



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2021

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.1095 of 2009

1.R.M.Muthu
2.Kunjaram

... Appellants

Vs.

1.Kalaivan (Died)
2.Mallika
3.Jothi Sathya
4.Malar Nandhini
5.Kadhiravan
6.Angaiyarkanni
7.Kumaran Karthikeyan

... Respondents

(Respondents 2 to 7 are brought on record as LRs of the deceased sole respondent vide order dated 14.09.2021 made in C.M.P. (MD)Nos.2705 to 2707 of 2020 in S.A. (MD)No.1095 of 2009 by GRSJ)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 27.08.2009 made in A.S.No.5 of 2005 on the file of the Sub Court, Sivagangai, confirming the judgment and decree dated 28.10.2004 made in O.S.No.82 of 2003 on the file of the District Munsif Court, Sivagangai.

For Appellants : Mr.S.Srinivasaragavan

For Respondents : No appearance for R2 to R7

JUDGEMENT

The defendants in O.S.No.82 of 2003 on the file of the District Munsif Court, Sivagangai are the appellants in this second appeal. The said suit was filed the deceased first respondent herein namely, Kalaivan. The suit was for injunction restraining the appellants herein from interfering with the plaintiff's possession and enjoyment of the suit property. The suit property is comprised in S.No.186/2, Chellakudi Village, Sivagangai Taluk and measures an extent of 2.82 acres. The appellants herein filed written statement



controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The plaintiff examined himself as P.W.1. Two other witnesses were examined on his side. Exs.A1 to A19 were marked. The first defendant examined himself as D.W.1 and one Nagasubbu was examined as D.W.2. on his side. Exs.B1 to B16 were marked.

3.After a consideration of the evidence on record, the trial Judge by judgment and decree dated 28.10.2004 decreed the suit as prayed for. Aggrieved by the same, the defendants filed A.S.No.5 of 2005 before the Sub Court, Sivagangai. Before the first appellate Court, both the sides filed applications for adducing additional evidence. I.A.Nos.173 and 189 of 2005 were allowed on 17.02.2006 and Exs.A20 and A21 and Ex.B17 were marked. The first appellate Court by the impugned judgment and decree dated 27.08.2009 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

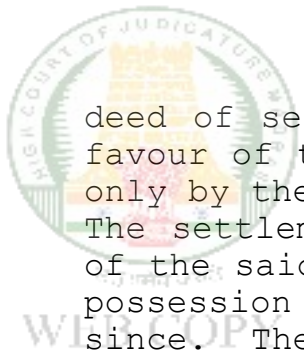
4.This second appeal was admitted on the following substantial question of law:-

"Whether the Courts below are correct in granting the relief of permanent injunction in favour of the plaintiff, eventhough the plaintiff has no title to the suit property?"

5.During the pendency of the appeal, the plaintiff/Kalaivan passed away and his legal representatives namely, respondents 2 to 7 were brought on record. Notices were issued to them. The notices have since been served and their names are printed in the cause list, however, there is no appearance on their behalf. In these circumstances, they have to be necessarily set ex-parte and the appeal has be taken up for disposal on merits.

6.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial question of law in favour of the appellants and set aside the impugned judgments and decree and dismiss the suit. Since there is no representation on the side of the respondents, I undertook an independent scrutiny of the entire evidence on record.

7.The specific case of the appellants is that the suit property belonged to the Government and that it was assigned in favour of his sister/Kannathal vide proceedings 12.11.1968. The said order was marked as Ex.A1. The said Kannathal pursuant to the assignment order took possession of the suit property and by expending her labour and money, improved the assigned land. Patta was issued in favour of the plaintiff's sister. The plaintiff's sister had also put up a house in a portion of the assigned land. She executed a



deed of settlement dated 26.06.2003, settling the suit property in favour of the plaintiff. The said settlement deed was executed not only by the plaintiff's sister but also her son namely, Subramanian. The settlement deed was marked as Ex.A19. Following the execution of the said settlement deed, the plaintiff had taken over exclusive possession of the suit property and has been enjoying the same ever since. The plaintiff was taking steps to demolish the old house and put up a new house. At this stage, the defendants were interfering with the plaintiff's possession and enjoyment of the suit property. That necessitated the filing of the aforesaid suit for injunction.

8.The plaintiff had come out with a very specific case. He had traced his title over the suit property clearly. His further contention is that he is in possession of the suit property and that the defendants were attempting to interfere with the same.

9.As rightly contended by the learned counsel for the appellants, the defendants in their written statement had disputed the plaintiff's title over the suit property. It is well settled that whenever the plaintiff's title is challenged and the challenge is prima facie well founded, the plaintiff will have to necessarily seek the relief of declaration of his title also. He cannot continue his litigative journey by maintaining the prayer for injunction alone. I therefore wanted to know if the challenge to the plaintiff's title is well founded. The learned counsel for the appellants draws my attention to Ex.B17 marked by the defendants before the first appellate Court. Ex.B17 is the relevant extract from the cancellation of assignment register maintained by the Revenue Divisional Officer, Sivagangai. It can be seen therefrom that the assignment made in favour of the plaintiff's sister/Kannathal on 12.11.1968 was cancelled vide proceedings bearing No.A8-24358/78, dated 03.05.1979. Thus as early as on 03.05.1979, the assignment made in favour of the plaintiff's sister stood cancelled. When the plaintiff's sister herself did not have any title over the suit property, Ex.A19 settlement deed dated 26.06.2003 executed in favour of the plaintiff is bereft of any legal foundation. The Hon'ble Supreme Court in the decision reported in **[2008 (6) CTC 237 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and Others)]** had held as follows:-

"17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(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



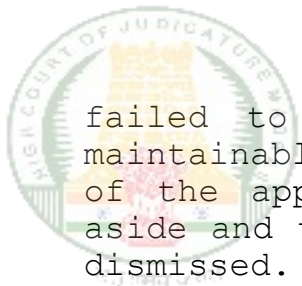
interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(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 recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (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."

10. Since the defendants had successfully demonstrated before this Court that the plaintiff's title is under a serious cloud, the plaintiff ought to have amended the suit prayer and sought the relief of declaration and injunction. In as much as, the plaintiff



failed to amend the plaint, the present suit was clearly not maintainable. The substantial question of law is answered in favour of the appellants and the impugned judgments and decree are set aside and the second appeal is allowed and O.S.No.82 of 2003 stands dismissed. No costs.

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Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To:

- 1.The Sub Judge, Sivagangai.
- 2.The District Munsif, Sivagangai.

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Madurai Bench of Madras High Court,
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+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-32187[F] dated
21/10/2021)

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RK(02.03.2022) 5P 6C