



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2022

Pronounced on : 28.07.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

S.A.No.139 of 1994

1.M.Natarajan (Died)

...Plaintiff / Respondent / Appellant

2.Chinnamma

3.N.Viswanathan

4.N.Chandrashekar (Died)

5.Sharadha

6.Maragadham

7.Shenbagam

Appellants 2 to 7 brought on record
as LR's of the deceased sole appellants
vide order of Court dated 13.06.2014
made in CMP.Nos.228 to 230 of 2014
in S.A.No.139 of 1994.

Vs.

Sengoda Gounder

... Defendant / Appellant / Respondent



The Second Appeal filed under Section 100 of CPC, against the judgment and decree made in A.S.No.40 of 1990 dated 25.03.1992 on the file of the Sub Court, Vridhachalam against the judgment and decree made in O.S.No.567 of 1984 dated 24.01.1990 on the file of the District Munsif Court, Kallakurichi.

For Appellants : Mr.P.Valliappan

For Respondent : Ms.V.Srimathy

JUDGMENT

The plaintiff in O.S.No.567 of 1984 on the file of the District Munsif Court, Kallakurichi, is the appellant herein.

2.O.S.No.567 of 1984 had been filed by the plaintiff, M.Natarajan against the defendant, Sengoda Gounder seeking permanent injunction restraining the defendant from interfering with the peaceful possession of the suit schedule property. The suit schedule property was punja lands in S.No.309/4 measuring 1.5 cents and in S.No.309/5 measuring 1.97 cents. The said suit was decreed with costs by the Additional District Munsif



Court, Kallakurichi, by judgment dated 24.01.1990. The defendant, then filed A.S.No.40 of 1990 before the Sub Court, Virudhachalam. By judgment dated 25.03.1992, the appeal was allowed with costs and the judgment and decree of the Trial Court was set aside.

3.The plaintiff, M.Natarajan, then filed the present Second Appeal. Pending the Second Appeal, he died and his legal representatives had been brought on record as 2nd to 7th appellants. Pending the Second Appeal, the 4th appellant who had been brought on record also died, it was claimed that legal representatives were already on record.

4.The Second Appeal had been admitted on 08.02.1994 on the following substantial question of law:-

“Whether the reversing judgment of the Lower Appellate Court is sustainable in law as it had failed to frame the proper point for consideration? In other words, when the suit was one for permanent injunction, the point for consideration framed by the Lower Appellate Court was, whether the plaintiff became the owner of the property or not.”



O.S.No.567 of 1984 (District Munsif Court, Kallakurichi):-

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5.The plaintiff claimed that the suit schedule property belonged to him. He further claimed his father, D.K.Muthu had purchased the said suit properties on 31.03.1969 from Kannammal and from that date, he had been in possession. After the death of D.K.Muthu, his sister Angammal and nephew Duraisamy continued in possession. The plaintiff was residing elsewhere and consequently, it was claimed that Angammal and Duraisamy were in possession on his behalf. It was stated that the defendant has no manner or right interest or title over the suit schedule properties. The defendant has no right to interfere with possession. This necessitated instituting the suit for seeking permanent injunction to protect possession.

6.The defendant filed a written statement denying and disputing the contention of the plaintiff. It was claimed that the plaintiff did not have any sister called Angammal and that the said Duraisamy was employed in Tamil Nadu Electricity Board. It was stated that the plaintiff was never in possession or enjoyment of the suit property either by himself or through anyone. The title of the plaintiff was disputed. It had been stated that in an earlier suit in O.S.No.324 of 1982 before the Sub Court, Erode, the plaintiff



claimed that his sister Jaya was married to Duraisamy and that they were residing at Magudanchavadi in Salem District. It was claimed that the plaintiff had come to Court with false pleadings. It was stated that the suit properties had been taken over by the Government as waste land / Nila Ela Tharisu. The defendant claimed to be in possession and enjoyment of the lands since 1980 and was cultivating the suit lands. It was stated that the plaintiff was not in actual possession of the suit property. It was stated that the suit for permanent injunction should be dismissed.

7. On the basis of the aforementioned pleadings, the following issues were framed for trial:-

- “i). Whether the plaintiff was entitled to the suit lands?*
- ii). Whether the plaintiff was in possession of the suit lands?*
- iii). Whether the plaintiff was entitled to the relief of permanent injunction?*
- iv). Whether the sale deed dated 31.03.1969 is a true and valid document?*
- v). Whether the suit is maintainable?*
- vi). To what other reliefs are the plaintiff entitled to?”*



8. During the Trial, the plaintiff examined himself as PW-1 and marked Exs.A1 to A3. Ex.A1 was the sale deed dated 31.03.1969 executed by Kannammal in favour of the father of the plaintiff D.K.Muthu. Exs.A2 and A3 were the Adangal with respect to the suit schedule lands for the fasli years 1381 to 1386 and 1388 – 1390.

