1999 passed by the District Munsif cum Judicial Magistrate Court at Alandur.

For Appellants : Mr.P.Subba Reddy

For Respondents : Mr.Srinath Sridevan

J U D G M E N T

Unsuccessful plaintiffs are the appellants in the present Second Appeal.



2.Plaintiffs filed a Suit for permanent injunction against the defendants. According to them, they are the absolute owners of the Suit property, which was purchased by the first plaintiff's grandfather P.P.Thangavelu Chettiar. The said Thangavelu Chettiar was in absolute possession and enjoyment of the Suit property among other properties and after his death, the plaintiffs are in absolute possession and enjoyment of the Suit property till date. Other than them, no one else has got any right, title, interest or possession over the Suit property. The first defendant claiming herself as legal heir of one Anjalakshmi Ammal, who is no more now, alleges right over the property, whereas, the first defendant as well as Anjalakshmi Ammal were not in possession. The plaintiffs fenced the property on all four sides and the defendants attempted to trespass therein. Defendants 3 to 6 claim to have purchased the property attempted to dispossess the plaintiffs on 01.04.1984 and hence, the Suit.

3.In the written statement, the defendants denied all the allegations and contended it as re-litigation. The Suit property was purchased by the first defendant's brother Sachidanandam on 16.06.1925. He died intestate in the year 1939 leaving behind his mother Anjalakshmi Ammal as his only surviving legal heir. Thus, the mother of the first defendant became the absolute owner and was in absolute possession and enjoyment of the Suit property. Since the grandsons of the said P.P.Thangavelu Chettiar, who is the husband of the second plaintiff and father of the third and fourth plaintiffs attempted to interfere with her possession, she filed a Suit in O.S.No.260 of 1968 for declaration of title and permanent injunction and for alternative recovery of possession. On appeal by the plaintiffs predecessor, their claim of adverse possession was decreed. This Court in S.A.No.1256 of 1973 set aside the decree of adverse possession and restored the decree of the Trial Court and granted the prayer for declaration of title and permanent injunction against the second plaintiff, who was the second defendant therein, the husband of the second plaintiff and father of the third and fourth plaintiffs. The first defendant being the legal heir of Anjalakshmi Ammal became the absolute owner and in possession of the Suit property. Patta stands in the name of the first defendant. The possession of the plaintiffs denied. The cause of action alleged is false. There is no question of trespass as alleged on 01.04.1984. The plaintiffs live in a different place and filed the Suit on false allegations and hence, the Suit is liable to be dismissed.

4.The Trial Court after framing appropriate issues and after elaborate trial had categorically found that as per the admission of fourth plaintiff as P.W.1 and Ex.B5, the first defendant is proved to be the legal heir of Anjalakshmi Ammal and was in possession of the Suit property. It was also held



that the Suit is hit by resjudicata and dismissed the Suit. On appeal, the appellants herein projected their case taking support of the dismissal of the execution proceedings filed for substitution of the first defendant as legal heir of Late Anjalakshmi Ammal. The First Appellate Court has considered the arguments advanced and held that in the absence of detailed order copy in the execution proceedings and in view of the findings rendered by this Court with regard to possession and enjoyment in its judgment and decree in S.A.No.1256 of 1973 dated 05.10.1977 the contentions of the appellants are not material to decide the appeal and confirmed the findings of the Trial Court. Aggrieved over the same, the present Second Appeal has been preferred.

5.At the outset, Exs.A3 and A4 disclose the fact that there was previous litigation with regard to the same subject matter, between the same parties and it was decided on merits and the appellants / plaintiffs were non-suited for their claim by the highest Court of this Country. Suppression of fact is writ large. The Hon'ble Supreme Court in T.ARIVANANDAM VS. T.V.SATYAPAL AND ANOTHER [1977 (4) SCC 467] has held as under:

"5.We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Or. VII r. 1 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost



realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

On this ground alone, the appellants are not entitled to any consideration.

6. Secondly, the contention that the first respondent herein is not the legal heir is belied by the admission of P.W.1 during cross examination. Both the Courts have considered the above aspect and had given a well considered findings, which could not be repudiated by the appellants.

