



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2021

PRONOUNCED ON : 16.12.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

SA(MD).No.356 of 2015

(Through Video Conferencing)

1. Azhagesan
2. Pappa

Appellants/Respondent/Defendant

Vs

Mohanlal Babu

Respondent/Appellant/Plaintiff

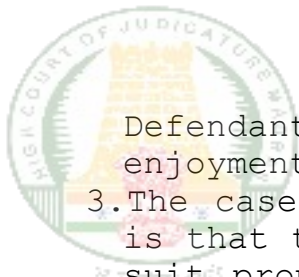
Prayer:- This Second Appeal has been filed, under Section 100 of CPC, against the judgement and decree, dated, 29.01.2015, passed in AS.No.57 of 2014, by the II Additional Sub Court, Nagercoil, reversing the judgement and decree, dated, 28.03.2014, passed in OS.No.390 of 2011, by the I Additional District Munsif, Nagercoil.

For Appellants : Mr.C.Godwin

For Respondent : Mr.C.Dhanaseelan

JUDGEMENT

- 1.The Defendants, who succeeded before the Trial Court, but lost their case before the lower appellate court, have filed this Second Appeal, against the judgement and decree, dated, 29.01.2015, passed in AS.No.57 of 2014, by the II Additional Sub Court, Nagercoil, reversing the judgement and decree, dated, 28.03.2014, passed in OS.No.390 of 2011, by the I Additional District Munsif, Nagercoil.
- 2.The case of the Plaintiff is that on 18.03.1996, the Defendants had sold the suit property to one Karthikeyan, who in turn sold the same to the wife of the Plaintiff, Vasantha Gokilam, on 21.12.1999 and mutation of revenue records was done and she had been in possession and enjoyment of the suit property till her death on 17.09.2009. Thereafter, the Plaintiff and her two sons were in joint possession and enjoyment of the suit property and after the demise of the elder son on 8.4.2010, the Plaintiff and another son were in joint possession and enjoyment of the suit property. Since on 8.8.2011, the Defendants had attempted to disturb the possession and enjoyment of the suit property, the suit has been filed, seeking permanent injunction, restraining the



Defendants from disturbing the Plaintiff's possession and enjoyment of the suit property and for costs.

3. The case of the Defendants, as set out in the written statement, is that the sale deed said to have been executed in respect of the suit property is a fabricated document, by forging the signature of the Defendants and that the Plaintiff has no right in the suit property and that the Plaintiff has neither title nor possession of the suit property and that the suit property is in possession of the Defendants and hence, the suit is liable to be dismissed.

4. On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A11 were marked and PW.1 and PW.2 were examined. On the side of the Defendant, Ex.B1 to Ex.B11 were marked and DW.1 was examined. Ex.C1 and C2 were marked. The Trial Court had dismissed the suit. On the appeal filed by the Plaintiff, the lower appellate court had decreed the suit. Aggrieved against the same, this Second Appeal has been filed by the Defendants.

5. This Second Appeal was admitted, on the following substantial questions of law:-

(a) Whether the lower appellate court has not committed an error in law in holding that the Defendants could not adduce any oral evidence against Ex.A1 sale deed, when the very execution of the sale deed was disputed by the Defendants?

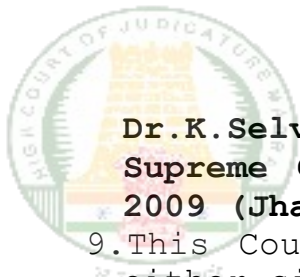
(b) Whether the lower appellate court has committed an error in deciding the question of title, without framing an issue regarding title?

(c) Whether the finding of the lower appellate court that the Plaintiff was in possession and enjoyment of the suit property is not based on legal evidence?

6. This Court heard the submissions of the learned counsel on either side.

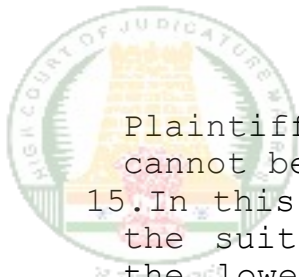
7. The learned counsel for the Appellants has submitted that when suit property belonged to the Defendants and when they denied the execution of Ex.A1, sale deed, the lower appellate court ought to have dismissed the suit for bare injunction, by erroneously shifting the burden on the Defendants to prove Ex.A1 and also erroneously relying on Section 91 and 92 of the Evidence Act to the effect that the Defendants cannot adduce evidence that they have not executed Ex.A1 and hence, the suit ought to have been dismissed.