9. The defendant examined himself as DW-1. He marked Exs.B1 to B6. Ex.B1 was the plaint in O.S.No.324 of 1982 on the file of the Sub Court, Erode. Ex.B2 was the sale deed dated 15.09.1980 executed by Rajum in favour of Sengoda Gounder and Pavaye. Ex.B3 was the B-memo issued in favour of the defendant. Ex.B4 was land tax receipt for fasli 1393 and 1391 and Ex.B5 was land tax receipt for the fasli 1394 to 1399. Ex.B6 was agreement dated 14.05.1983 between the defendant and Chinnadurai son of Muthu.

10. An Advocate Commissioner had also been appointed during the course of trial and his report was marked as Ex.C1 and sketch was marked as Ex.C2.



11. The learned Additional District Munsif took up for consideration the 1st and 2nd issues, namely, the title and possession of the suit properties.

He then examined Ex.A1, which was the sale deed in favour of the father of the plaintiff. He then examined Ex.A2, which was the Adangal with respect to the said lands. The contention of the plaintiff that his aunt Angammal and her son Duraisamy were cultivating the lands, which fact was evidenced by Ex.A2 was also noted by the learned Additional District Munsif. It was therefore concluded that Exs.A1 and A2 prima facie showed that the plaintiff was entitled to the said lands.

12. The contention of the defendant was then examined, who stated that the Government had acquired the said lands as waste land / Nila Ela Tharisu. The agreement in Ex.B6 dated 14.08.1985 was also noted, by which the brother of the plaintiff, Chinnadurai had entered into an agreement to sell the lands mentioned in the said agreement for a total consideration of Rs.12,000/- and had also obtained an advance of Rs.1,500/-. The terms of the agreement was noted which stipulated that the performance should be within a period of five months. It was then extended on two separate occasions. It was however observed that pursuant to such



agreement, sale deed had not been executed. It was observed that Ex.B2 / sale deed dated 15.09.1980 in favour of the defendant and Pavaye was actually with respect to adjoining lands. The statement of the defendant that he was enjoying the suit lands was rejected by the learned Additional District Munsif, since he had entered into an agreement in Ex.B6 with Chinnadurai / brother of the plaintiff, which implicitly implied that Chinnadurai was in possession of the suit lands.

13.It was also observed that the defendant cannot claim title or even possessory right over the lands, since the lands were Government lands. It was also found that the defendant had not established that Exs.B4 and B5 actually related to the suit schedule lands. It was concluded that those two documents would not establish the possession of the defendant in the suit lands. It was also found that the land tax under both the documents were paid on the same date namely, 27.01.1984. It was also observed that Ex.B3 was not a true and valid document. There were no indication as to when it was issued to the defendant.



14.It was found as a fact that the lands were patta lands. The father of the plaintiff had purchased the said lands under Ex.A1. Thereafter, the lands were categorized as assessed waste and came to be in possession of the aunt of the plaintiff, Angammal and his brother-in-law Duraisamy on behalf of the plaintiff. It was therefore concluded that the plaintiff was in effective possession of the land. In view of the said finding, the suit was decreed with costs.

A.S.No.40 of 1990 (Sub Court, Virudhachalam):-

15.The defendant, Sengoda Gounder, then filed A.S.No.40 of 1990 before the Sub Court, Virudhachalam. The learned Sub Judge, framed only one point for consideration namely, whether the plaintiff had title over the suit lands.

16.It was observed that the burden was on the plaintiff to prove title. It was observed that the plaintiff claimed title by way of Ex.A1 sale deed dated 31.03.1969 executed by Kannammal in favour of the father of the plaintiff, D.K.Muthu. It was found that the plaintiff had not produced any document to show possession. It was stated that there were no documents to show possession by Angammal or Duraisamy. It was also stated that Ex.A2, Adangal was till the year 1980 and the suit had been filed in the year 1984.



It was therefore, held that the plaintiff had not established possession as on the date of the suit.

17. Thereafter, the agreement which was relied on by the defendant namely, Ex.B6 was examined, by which the brother of the plaintiff, Chinnadurai had entered into an agreement to sell the suit schedule lands to the defendant. It was stated that the plaintiff had admitted during his cross-examination that the defendant was in possession of the lands. It was also stated that B-memo had been issued to the defendant. It was finally held that the plaintiff had neither established title nor had established possession and therefore, the appeal suit allowed and the judgment and decree of the Trial Court was interfered with and set aside.

S.A.No.139 of 1994:-

18. The plaintiff had then filed the present Second Appeal.

19. Pending the Second Appeal, the plaintiff died and his legal representatives had been brought on record as 2nd to 7th appellants. The 4th appellant also died, it was claimed that legal representatives were already on record and that was recorded.



