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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 14..09..2021
Judgment Pronounced on : 24..01..2022

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Second Appeal No.51 of 2019
and
C.M.P.No.1114 of 2019

1.Anbazhagan
2.Duraisamy ... Appellants/Respondents/Defendants

-Versus-

Nethaji ... Respondent/Appellant/Plaintiff

This second appeal is filed under Section 100 of CPC against the judgment and decree dated 04.12.2018 passed in A.S.No.3 of 2017 by the learned Additional Subordinate Judge, Puducherry, reversing the judgment and decree dated 14.12.2016 passed in O.S.No.1166 of 2007 by the learned Principal District Munsif, Puducherry.

For Appellants : Mr.D.Ravichander
For Respondent : Mr.S.Subramanian

JUDGMENT

The defendants in the suit have come up with this Second Appeal as against the judgment and decree of the lower appellate Court passed in A.S.No.3 of 2017, reversing the judgment and decree of the trial Court passed in O.S.No.1166 of 2007, dismissing the suit.

2. The sole respondent herein is the plaintiff and the appellants herein are the defendants in the suit. The suit was filed for a decree of permanent injunction, restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.



3. The suit was filed on the pleadings, inter alia, that suit A-Schedule property originally belonged to the plaintiff's family and it was allotted to the share of the plaintiff and his elder brother Boopathy through a registered partition deed dated 20.03.1970 in which western half of the building described under C-Schedule was allotted to the share of Boopathy and the Eastern half of the building described under G-Schedule was allotted to the share of the plaintiff with common pathway on the eastern side. Later on, the plaintiff and Boopathy had rented out the A-schedule property to an industry and on 31.03.1999, Boopathy and the plaintiff entered into an Exchange Deed, in which the western half of the building was allotted to the share of the plaintiff and from the date of exchange, the plaintiff became the absolute owner of the entire A-Schedule property. Property tax receipts stand in the name of the plaintiff. The plaintiff, thereafter, rented out the entire building to M/s.Harsha Packaging and the electricity service connection stands in the name of M/s.Harsha Packaging. There is no dispute with regard to title of the property. The defendants are the brothers and eastern side neighbors. In the year 2005, during construction of their storeyed house, the defendants set up a false claim that the western boundary extended up to 2 feet in the pathway and lodged a police complaint. Thereafter, the defendants approached the revenue authorities for measurement of the property. Accordingly, the surveyor visited the suit property on 27.02.2006 and he found that the pathway was within the boundary of the plaintiff. However, the defendants fixed three windows on the western side to overlook the pathway and, therefore, the plaintiff was forced to lodge a police complaint on 17.08.2006. The Municipal Planning Officer, in fact, directed the defendants to close the windows. Despite the gate fixed in the pathway, the defendants attempted to cause disturbance to the plaintiff. The title of the plaintiff is not denied. The disputed pathway, which is shown as B-Schedule, is part of A-Schedule and the plaintiff has prescribed title by adverse possession regarding the pathway and, hence, the suit for permanent injunction.

4. The defendants resisted the suit, inter alia, contending that the B-Schedule property and other properties were originally owned by one Govindasamy Naidu through a notarial sale deed, dated 08.05.1943, in the name of his son Sarangapani Naidu and after the demise of Sarangapani Naidu, his wife Jayalakshmi and his legal heirs were in joint possession and enjoyment of the property along with Govindasamy's son Rangasamy Naidu. As per the registered partition deed, dated 23.01.1981, the eastern part of the property was allotted to the share of Rangasamy Naidu and the said Rangasamy Naidu, in turn, bequeathed his right to the



defendants, through a Will, dated 23.01.1989. After the demise of Rangasamy Naidu the Will, dated 23.01.1989, came into effect and, hence, the defendants have become the joint owners of the eastern side of A-Schedule property. The B-schedule property does not form part of A-Schedule property and, hence, the plaintiff has no right over the B-schedule property. During construction of the defendants' house, the plaintiff and his family members caused several hurdles and the suit has been filed with an ulterior motive. The defendants are unable to make cement plastering on the western side wall of the house which poses not only danger to the lives of the defendants but also causes irreparable damages. When there is a serious dispute regarding title, a suit for bare injunction without seeking the relief of declaration is not maintainable and the suit is therefore, liable to be dismissed.

