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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1005 of 2011

and

M.P. No.1 of 2011

Varadhan @ S.R. Varadharajan ...Appellant/Appellant/Defendant

Vs.

S. Mariappan ... Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 06.09.2005 passed in A.S. No.97 of 2005, on the file of the Principal Subordinate Judge, Salem, confirming the decree and judgment dated 01.04.2005 passed in O.S. No.284 of 2003, on the file of the I Additional District Munsif Court, Salem.

For Appellant : Mr. D. Shivakumaran

For Respondent : Mr.N. Ilangovan

JUDGMENT

The appellant is the defendant in O.S. No.284/2003. The respondent/plaintiff filed the suit in O.S. No.284/2003 against the appellant/defendant for a permanent injunction restraining the latter from interfering with his peaceful possession and enjoyment of the suit property.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The minimum facts that are required for the disposal of the present second appeal are as follows:

The suit property as described in the plaint is a dry land measuring 0.35 cents situate in old Survey Number 99/1 and new Survey No.99/5 of Seelanaikenpatty Village, Salem, within the boundaries stated therein. The plaintiff Mariappan (P.W.1) claims that he has title over the suit property through a Will dated 16.06.1952 (Ex.A22) executed by Muthusamy Gounder, grand



father of the plaintiff, in favour of the mother of the plaintiff Patchiammal @ Chinnaponnu. According to him, the suit property was the self acquired property of Muthusamy Gounder and that after the death of his mother Patchiammal, he is in possession and enjoyment of the suit property. It is also his contention that the defendant, without any right/title over the suit property, has been attempting to interfere with his peaceful possession and enjoyment of the suit property and one such attempt was made on 10.04.2003, for which a police complaint was lodged by the plaintiff against the defendant. It is also his contention that at the intervention of the police officials, he prevented the defendant from trespassing into the suit property. Hence, the suit.

4. The suit was resisted by the defendant on the ground that the suit property originally belonged to one Kolandaiammal, wife of Athi Samban, and subsequently Kulandaiammal and her sons sold the suit property in favour of Ammasi @ Irusagoundar, grand-father of the defendant, through a registered sale deed dated 10.06.1939 (Ex.B4). According to him, the plaintiff obtained patta in his name in respect of the suit property by misrepresenting the facts before the Revenue officials and also got possession of the suit property. The defendant on coming to know of the same, has been demanding the plaintiff to hand over the possession of the suit property to him. However, the plaintiff has filed the present suit with false allegations. According to the defendant the possession of the plaintiff over the suit property is illegal and that he is taking steps to recover the possession from the plaintiff. He, therefore, prayed for the dismissal of the suit.

5. The trial court, after framing necessary issues and after full contest, decreed the suit in favour of the plaintiff on the following grounds.

- 1) The pattas (Ex.A1 and Ex.A17) and other revenue records like chitta, adangal extract, etc., (EX.A4 to Ex.A16 and Ex.A18) clearly prove the possession of the plaintiff over the suit property.
- 2) The defendant in his written statement had clearly admitted that the plaintiff is in possession of the suit property.
- 3) Though the defendant contended that he is the absolute owner of the suit property through Ex.B1 to Ex.B4, he did not prove his title. He did not also file any counter claim.
- 4) Even assuming that the plaintiff's possession over the suit property is illegal as alleged by the defendant, the defendant cannot be permitted to take law into his own hands for evicting the plaintiff and therefore, the plaintiff is entitled for a permanent injunction.



6. Aggrieved over the same, the defendant filed the first appeal in A.S. No. 97 of 2005 before the Principal Subordinate Court, Salem. The learned principal Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 06.09.2005.

7. Now the present second appeal is filed by the defendant on the following substantial questions of law :

- i. Whether the Courts below were right in granting the relief of injunction in favour of the respondent/plaintiff when the appellant proved title to the suit property?
- ii. Whether the courts below were right in holding that in the absence of any counter claim made by the appellant/defendant regarding his title, the question relating to the title of the suit property cannot be gone into in a suit for injunction?

8. Heard Mr. D. Shivakumaran, learned counsel for the appellant and Mr.N. Ilangovan, learned counsel for the respondent.

9. Mr. D. Shivakumaran, learned counsel for the appellant contended that when the defendant had denied the title of the plaintiff in his written statement, the plaintiff should have amended the plaint suitably seeking for a relief of declaration of title and for a consequential relief of permanent injunction and that since the plaintiff had failed to do so, the suit filed by him for a bare injunction is not maintainable. He relied on the following decisions to substantiate his contention in this regard.

- 1) Veerabadran Vs. Paramathal reported in CDJ 2019 MHC 3807.
- 2) Murugesan & others Vs. Selladurai & others reported in CDJ 2018 MHC 1370.
- 3) Chinna Nachiappan and another vs. PL. Lakshmanan reported in 2007 (4) CTC 70.
- 4) R. Shanmugampillai vs. K. Chidambara Devar reported in 2008 (6) CTC 267.