20.The Second Appeal had been admitted on 08.02.1994 on the following substantial question of law:-

“Whether the reversing judgment of the Lower Appellate Court is sustainable in law as it had failed to frame the proper point for consideration? In other words, when the suit was one for permanent injunction, the point for consideration framed by the Lower Appellate Court was, whether the plaintiff became the owner of the property or not.”

21.Heard arguments advanced by Mr.P.Valliappan, learned counsel for the appellant and Ms.V.Srimathy, learned counsel for the respondent.

22.For the sake of convenience the parties would be referred as plaintiff and the defendant.

23.Mr.P.Valliappan, learned counsel for the appellant / plaintiff pointed out that the plaintiff had instituted the suit for permanent injunction with respect to vacant land which was originally a patta land, but subsequently assessed as dry waste land by the Government. To establish title, the plaintiff had produced Ex.A1 sale deed executed by Kannammal in



favour of D.K.Muthu, the father of the plaintiff herein. The learned counsel also stated that the plaintiff had very clearly stated that since he was not residing in the said village his aunt / sister of his father, Angammal and her son Duraisamy / brother-in-law of the plaintiff were looking after of the lands. To establish the lands were in possession, he had also produced Exs.A2 and A3 adangal.

24.The learned counsel then pointed out the documents filed on behalf of the defendant and stated that the defendant was actually the owner of the adjoining land and the documents produced by the defendant related to adjoining land. With respect to Ex.B3, B-memo said to have been issued in favour of the defendant, the observation of the Trial Court was pointed out by the learned counsel, wherein it was stated that there is no indication as to when it had been sent to the defendant and that the said document cannot be taken as a true document.

25.The learned counsel's arguments was also focused on the point framed for consideration by the First Appellate Court, namely, whether the plaintiff had established title to the land. It was contended that the plaintiff



had sought permanent injunction on the basis of title and on the basis of possession and therefore, it was contended that title was not a core issue while deciding whether permanent injunction should be granted or not. The learned counsel therefore stated that the judgment of the First Appellate Court had proceeded on a tangential line and required to be interfered with and set aside.

26.Ms.V.Srimathy, learned counsel for the respondent / defendant in the appeal, on the other hand, contended that the defendant was the owner of the adjoining land and pointed out that the First Appellate Court had stated that Exs.A2 and A3 were till the year 1980 and no document was produced to show that the plaintiff was in possession in the year 1984 when the suit was instituted. The learned counsel stated that the finding on Ex.B3 by the Trial Court was not correct. It was a document issued by the proper authority. It was also stated by the learned counsel that the lands had now been assessed as waste land and therefore, the plaintiff cannot claim title over the said lands. The learned counsel also pointed out Ex.B6, agreement of sale and stated that consequent to the said agreement, the defendant had acquired right and interest over the lands. The learned counsel therefore



urged that since the defendant questioned the title of the plaintiff, it is only appropriate that the issue of title is put to test and therefore justified the point framed for consideration by the First Appellate Court Judge. The learned counsel therefore stated that the judgment under appeal does not require any interference and urged that this Court should dismiss the Second Appeal.

27.I have given my carefully consideration to the argument advanced and perused the materials on record.

28.The substantial question of law on which the Second Appeal had been admitted revolves around the point framed for consideration under Order 41 Rule 31 CPC by the First Appellate Court in a suit for permanent injunction for vacant land. The First Appellate Court had proceeded to examine whether the plaintiff had established title over the lands.

29.In *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. and others* reported in (2008) 4 SCC 594 : 2008 (6) CTC 237, the Hon'ble Supreme Court held as follows:-



“13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

*14. We may, however, clarify that a prayer for declaration will be necessary **only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property.** A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property.*

.....

*15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, **the plaintiff will have to establish that as***



on the date of the suit he was in lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession.”

(Emphasis Supplied)

30.The principle of law laid down is very clear. In a suit filed for permanent injunction with respect to vacant land, if the plaintiff is able to establish title, then a reasonable presumption can be drawn that he is also in lawful possession. If that title is questioned, then the bonafide of the challenge to the title must be examined to determine whether such challenge is lawful or not. It must be examined whether that challenge actually raises a cloud over the title of the plaintiff.

31.In the instant case, the plaintiff has produced Ex.A1 sale deed with respect to the specific suit schedule lands. The sale deed is in the name of his father D.K.Muthu. That had been produced as Ex.A1. That document cannot be questioned, denied or disputed. The plaintiff as a son claims that he has acquired right over the land on the death of his father.



