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S.A.No.862 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.862 of 2005

Karunakaran

... Appellant

Vs.

1.K.Vijaya Ammal
2.K.Sivaraman
3.K.Chitradevi
4.Bharanidharan
5.Padma Priya

... Respondents

[R.5 has been discharged from her Guardian and declared as Major vide order of Court dated 17.06.2022 made is C.M.P.2386 & 2388 of 2022 in SA.No.862 of 2005.]

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree in A.S.No.15 of 2002, on the file of the Additional District Court Fast Track Court No.I, Chengalpattu and dated 30.03.2005 in confirming the judgement and decree in OS.No.642 of 1993, on the file of the District Munsif Court, Chengalpattu and dated 30.01.2002.



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S.A.No.862 of 2000

For Appellant : Mr.V.Raghavachari
For Respondents : Mr.N.P.Kumar [R.1 and R.2]
: Mr.P.R.Raman, Senior Counsel
for M/s. Raman and Associates [R.3 to R.5]

JUDGMENT

The defendant who has concurrently lost in both the Courts below is the appellant before this Court. The challenge is to the decree for injunction granted by the District Munsif, Chengalpattu in O.S.No.642 of 1993 which was confirmed by the Additional District Court Fast Track Court No.I, Chengalpattu in A.S.No.15 of 2002. The parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the above suit for bare injunction restraining the defendant, his men, agents and servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property has been described as follows:-



S.A.No.862 of 2000

i) Property situate at Thiruporur Village, Thiruporur firsks,
Chengalpattu Taluk.

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Sl.No.	S.No.	Extent	Boundaries
1.	Gramanatham Sy.No.109/1A	0.07 cents measuring east to west on the north 17 ft. East to West on South 25 ft. North- South on the east 157ft. with fence all around and velikathan trees and other trees.	South of street. North of Nagareli poramboke, west of the house & site of pulliga Rao, East of the site of Arumuga Gurukkal.

3. It is the case of the plaintiff that the suit property is a Grama Natham Poramboke which was in the occupation of one Veerabadra Mudaliar. After his death his son Murugesan Mudaliyar, was in possession and occupation of the same till the year 1972. Thereafter, Murugesan Mudaliyar shifted to Madras and the plaintiff was in permissive occupation of the suit property from Murugesan Mudaliyar. It is the further case of the plaintiff that on 19.03.1977, the said Murugesan agreed to sale the suit property to him. The plaint would further read that the property was being enjoyed by the plaintiff by stocking manure and tethering cattle. The sale consideration was a sum of Rs.1,000/- for which an advance of Rs.750/- was paid and the balance sale consideration of Rs.250/- was to be paid



within a period of one year. On 15.03.1978, the balance sale consideration of Rs.250/- was also paid and an entry made in the reverse of the agreement.

It was informed to the plaintiff that since the suit property was a Grama Natham Poramboke, the sale deed was not required to be executed and registered, therefore the sale deed had not been executed.

4. The case of the plaintiff is that the property was being used by him from the year 1972 for stocking manure, throwing rubbish and tethering his cattle. The plaintiff's wife Vijaya Ammal had purchased the property to the east of the suit property from one Pullikara Rao under a sale deed dated 27.08.1986. The suit property is used as an appurtenant land for the said property. It is also his case that the suit property has been fenced on all sides and there are some trees in the suit property which was being enjoyed by the plaintiff. While so, the defendant who had in no manner of a right, title or interest in the property and who was living in a different village gave out that he would trespass into the suit property. It is the further case of the plaintiff that the defendant has a powerful backing of his community people and therefore he should be restrained by means of a permanent injunction.



5. The defendant had filed a written statement inter alia denying the contentions contained in the plaint. He would state that the suit property belong to Pushpathammal, the wife of Veerabadra Mudaliar, whose power agent and daughter Deivanai Ammal had sold the suit property to the defendant under a registered sale deed dated 06.01.1990 for a sum of Rs.2,500/-. The possession of the said property was handed over on the very same day. Immediately, on the purchase of the property the defendant had put up a barbed wire fencing on the northern, southern and western side by fixing 40 granite poles. To the east of the property the plaintiff's wife Vijaya Ammal had owned a house property.