7. Thirdly, it was categorically held that Exs.A13 and A14 documents produced by the appellants as proof of their possession were fabricated as it does not contain the seal and signature of the authority claimed to have issued the same and it was further held that those documents were fabricated for the purpose of the Suit. Apart from the same, it is categorically found that this Court in S.A.No.1256 of 1973 had set aside the findings of the First Appellate Court with regard to adverse possession claimed by the appellants herein and declared that the predecessor of the first respondent was in possession. Ex.B5 substantiates the possession in the hands of the first respondent Rajeswari Ammal. This finding of fact is based on material evidence.

8. Fourthly, it is noted from the additional typed set of documents filed by the appellants that on 21.04.1979 in C.R.O.P.No.171 of 1974, the Sub-Court, Chengalpattu, had enhanced the compensation in favour of the predecessors of the appellants. It is also noted that an execution petition was filed by Late Anjalakshmi Ammal in E.P.No.425 of 1980. It is very crucial to note that the relief prayed in the execution petition was that proclamation of injunction under Order XXI Rule 32(1) CPC. Sub-rule 1 of Rule 32 of Order XXI reads as under:

" 32. Decree for specific performance for restitution of conjugal rights, or for an injunction

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an



injunction by his detention in the civil prison, or by the attachment of his property, or by both."

9. The above sub-rule enables a party who has obtained an order of injunction in his favour to enforce the same. At no stretch of imagination, can it be construed that the execution petition is one filed for recovery of possession. As rightly held by the First Appellate Court, the dismissal of execution application without production of any detailed order cannot be considered as material to decide the appeal overlooking the declaration confirmed by this Court in S.A.No.1256 of 1973. This Court has taken judicial notice of the affidavit and petitions filed before the execution court and of the considered opinion that the findings of the First Appellate Court is correct and legal and thereby affirm the same. Hence, the judgments relied on by the appellants in KARNATAKA BOARD OF WAKF VS. GOVERNMENT OF INDIA AND OTHERS [2004 (10) SCC 779]; L.N.ASWATHAMA AND ANOTHER VS. P.PRAKASH [2009 (13) SCC 229] and KANNAPPAN VS. PARGUNAN AND 9 OTHERS [2000 (II) CTC 219] are not applicable to the facts and circumstances of this appeal. Thus, the main contention projected by the learned counsel that the respondents have not taken over possession in the manner known to law or by due process of law is without basis. This Court has categorically set aside the findings of adverse possession claimed by the appellants in the previous litigation and on the other hand, recognised the possession of mother and predecessor of the first respondent. It is substantiated by Ex.B5 patta issued in favour of the first respondent. Therefore, this appeal is nothing but re-litigation, by suppressing the material facts, thereby absolute exploitation of due process of law, malafide and liable to be struck off. It is well settled principle that possession follows title. This Court not only declared title but also found that the first respondent's mother was in possession and granted injunction against the present second appellant and father of third and fourth appellants, through whom they claim title. One can get an injunction against the whole world but not against a true owner. The appellants knowing well that they do not have title, on the other hand, they have suffered a decree against the first respondent over the title of the Suit property have come forward with a Suit for bare injunction on false and illusory cause of action and hence, they are not entitled to any relief.

10. The legal notice dated 21.03.2019 enclosed in the additional typed set of papers filed by the appellants evidences the fact that the subsequent purchaser of the property is in possession of the Suit property. When it is admitted that the appellants are not in possession of the Suit property, on the other hand, the subsequent purchaser of the first respondent is in possession, the Suit itself becomes infructuous and



appellants have to work out their remedies in the manner known to law.

11.The questions of law raised in the Memorandum of Grounds of Second Appeal impliedly questions the title of the respondents. The Suit filed by the appellants is for bare injunction and not for declaration of title. If the doctrine of estoppel is to be applied, it shall emanate from the dispute raised for declaration of title. Having suffered a decree for title, the appellants cleverly maneuver this case to get undue advantage. The course adopted by the appellants is sheer abuse of process of law. The questions raised in the above appeal are not questions of law emanating the facts and circumstances of this case, but they are question of facts, much less there is no substantial question of law arising to admit the Appeal.

12.The Second Appeal merits no consideration for admission and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Subordinate Judge
Subordinate Court
Tambaram.

2.The District Munsif cum Judicial Magistrate
Alandur.

Copy to

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

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.54545
+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.54451

SECOND APPEAL NO.443 OF 2017

SSN(CO)
GN(27/10/2021)