5. Based on the above pleadings of both the parties, the trial Court framed the following issues for trial :-

- (1) Whether the plaintiff has not paid proper court fees?
- (2) Whether the suit is bad for non seeking of relief of declaration of title?
- (3) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
- (4) Whether the plaintiff is entitled for judgment and decree for the relief sought for?
- (5) To what relief ?

6. During the course of trial, on the side of plaintiff, the plaintiff examined himself as P.W.1 and marked as many as 6 documents as Exs.A1 to A.6 and on the side of defendants, the 2nd defendant examined himself as D.W.1 and marked as many as 5 documents as Exs.B.1 to Ex.B.5.

7. The learned Principal District Munsif, after having considered the oral and documentary evidence adduced by the parties, concluded that B-Schedule property is not part of the A-Schedule property and the plaintiff has failed to prove the existence of the pathway. Accordingly, the learned Judge has dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal before the lower appellate Court, whereupon, the learned appellate Judge, while reversing the judgment of the learned trial Judge, granted permanent injunction as against the defendants, as prayed for by the plaintiff in the suit. Challenging the reversal of the judgment and decree of the lower appellate Court, the defendants are before this Court with the present Second Appeal.



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8. This Second Appeal has been admitted on the following substantial questions of law :-

(1) Whether the courts below are correct in law in coming to the conclusion that no doubt has been cast on title especially when the defendant has claimed title to the property under a Will dated 23.01.1989 thereby disputing the defendants title?

(2) Whether a suit for bare injunction without a prayer for declaration is maintainable when title has been disputed and have not the courts below erred in law in overlooking this axiomatic principle?

(3) Whether the lower appellate Court was correct in law in holding as follows "therefore, this court comes to the conclusion that the plaintiff's title was proved through Ex-A1, A2 and A3, without any doubt and was proved through Ex A1 and A2 when there is no prayer for declaration?"

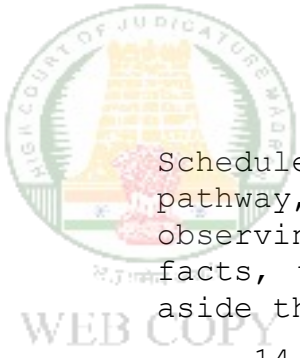
9. I have heard the learned counsel for the parties and also gone through the records.

10. Admittedly, the Original Suit has been filed by the respondent herein, claiming the plaint "B" Schedule pathway belonging to him, and since the appellants have tried to interfere with the possession of the "B" Schedule property by claiming title over the "B" Schedule property, a permanent injunction has been sought for in the main suit.

11. The respondent/plaintiff claimed title over the suit property as per Ex.A1, Certified copy of the Partition Deed, dated 20.03.1970 and Ex.A2, Certified copy of the Exchange Deed, dated 31.03.1999. On perusal of the entire records, it is seen that the appellants herein have not objected to Exs.A1 and A2.

12. The trial Court dismissed the suit filed by the respondent herein, by holding that he has failed to prove the existence of "B" Schedule pathway within "A" Schedule property and also that the suit is not maintainable without seeking the relief of declaration of title.

13. However, the lower appellate Court, after re-appreciating the evidence, both oral and documentary, has held that the plaint "B" Schedule property forms part of the "A"



Schedule property and that with regard to the "B" Schedule pathway, a separate and clear recital is made in Ex.A1. By observing that the trial Court has failed to consider the above facts, the lower appellate Court allowed the appeal, by setting aside the judgment and decree of the trial Court.

