



WEB COPY



S.A.No.426 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.426 of 2013

M.P.No.1 of 2013

H.S.Ramakrishnan

....Appellant

Vs.

Palanisamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree in A.S.No.42 of 2012 on the file of Sub-Court, Harur, dated 14.02.2013 in reversing the well considered Judgment and decree in O.S.No.142 of 2010 on the file of District Munsif Court, Harur, dated 11.10.2012

For Appellant : Mr.V.Srimathi

For Respondent : Mr.N.E.A.Dinesh
For Mr.V.Nicholas



S.A.No.426 of 2013

JUDGMENT

WEB COPY

This Second Appeal has been filed by the defendant against the Judgment and decree in A.S.No.42 of 2012 on the file of Sub-Court, Harur, dated 14.02.2013 in reversing the well considered Judgment and decree in O.S.No.142 of 2010 on the file of District Munsif Court, Harur, dated 11.10.2012.

2. The appellant is the defendant and the respondent is the plaintiff in the suit.

3. The appellant/defendant contested the suit and the trial Court had dismissed the claim of the plaintiff. Aggrieved over the Judgement and decree of the trial Court, the plaintiff filed the appeal in A.S.No.42 of 2012 on the file of the Sub-Court, Harur, and the same was allowed by set aside the trial Court findings. Aggrieved over the Judgment and decree of the lower Appellate Court, the defendant has preferred this appeal.



S.A.No.426 of 2013

4. The brief case of the plaintiff is as follows

WEB COPY

Based on two title sale deeds dated 16.07.1986 and 22.05.1992, the plaintiff is the absolute owner of the suit properties as described in the plaint schedule. Originally, the suit property belongs to one Rangasamy Gounder by virtue of the sale deed dated 21.09.1981. The said Rangasamy Gounder and his sons Chinnimalai, the plaintiff had purchased the property by virtue of a Registered Sale deed dated 16.07.1986. The other property belonged to one Srirangan by means of a Registered Sale deed dated 18.04.1979. The said Srirangan and his sons, they have sold the property by means of a Sale deed to the plaintiff on 22.05.1992. So, the plaintiff had purchased the properties on 16.07.1986 and 22.05.1992 by means of a Registered Sale deed and spent amount and developed the property and constructed a house and got the electricity connection. There is no house except the suit house situated in the suit property. On the basis of the possession of the suit property the patta Nos.93, 108 and 235 was given to the plaintiff. The revenue records are stands in the name of the plaintiff. The plaintiff has been paying the kist receipts and also paying the electricity charges. Thereafter, the defendant had compelled the plaintiff to sell the properties and also created forged several documents with intention to grab the suit properties.



S.A.No.426 of 2013

On 11.07.2010 the defendant along with rowdy elements trespass into the suit property and destroyed the crops and threatened him. Hence, the plaintiff filed the suit for permanent injunction.

5. The brief case of the defendant is as follows

The defendant totally denied the claim of the plaintiff. The defendant is the absolute owner of the suit property. He admits that originally the suit property belongs to one Puttu @ Ramachari and his sons Angachari, Venkatachari, Krishnachari by virtue of the Sale deed dated 12.05.1951. The said Rangachari got amount and released his share by means of Registered deed dated 10.01.1957 and released from the joint family. Thereafter, Venkatachari, Krishnachari, Rangachari, Subramaniya Achari, along with Nagammal are living jointly. Thereafter, the brothers of the said Nagammal refused to give share. Hence, the said Nagammal filed a suit in O.S.No.440 of 1978 and the case was transferred to District Munsif Court in O.S.No.1154 of 1984 for partition and the said suit was preliminary decreed on 03.07.1986 and also a final decree was passed in I.A.No.351/1989 on 19.01.1993. Thereafter the said Nagammal filed a petition in R.E.P.No.173/1993 for delivery. The said Nagammal died and



S.A.No.426 of 2013

her one daughter Sagunthala sold the property in the sketch attached in the written statement. The said Sagunthala sold the property to the defendant on 27.04.2010. The possession of the suit property taken on 25.02.2009 through court amin. Thereafter, the said Sagunthala was in possession and enjoyment of the suit property in Survey No.122/2A1B. On 27.04.2010 onward after the purchase from Sagunthala, the defendant is in possession and enjoyment of the suit property and doing agriculture works. Hence, the defendant contended that the suit properties were joint family properties wherein the vendor of the plaintiff's Krishnachari is having only 1/5 share but he sold the entire ancestral property to vendor of the plaintiff. So, the alleged transaction made by the vendor of the plaintiff and Krishnachari as such is not valid one. Furthermore, he also submits that during the pendency of the partition suit, the plaintiff as well as his vendor purchased the property is *lis pendens* and the said document is non-est in law. Based of the above submissions, the defendant contended that the plaintiff is not entitled for permanent injunction against the defendant, accordingly, he prayed to dismiss the suit.



S.A.No.426 of 2013

6. Before the trial Court, on the side of the plaintiffs examined as PW1 to PW3 and documents Exs.A1 to A23 were marked and on the side of the defendant, he was examined as Dw1 to DW3 and 15 documents Exs.B1 to B15 were marked and Court witness was examined as XW1, Exs. C1 & C3 were marked.