8. The learned counsel for the Respondent would submit that even the suit seeking mere injunction, without the relief of declaration, is maintainable and that the lower appellate court, considering the evidence on record in a proper and perspective manner, had rightly decreed the suit. The learned counsel would rely on the decisions reported in **2008 AIR SC 2033 (Anathula Sudhakar Vs. P.Buchi Reddy)**, **2015 2 MWN Civil 582 (V.N.Krishnasamy Vs. E.S.Vasudevan)**, **2014 4 CTC 618 (Jayanthi and another Vs.**



Dr.K.Selvaraj and others) and the judgement of the Honourable Supreme Court, dated 09.10.2018 made in Civil Appeal No.8241 of 2009 (Jharkhand State Housing Board Vs. Didar Singh).

- 9.This Court considered the submissions of the learned counsel on either side and perused the materials available on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.
- 10.The Plaintiff claims the relief of injunction in respect of the suit property, on the basis of Ex.A1 and Ex.A2, registered sale deeds and Ex.A3, tax receipt and Ex.A4, patta. The Defendants have denied Ex.A1 as a forged one.
- 11.The lower appellate court, on considering the evidence, had found that the suit property originally belonged to the Defendants and in respect of the suit property, they executed Ex.A1, registered sale deed, in favour of one Karthikeyan, who in turn, had sold the same to the wife of the Plaintiff, under a sale deed, Ex.A2. The lower appellate court, relying on Ex.A1 and Ex.A2, registered sale deeds, Ex.A3 tax receipt and Ex.A4 computer patta, further had held that the Plaintiff has title and is in possession of the suit property.
- 12.It was also held by the lower appellate court that though the Defendants disputed Ex.A1 as a forged one, they did not depose anything as to any case being preferred by them to prove the forgery of Ex.A1 and even they did not make any objection to Ex.A1 at the time marking and that only after filing of the suit, through Ex.B10, the Defendants had complained off about Ex.A1 to the concerned Sub Registrar. It was further held that when Ex.A1 is disputed by the Defendants, it is their bounden duty to prove that Ex.A1 is a forged document, in a manner known to law and that the execution of Ex.A1 and Ex.A2 is also corroborated by the oral evidence of PW.1 and PW.2, who elaborately deposed about the said documents and also corroborated by the evidence of DW.1, who deposed that one Vasantha Gokilam has right over the suit property.
- 13.It was also held by the lower appellate court that the Defendants cannot adduce evidence against Ex.A1 executed by them. Further, relying on Ex.C1 and C2, the report and plan of the Advocate Commissioner, it was found by the lower appellate court that the Plaintiff is in possession of the suit property and since Ex.A1 was denied by the Defendants, a duty is cast upon the Defendants to prove the same, but they failed to do so. However, the Trial Court has wrongly shifted the burden of proof in respect of Ex.A1 on the Plaintiff, which is erroneous.
- 14.It is well settled that even in a suit for mere injunction, the question of title can also be gone into incidentally and as such, a suit for bare injunction without a prayer for declaration of title is maintainable. It would depend upon the facts and circumstances of each and every case. In this case, the lower appellate court had recorded findings of facts arising from the documents, particularly, Ex.A1 to Ex.A4 in favour of the



Plaintiff, regarding title and possession and hence, the same cannot be said to be improper.

15. In this case, though it is the contention of the Appellants that the suit is not maintainable without the relief of declaration, the lower appellate court, after analysing the entire evidence, both oral and documentary and keeping in mind the well settled proposition, have rightly recorded findings in respect of the title of the suit property also and clearly held that since the Plaintiff has established his title by valid evidence, there was no necessity for her to seek a relief of declaration. Ultimately, it was held by the lower appellate court that the Plaintiff has proved his case, by valid evidence and on the other hand, the Defendants failed to establish their case by valid evidence. Consequently, the impugned judgement of the lower appellate court do not warrant any interference by this Court, but the judgement and decree of the Trial Court is liable to be set aside. Accordingly, the substantial questions of law are answered against the Appellants.

16. In fine, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

Srcm

To

1. The II Additional Sub Court, Nagercoil

2. The I Additional District Munsif, Nagercoil

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The Record Keeper, VR Section, (2C)

Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.C.DHANASEELAN, Advocate (SR-39065[F] dated 16/12/2021)

+1 CC to M/s.C.GODWIN, Advocate (SR-39443[F] dated 20/12/2021)

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PK(CO)

KB(24.01.2022) 4P 7C