6. It is the case of the defendant that he has been in enjoyment of the property since the purchase and has been cutting the trees found in the suit property. On 07.02.1992, he had applied to the Executive Officer of the Tiruporur Panchayat for constructing a residential building on the property. The Panchayat had also sanctioned the said constructions on the suit property. It is the further case of the defendant that prior to his purchase Pushpathammal and Deivanai Ammal were in possession of the site. The property originally belonged to Veerabadra Mudaliar, Pushpathammal's



husband and he was initially using the property as a bus shed. Veerabadra had 2 daughters, Deivanai Ammal and Meenakshi Ammal apart from the 2 daughters there were no other issues. The defendant had categorically denied the relationship of the said Murugesan as a son of Veerabadran. He had contended that the plaintiff had no manner of an interest in the suit property and was never in possession of the same. The defendant had also contended that the suit was bad for want of a prayer regarding title and the value of the suit was also questioned. In all the defendant sought for a dismissal of the suit.

7. The learned District Munsif had framed the following issues which when translated from the vernacular would read as follows:-

- 1. Whether the plaintiff is entitled to the relief of permanent injunction?*
- 2. To what other relief the plaintiff is entitled to ?*

8. The plaintiff has examined himself as P.W.1 and examined 3 other witnesses. The plaintiff had filed Ex.A.1 to A.11 in support of his case and on the side of the defendant, the defendant had examined himself as D.W.1



and one Jambulingam as D.W.2 and marked Ex.B.1 to B.17. The Advocate Commissioner's Report and Plan were marked as Ex.C.1 and C.2 respectively.

9. The learned Judge had decreed the suit on the basis that patta had been granted to the plaintiff in respect of the suit property. The learned Judge also held that the suit property was a Grama Natham Poramboke and not a Grama Natham house site. The learned Judge would draw strength for this conclusion from Ex.B.2 which is the sale deed executed in favour of the defendant where the property has not been described by its description. The learned Judge had proceeded to hold possession with the plaintiff on the basis of Ex.A.1 which is a sale deed dated 19.03.1977 under which the plaintiff claims he had purchased the property whereas the learned Judge held that the defendant has purchased the property only in the year 1990. The learned Judge had also observed that in the year 1972, Murugesan was running a tea shop as well as a grocery shop which is proved by the oral evidence of P.W.2 to P.W.4.



10. Challenging the said Judgement and Decree the defendant had filed A.S.No.15 of 2002 on the file of the Additional District Court Fast Track Court No.I, Chengalpattu. The learned Judge also followed suit and confirmed the judgement and decree of the Trial Court and dismissed the appeal.

11. Challenging the same the defendant is before this Court. The appeal has been admitted on the following substantial Questions of law:-

"Have not the Courts below committed an error of law in relying upon the two agreements of sale (Exs.A.1 and A.2) which do not by itself confer title on the agreement holder in granting the decree against the defendant when he is shown to be a legal owner of the property under a registered sale deed marked as Ex.B.2 ?"

12. Mr.V.Raghavachari, learned counsel appearing on behalf of the appellant would at the outset state that the suit for bare injunction is not maintainable without a prayer seeking to declare the plaintiff's title to the suit property particularly when the title has been questioned by the



defendant. He would contend that the defendant had questioned the fact that the plaintiff's vendor was the son of Veerabadra Mudaliar. The defendant has come forward with a case that the Veerabadra Mudaliar had only two daughters Devaniammal and Puspawathiammal. Despite questioning the very relationship of the plaintiff's vendor to Veerabadra Mudaliar, the plaintiff has not sought to amend the prayer to include the relief of declaration. This assumes significance since the defendant claims title through the daughters of Veerabadra Mudaliar.

13. He would further submit that as on date there is no sale deed in favour of the plaintiff. The plaintiff has contended that no sale deed is required in respect of a Natham Poramboke. However, as per revenue documents that have been filed by the plaintiff post the suit would clearly show that the property in question is a Grama Natham and not a Poramboke. That apart, once the patta has been granted it only indicates that the property in question is a Natham house site. The plaintiff's wife has purchased another portion in the very same Survey Number and the property has been described as a Gramnatham as evident by Ex.A.8. He would further submit that the suit property measures an extent of 7 cents (3052 Sq.Ft). whereas



under Ex.A.5 patta the measurement of the property is shown as 2315 Sq.Ft. and (152 Sq.Mt.).