32. This document has to be contrasted with Ex.B6 dated 14.05.1983

were the plaintiff's brother Chinnadurai, had entered into an agreement of sale with the defendant for sale of the lands. According to the said document, the sale consideration was fixed at Rs.12,000/- and an advance of Rs.1,500/- had been received by Chinnadurai. The time period for performance of the agreement was fixed at five months. It was extended for a further period of two months by endorsement dated 06.09.1983. On that date, an additional advance of Rs.1,000/- had been paid by the defendant to Chinnadurai. The period was again extended for a further three months by an endorsement dated 12.11.1983. The period of agreement was till 12.02.1984. There is no indication that the defendant had actually purchased the said lands.

33. Section 54 of the Transfer of Property Act, is as follows:-

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the



value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.*—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. ***It does not, of itself, create any interest in or charge on such property. ”**

Emphasis Supplied

34. In ***AIR 1977 SC 774 (or) (1977) 3 SCC 247 [Narandas***

Karsondas Vs. S.A. Kamtam and Anothers], alibet while examining a



right of redemption vis-a-vis an agreement of sale, the Hon'ble Supreme

WEB COURT held as follows:-

*“In India there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser. In India, there is no distinction between legal and equitable estates. The law of India knows nothing of that distinction between legal and equitable property in the sense in which it was understood when equity was administered by the Court of Chancery in England. Under the Indian law, there can be but one owner that is, the legal owner. See **Rani Chhatra Kumari v. Mohan Bikram (1) (1) (1931) 58 I.A. 279.***

*A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in s. 54 of the Transfer of Property Act. See **Rambaran Prasad v. Ram Mohit Hazra(1) & Ors. C).** The fiduciary character of the personal obligation created by a contract for sale is recognised in **section 3 of the Specific Relief Act, 1963** and in **section 91 of the Trusts Act.** The personal obligation created by a contract of sale is*



*described in **section 40** of the **Transfer of Property Act** as an obligation arising out of contract and annexed to the ownership of property, but not amounting to, an interest or easement therein.*

*In India, the word "**transfer**" is defined with reference to the word "**convey**". The word "**transfer**" in English law in its narrower and more usual sense refers to the transfer of an estate in land. **Section 205** of the **Law of Property Act in England** defines: "**Conveyance**" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument. The word "**conveys**" in **section 5** of the **Transfer of Property Act** is used in the wider sense of conveying ownership."*

Emphasis Supplied

35.It is thus seen that the defendant cannot claim any title over the suit lands as he is only a mere agreement holder. He cannot even claim any interest in or charge on the property. In that agreement, the time period stipulated under the said agreement had long long expired.



36. In the Second Appeal arguments had not been advanced that the defendant had subsequently purchased the lands. Thus, by no stretch of imagination it can be stated that the defendant has put up a lawful challenge to the title of the plaintiff. The said challenge is sham and has been done with intention to usurp the lands of the plaintiff. It is on evidence that the defendant was the owner of the adjoining lands. Thus, the suit has been lawfully instituted by the plaintiff for permanent injunction alone. The plaintiff need not have sued for declaration of title.

37. With respect to the substantial question of law, I hold that the First Appellate Court had traveled far beyond the frame work of the issues and had proceeded to adjudicate on title. Even in such adjudication, the First Appellate Court had misdirected itself and much reliance had been placed on the B-memo, which is not a document of title. No reason had been given as to why Ex.A1 had been rejected. The character of lands may have changed to assessed waste, but still the fact that the plaintiff's father had purchased it, is alone sufficient to hold that the plaintiff have established title. The very fact that the defendant had entered into an agreement of sale in Ex.B6 to purchase the land from the brother of the plaintiff, itself shows that the



father D.K.Muthu, had title over the lands.

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38. Therefore, I hold that the First Appellate Court, had needlessly framed as a point for consideration, the issue of title when the said issue had been raised only as a moonshine defence by the defendant.

39. I hold that the judgment of the First Appellate Court has to be set aside and since the Trial Court had given a definite and considered finding on both title and possession, the said findings will have to be necessarily upheld and confirmed.

40. The substantial question of law is answered that in a suit for injunction, the point framed for consideration by the Lower Appellate Court, namely, whether the plaintiff had become the owner of the suit property was neither legally proper nor warranted. The challenge to the title of the plaintiff by the defendant is a sham challenge and merits no consideration.



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41. In the result,

i) the Second Appeal is allowed, with costs.

ii). The judgment and decree dated 25.03.1992 in A.S.No.40 of 1990 on the file of the Sub Court, Virudhachalam is set aside.

iii). The judgment and decree dated 24.01.1990 in O.S.No.567 of 1984 on the file of the District Munsif Court, Kallakurichi is restored and confirmed.

28.07.2022

Index: Yes/No

Internet: Yes/No

Speaking / Non speaking order

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To

1. The District Munsif Court, Kallakurichi.

2. The Sub Court, Virudhachalam.

3. The Section Officer, VR Section, Madras High Court.



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C.V.KARTHIKEYAN,J.

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Pre-delivery Judgment made
in
S.A.No.139 of 1994



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28.07.2022