14. The lower appellate Court has observed the recital in Ex.A1 with regard to the "B" Schedule pathway with a measurement of 7 ½ feet on the Southern side and 9 feet on the Northern side. A specific recital in Ex.A1, Partition Deed, at Page No.205 is as follows:

"ஜி ஷெடியில் கண்டுள்ள வீட்டிலுள்ள ஊற்றுக் கிணறு மோட்டார், பம்ப் செட் வீட்டு மின்சாலை சர்வீஸ் மின் விளக்குவரி வீட்டுவரி இவைகளை மூன்று, ஏழு நபர்கள் சம உரிமையோடு அடைந்து கொள்ள வேண்டியது. வீட்டில் தெரு வாயிற்படி நடைவாயிற்படி வீட்டின் கீழ்ப்புறம் உள்ள தென்புறத்தில் 7 1/2 அடியும் வடப்புறத்தில் 9 அடியும் பொதுவனது. சந்திலிருந்து வீட்டிற்குள் நுழையும் வாயிற்படிகளும் வீட்டின் பின்கட்டிலுள்ள கக்கூசுக்கு செல்லும் வாயிற்படியும் கக்கூசும் 3, 7 நபர்களுக்கு பொதுவானது. ' ' "

The lower appellate Court has also observed the recital in Page No.210 of Ex.A1 as under :

" '7வது பாகஸ்தரான தெய்வநாயகம் என்கிற இராமச்சந்திர நாயுடு குமாரர் நேதாஜி பாகத்திற்கு உரியது, குசுதராப்பட்டு கிராமத்தில் கதாஸ்தர் 246 விஸ்தீரணம் தெற்கு வடக்கு 115 1/2, கிழக்கு மேற்கு ஜாதியடி 36 இதற்குள் அடங்கிய கல்கட்டுக்கோப்பு வீடு ஒன்று இதில் கீழ்ப்புறம் தெற்கு வடக்கு 115 1/2 அடி கிழக்கு மேற்கு 18 ஜாதியடி. ' ' "

15. When it is clear that the "B" Schedule pathway was separately allotted and it formed part of the property that was allotted to the plaintiff and his brother viz., Boopathy, the lower appellate Court has rightly held that the appellants herein have no right over the "B" Schedule property. Further, it observed that as per Exs.A1 and A2, a total extent of the suit property lies in re-survey No.90/26, Cadastre No.246 to an extent of East - West 36 Sq.ft and North - South 115 ½ feet along with "B" Schedule property on the side of South 7 ½ feet and on the side of North 115 ½ feet of the pathway.

16. The first appellate Court has also observed that as per the appellants / defendants' document Ex.B3, Original Partition Deed, dated 23.03.1981, and Ex.B4, Original Will, executed by Rangasamy Naidu, dated 23.01.1989, the appellants' property lies in Cadastre No.246, re-survey No.90/27, but not in re-survey No.90/26, which is the property of the respondent herein. That apart, it was also elicited that the appellants / defendants did not dispute Ex.A1, Certified copy of Partition Deed, dated 20.03.1970, and Ex.A2, Certified copy of Exchange Deed, dated 31.03.1999, and that "B" Schedule property is tallied with Exs.A1



and A2 documents. When there is a clear recital about "B" Schedule property and also when it is lucid that "B" Schedule pathway shall form part of the "A" Schedule property, in the considered opinion of this Court, the learned Subordinate Judge has rightly allowed the appeal, decreeing the Suit. Therefore, the contention of the appellants / defendants that the suit for injunction simpliciter would not be maintainable, where the appellants / defendants raised a cloud over the plaintiff's title, has to be simply rejected.

17. Learned counsel for the appellants has contended that the learned Subordinate Judge has erroneously decided the title of the respondent's property in the absence of pleadings or issues being raised in a Suit for injunction simpliciter. But, when the appellants herein have raised a question regarding the title of the plaintiff's property, the learned Subordinate Judge has rightly decided the title of the plaintiff and this Court finds nothing wrong in that.