10. Per contra Mr.N. Ilangovan, learned counsel for the respondent contended that the plaintiff was able to prove his title and possession over the suit property by adducing acceptable evidence and both the courts below had rendered a concurrent finding that the plaintiff is entitled for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. It is also his contention that the defendant is claiming title to the suit property through a sale deed dated 10.06.1939 (Ex.B4). However, the property conveyed under Ex.B4 is



altogether a different property and not the present suit property. He would therefore contend that in the absence of acceptable evidence to show that the defendant has got title/right over the suit property, the plaintiff need not seek for a relief of declaration of his title.

11. The plaintiff, in order to prove his possession over the suit property, had filed two pattas (Ex.A1 and Ex.A17) and he had also adduced revenue records such as chitta, adangal extract, etc., (Ex.A4 to Ex.A16 and Ex.A18) to show his continuous possession over the suit property. The defendant had also admitted the possession of the plaintiff over the suit property in his written statement. However, according to the defendant, the possession of the plaintiff over the suit property is illegal as he is the rightful owner of the suit property through the sale deed 10.06.1939 (Ex.B4). Ex.B4 was executed by one Kulandaiammal and others in favour of Ammasi @ Irusa Gounder. According to the defendant, Irusa Gounder is his grand father. A perusal of Ex.B4 shows that the property conveyed under it is situate in Survey Number 99/4 of Seelanaickenpatty Village. The present suit property is in Survey No.99/5 of Seelanaickenpatty Village. Though the defendant in his written statement had also contended that the possession of the plaintiff over the suit property is illegal and that he is taking necessary steps to get the possession back to him, admittedly he has not filed any suit against the plaintiff till date. As rightly observed by both the courts below, the defendant did not file any counter claim. He did not also raise any objection before the revenue officials at the time of issuance of pattas in respect of the suit property. However, it is settled law that the plaintiff who is seeking for a relief of permanent injunction against the defendant should prove his case to the hilt and should not pick holes in the title of the defendant. As far as the present case is concerned, the plaintiff had adduced sufficient documentary evidence to show that he is in possession of the suit property by cultivating crops and his possession was also admitted by the defendant. Both the courts below had analysed the oral and documentary evidence adduced on both sides and had come to a conclusion that the plaintiff is entitled for a decree as prayed for by him.

12. In the decision in Anathula Sudhakar vs. P. Buchi Reddy (dead) by Lrs. reported in (2008) 4 SCC 594, the Hon'ble Supreme Court has held as follows:

"13. 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. We may refer to them briefly.



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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."

Therefore, it is clear from the above decision that the prayer for declaration of title would 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 and on the other hand, where the plaintiff has clear title supported by documents and if a trespasser without any claim to title and if a person without any apparent title, merely denies the plaintiff's title, it would not amount to raising a cloud over the title of the plaintiff. In such circumstances, it is not necessary for the plaintiff to sue for declaration and a suit for injunction would be sufficient.

13. In the instant case, as already observed, the defendant did not file any acceptable evidence to show that he has title over the suit property. The sale deed relied on by him is of the year 1939 and the property conveyed under the said document is in Survey No.99/4 of Seelanaickenpatty Village. In the circumstances, mere denial of the plaintiff's title over the suit property is not sufficient to hold that the plaintiff's suit for bare injunction is not maintainable. It is also contended by the counsel for the appellant that even the plaintiff, in the cause of action paragraph, has mentioned that on 10.04.2003 the defendant denied his title and attempted to trespass into the suit property and tried to put up a fence. He would, therefore, contend that when the plaintiff admitted that the defendant denied the title of the plaintiff and therefore, he should have sought for the relief of declaration of title. As already observed, the defendant till date has not taken any action against the plaintiff to recover the possession of the suit property in the manner known to law. No notice was issued by the defendant to the plaintiff in this regard. If really the defendant and his predecessors in title had a valid title over the suit property since the year 1928 as alleged by the defendant, they would not have kept quiet. As far as the present case is concerned, the plaintiff has established his possession over the suit property and the adangal extract also shows that he has been cultivating crops. In a suit for bare injunction, the question of title need not be gone into. However, both the courts below had incidentally gone into the title of the plaintiff and the defendant over the suit property and held that the plaintiff is entitled for a permanent injunction. The findings recorded by both the courts below cannot be said to be perverse and therefore, the substantial



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questions of law are answered against the appellant. In fine, the second appeal fails and is dismissed.

14. In the result,
- i. the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
 - ii. The decree and judgment dated 06.09.2005 passed in A.S. No.97 of 2005, on the file of the Principal Subordinate Judge, Salem, and the decree and judgment dated 01.04.2005 passed in O.S. No.284 of 2003, on the file of the I Additional District Munsif Court, Salem, are upheld.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge, Salem.
2. The I Additional District Munsif, Salem.
3. The Section Officer, VR Section, High Court, Madras.

+3cc to Mr.N.Ilangovan, Advocate, S.R.No.22001
+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.22290

S.A.No.1005 of 2011

GSM(CO)
SB(05/05/2022)