



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.46 of 2006

Natarajan

... Appellant / Appellant /Plaintiff

Vs.

Palanikumar

... Respondent / Respondent /Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree of the learned Subordinate Judge, Devakkottai, dated 28.07.2005 in A.S. No.21 of 2005 confirming the Judgment and Decree of the learned District Munsif, Devakkottai in O.S.No.161 of 2004 dated 31.01.2005 and to decree the said suit filed by the appellant with costs by allowing this appeal with costs throughout.

For Appellant : Mr.V.R.Shanmuganathan

For Respondent : Mr.K.Govindarajan,
for Mr.J.Anand Kumar

* * *

J U D G M E N T

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

2. The plaintiff in O.S.No.161 of 2004 on the file of the District Munsif, Devakkottai, is the appellant in this second appeal.

3. The appellant filed the said suit for restraining the defendant from altering the physical features of the suit property. The suit suffered dismissal before the trial Court. The plaintiff filed A.S.No.21 of 2005 on the file of the Sub Court, Devakkottai. The first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Aggrieved by the same, this second appeal came to be filed.

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

"1. Whether both the Courts below are justified in not drawing the presumptions regarding the ownership of property in favour of the appellant in as much as



there has been a stand by the respondent that the appellant has also signed Ex.B.1 sale deed under which the respondent staked his claim for the suit property?

2. Whether declining relief of perpetual injunction from altering physical features of the suit property in favour of a person who would be a co-owner is proper?

3. Whether the Courts below are justified in not drawing the presumption of possession follows title since the suit property is admittedly a vacant land? "

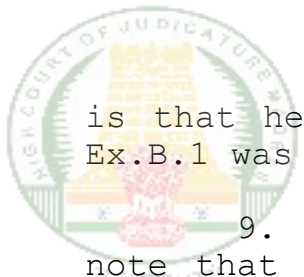
5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant. He pointed out that the Courts below have non-suited the appellant by proceeding on the terms that the appellant was not in possession of the suit property. He pointed out that the issue of possession is absolutely irrelevant to the case on hand. The only relief which the appellant sought before the trial Court was that the defendant should be restrained from altering the physical features of the suit property. The plaintiff need not be in possession for obtaining the aforesaid relief. In this regard, he also pointed out that the defendant did not set up any independent title. On the other hand, he claimed title over the suit property through the plaintiff. But it turns out that such a document was executed by some other person and not the plaintiff herein. The learned counsel also placed reliance on the Judgment of this Court dated 07.01.2011 made in S.A. No.700 of 2008 (PL.Lakshmanan V. N.N.N.Nachiappan and 1 Other).

6. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not warrant any interference and he called for dismissal of this second appeal.

7. I carefully considered the rival contentions and went through the evidence on record.

8. The suit property is comprised in Survey No.83/2 in Thatchavayal Village and measures an extent of 70 cents. The case of the appellant is that the suit property originally belonged to his grandfather Aadhiyan Servai. Following his demise, it devolved on his father Subbaiah Servai. After his father's demise, the plaintiff inherited the suit property. In the written statement, the defendant had contended that he purchased the suit property under Ex.B.3 dated 20.04.1998 from one Banumathy. Banumathy in turn purchased the suit property from one Ganesan under Ex.B.2. Ganesan in turn purchased the suit property under Ex.B.1 dated 16.07.1997. It is true that in the said Ex.B.1, Natarajan has been shown as one of the executants. The stand of the defendant is that this plaintiff was one of the

<https://www.scribd.com/document/106106106/PL-Lakshmanan-V-N-N-N-Nachiappan-and-1-Other>



is that he is the son of Subbaiah Servai whereas the executant of Ex.B.1 was Natarajan, S/o.Karuppannan.

9. In view of the divergent pleadings, one can very easily note that the plaintiff is no longer have any possession over the suit property. The defendant projected his defence and marked certain documents. Therefore in view of the decision of the Hon'ble Supreme Court reported in (2008) 4 SCC 594 (Anathula Sudhakar V. P.Buchi Reddy), the plaintiff ought to have sought the relief of declaration also. He could not have maintained a simple suit for injunction. Of course as rightly pointed out by the learned counsel appearing for the appellant, the nature of relief was only for restraining the defendant from altering the physical features of the suit property. Possession was not really relevant. But then, when the defendant has claimed that he is having title over the suit property and he had marked certain documents, the plaintiff ought to have sought the relief of declaration. Therefore, the substantial questions of law are answered against the appellant.

10. Since the appellant had categorically questioned the very validity and genuineness of the said Ex.B.1, it is of course open to the appellant to work out his rights in the manner known to law. If any development is made by the defendant on the suit property, that would certainly abide by the outcome of the suit that may be filed by the plaintiff.

11. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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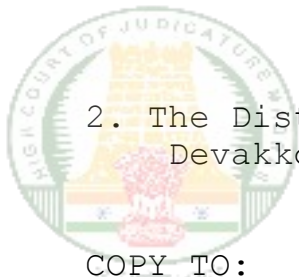
Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Devakkottai.



2. The District Munsif,
Devakkottai.

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+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-33269[F] dated 29/10/2021)

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