18. In the view of this Court, the first appellate Court has also rightly held that the judgments relied upon by the appellants herein in 1) 2016 (4) CTC 138, Selvaraj & others vs. Nagarajan and others, 2) 2010 (5) CTC 874, Rangasamy vs. T.V.Krishnan (died and 12 others, 3) 2007 (2) CTC 553, Govindasami Naidu vs. Shanmuga Nattar & another, 4) 2016 (1) MWN (Civil) 423, State of Madhya Pradesh vs. Nomi Singh & others, 5) 2016 (1) MWN (Civil) 506, Adbul Wahith vs. Mohammed Ali, and 6) 2016 (1) MWN (Civil) 280, Kuppusamy & 2 others vs. Karuppa Padayachi & 4 others, are not applicable to the case on hand, as the facts and circumstances therein are different.

19. Learned counsel for the appellants has relied upon the following cases, namely, (1) Anathula Sudhakar v. P.Buchi Reddy (died) by L.Rs. And Others, 2008 (4) SCC 594; (2) Syed Dhasthakeer v. Navab John, 2012 (6) CTC 892; and (3) Sri Viruntheewarar Temple v. T.Shanmugasundaram and Others, 2021 (6) MLJ 265, to contend that the suit for permanent injunction simpliciter is not maintainable without seeking the relief of declaration of title over the suit property.

20. The very same decision of the Hon'ble Supreme Court in Anathula Sudhakar, referred to above, is relied upon by the learned for the respondent as well to state that suit for



permanent injunction is maintainable without seeking the relief of declaration of title.

21. Let us now see the case of Anathula Sudhakar, cited supra. In the said case, the Hon'ble Supreme Court, while dealing with the issue on hand, has discussed the matter at length. The relevant portion of the said decision is as under :

'21. 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.''

22. The general principles, as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title, by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession. 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 defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of 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.



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23. It is, however, important to note that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of 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. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction is sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the Court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title. (emphasis supplied)

24. In a suit for permanent injunction to restrain the defendant from interfering with 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 defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.



25. In the case on hand, though the appellants raised a plea that there is a dispute with regard to title over the suit 'B' schedule property, no documents are filed by them to prove that the said property belongs to them, whereas, the plaintiff has proved through Exs.A-1 to A-3 that 'B' schedule property belongs to him. The appellants have also not disputed Exs.A-1 to A-3. 'B' schedule property is the same as in 'A' schedule property and, therefore, it is one unit and a part and parcel of 'A' schedule property. In 'B' schedule, the existence of pathway is clearly mentioned and there is no dispute over it. Mere denial of title in the written statement is not sufficient and the appellants/defendants have to prove their claim with relevant documents, but, the appellants, in the suit, have not filed any documents to show that 'B' schedule property belongs to them. In other words, though the appellants claim title and right over the 'B' schedule property on the basis of Exs.B-1 to B-4, they have not examined any witnesses in support of their claim. More importantly, the Surveyor, who has been appointed at the instance of the appellants lis pendens, also found that the 'B' schedule/pathway is well within the boundary of the respondent/plaintiff. Therefore, the contention of the appellants that 'B' schedule property does not form part of 'A' schedule property and the respondent has no right over the 'B' schedule property collapses. The plaintiff has clear title to the suit 'B' Schedule property/pathway supported by documents Exs.A-1 to A-3 and there is no cloud over it. However, the defendants, without any claim to title, merely deny the plaintiff's title. Therefore, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration, and a suit for injunction is sufficient.

26. For all the foregoing reasons, this Court is not inclined to interfere with the well-reasoned judgment and decree, impugned in this appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, the connected C.M.P. is also dismissed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar



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1. Additional Subordinate Judge, Puducherry

2. Principal District Munsif, Puducherry.

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

+1cc to Mr.D.Ravichander, Advocate SR.No.4210

+1cc to Mr.S.Subramanian, Advocate SR.No.4825

Second Appeal No.51 of 2019

KJ(CO)
CB(02/03/2022)