14. He would further submit that all the documents are much after the filing of the suit. At the time of the filing of the suit except for Ex.A.1, agreement of sale no other document had been filed. He would further contend that Ex.A.4 and A.5 are only the rough patta issued prior to the enquiry and not the confirmed patta which has been issued to the plaintiff. He would further submit that the plaintiff's husband and the so called attesting witnesses of Ex.A.11 were all from different villages and they have colluded together to create the document. He would further submit that Ex.A.1 is a fabricated document which is evident from the fact that in Ex.A.8 under which the plaintiff's wife had purchased the property, the western boundary is shown as Veerabadra Mudaliar's vacant site and not that of Murugesan or the plaintiff. The plaintiff's wife has purchased the property only in the year 1986. He would further submit that the plaintiff as P.W.1 has been developing on her case during the course of the evidence particularly with reference to the measurement. P.W.3 who is said to be the scribe of Ex.A.1 would admit that he has been licensed to write documents



only from the year 1984, however, Ex.A.1 is of the year 1977. He would further submit that the plaintiff who has come forward with a suit for bare injunction has not proved his possession as on the date of the filing of the suit and all revenue documents are two years thereafter and cannot be relied upon. He would also rely upon the judgment of the Hon'ble Supreme Court reported in *(2008) 4 SCC 595 – Anathula Sudhakar Vs. P.Buchi Reddy (dead) by Lrs and others.*

15. Per contra, Mr.P.R.Raman, learned Senior counsel appearing on behalf of the respondents 3 to 5 would submit that there was no necessity for a declaration of title in respect of a Grama Natham and would rely on the judgement of this Court reported in *Manu/TN/1606/2009 - Madasamy Pandi Vs. Pappathiammal.* He would further submit that it is an admitted fact that Veerabadra Mudaliar was the original owner of the property. The defendants who have come forward with a case that the said Veerabadra Mudaliar only had daughters had not proved their case. The witnesses examined on the side of the plaintiff would also deny the fact that the said Veerabadra Mudaliar had daughters. He would submit that the property is a vacant site and abutting the house purchased by his wife and they have been



in enjoyment of the said property by dumping rubbish, storing manure and tethering cattle. Both the Courts below have concurrently held that the plaintiff has proved his possession pursuant to Ex.A.1 agreement and therefore, this Court sitting in Second Appeal cannot re-appreciate the evidence.

16. Heard both the counsels.

17. The defense to the suit for bare injunction is two fold:-

i) That the vendor of the plaintiff did not own the same as he is not the son of Veerabadra Mudaliar.

ii) In the light of the title of the plaintiff being questioned the suit for a bare injunction without seeking the relief of declaration was not maintainable.

18. As regards the 1st issue, the witnesses examined on the side of the plaintiff in their cross examination have not been able to categorically deny the fact that the said Veerabadra Mudaliar did not have daughters. It is rather strange that the plaintiff has proceeded to purchase the property



without even looking into the right of her vendor to sale the suit property.

The plaintiff does not have a sale deed (even an unregistered one) executed by the said Murugesan in his favour. Whereas, the defendant has a registered sale deed from the daughters of the said Veerabadra Mudaliar. The property is a vacant site and therefore possession follows title.

19. Further the suit is one for a bare injunction and in order to obtain a decree for injunction the plaintiff has to first assert possession of the property. Admittedly, in this case except for the disputed document Ex.A.1 there is nothing to show that the plaintiff has been in possession and enjoyment of the property from the date of sale in the year 1977 till 1995, when the 1st rough patta has been issued in the name of the plaintiff. Although, the defendant had produced Ex.A.4 to Ex.A.7 they are all dated from the year 1995 to 2002. The suit has been filed in the year 1993. There is no document to show possession on the date of the suit.



20. Further the title of the vendor of the plaintiff to the suit property has been questioned despite which there is no amendment to the plaint. In the judgment referred to by the appellant, the Hon'ble Supreme Court has held that where a *de jure* possession has to be established on the basis of title to the property as in the case of vacant site, issue of title is directly and substantially an issue and without a finding thereon, the issue of possession cannot be decided. In the instant case, there is a serious dispute with reference to the title therefore, the suit filed for a bare injunction is not maintainable.

21. The courts below have placed reliance on Ex.A.1 and Ex.A.2 to hold title and possession with the plaintiff however the said document cannot be looked into since it is not a registered one and the property being a Grama Natham and the sale consideration being over of sum of Rs.1,000/-, the plaintiff ought to have obtained a sale deed in respect of the said land. The judgment relied upon by the learned Senior counsel for the plaintiffs/respondents herein would not come to their aid since that is a case where possession has been proved by the plaintiff and therefore, the suit filed without a declaration was found to be in order that is not the case in



S.A.No.862 of 2022

the instant suit. In the result, the Substantial question of law is answered in favour of the defendant/appellant herein and the Second Appeal stands allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

13.12.2022

Index : Yes/No
Internet : Yes/No
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To

- 1.The Additional District Court Fast Track Court No.I, Chengalpattu.
- 2.The District Munsif Court, Chengalpattu.



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