7. The trial Court, after taking consideration the oral and documentary evidence of both sides, dismissed the suit for the reason that the plaintiff's vendor is not entitled to sell the entire extent and also purchase made by the plaintiff from his vendor is hit by the principles of *res judicata*.

8. Aggrieved over the said findings of the trial Court, the plaintiff has preferred an appeal in A.S.No.42 of 2012 on the file of the Sub Court, Harur and the lower Appellate Judge had allowed the appeal concluded that the decree obtained by the defendant's vendor Nagammal and her daughter Sagunthala is collusive decree for the reason that the plaintiff and his vendor not impleaded in the said suit and accordingly, the decree will not bind upon the plaintiff. Further, the lower Appellant Court also observed that the plaintiff alone is in possession and enjoyment of the suit properties and the



S.A.No.426 of 2013

Court instantly decided the title even in the permanent injunction suit, accordingly, the lower Appellate Judge concluded that the plaintiff is to chosen the entire property and title also. Therefore, the lower Appellant Court set aside the judgment and decree of the trial Court.

9. Aggrieved over the Judgment and decree of the lower Appellate Court, the defendant has filed the above second appeal.

10. This Court at the time of admitting the second appeal has formulated the following substantial questions of law:

(1) Whether the Lower Appellant Court is right in allowing the appeal on the surmises that the plaintiff had prescribed title by adverse possession when he had purchased property under Ex.A2 and A4, pending the earlier suit instituted by Nagammal in the year 1978?.

(2) Whether the Doctrine of Lis pendens would not apply on all force leaving no title to the plaintiff.

(3) Whether the plaintiff could claim anything more than what his vendor had to the property and on the facts and circumstances of case, whether the finding of the Court that the plaintiff had prescribed right is not



S.A.No.426 of 2013

legally untenable?.

WEB COPY

(4) Whether the suit for injunction is maintainable against a true owner of the property?

(5) Whether the finding of Courts below as regards title is not perverse and whether its Judgment is not against a Court document under Ex.B10?.

11. Both the plaintiff and the defendant claimed that absolute right over the suit properties, based upon the sale deeds, and conclusion of the parties, based upon the sale is undisputed, as per the contention of the plaintiff is that the entire suit properties belongs to one Krishnachari from him, he purchased the property through his vendor namely Srirangan through Exs.A2 and A4. Based upon, those documents, the plaintiff contending that he is in possession and enjoyment of the entire suit property and the defendant has no right over the suit properties. Hence, he prayed for permanent injunction.



S.A.No.426 of 2013

12. But the defendant denied that plaintiff is absolute owner of the entire suit property and he contended that the plaintiff's vendor Krishnachari entitled only 1/5 share but he sold the entire properties belongs to other sharer's including the said Nagammal who is the sister of the said Krishnachari. Since the property were joint family properties and no partition was held between the Krishnachari and his brothers and sisters. Further, they refused to given the share to Nagammall, she filed the suit for partition in O.S.No.440 of 1978 and then transferred to District Munsif Court in O.S.No.1154 of 1984 and the same was allowed on 03.07.1986 and also a final decree was passed in I.A.No.351/1989 on 19.01.1993. Thereafter the said Nagammal filed a execution petition in R.E.P.No.173/1993. Further, the said Nagammal died and her daughter Sagunthala was possession and enjoyment of the suit property and property was handed over by the Court amin, Therefore, she has right over the suit properties and sold to the defendant through sale deed on 27.04.2010.

13. After the said purchase, the suit was filed by the plaintiff for bare injunction. Tracing his title through purchase, the defendant also claimed 20/90 share in the suit property as well as denied the plaintiff is absolute



S.A.No.426 of 2013

owner of the entire suit property.

WEB COPY

14. The learned counsel for the appellant/defendant submitted that during the pendency of the partition suit filed by the said Nagammal who is the sister of the said Krishnachari in O.S.No.440 of 1978 transferred to District Munsif Court in O.S.No.1154 of 1984 and the same was allowed. The final decree was passed and R.E.P.No.173/1993 was filed for taking delivery. The delivery receipts also marked as Ex.B9. The delivery was recorded as per Ex.B10. The appellant/defendant had purchased the property in the year 2010 therefore, through those documents, the appellant/defendant able to establish his title 20/90 in the suit properties and possession also given to her through court proceedings, thereby contend that the respondent/plaintiff was also aware of the said execution proceedings.

15. But the counsel for the respondent/plaintiff submits that the said decree was obtained by the Nagammal and his brother is collusive nature and also contended that the said Nagammal have not taken any steps to implead the plaintiff and his vendor as party to the proceedings. Hence, the said decree will not bind upon him, The Appellate Court also accepted and



S.A.No.426 of 2013

concluded that the decree is collusive nature and not bind the plaintiff. But as rightly concluded that during the pendency of the said execution proceeding in R.E.P.No.173 of 1993. The plaintiff filed a claim application contended that the property belongs to him in R.E.A.No.48 of 1995 and the same was dismissed and the said order copy in R.E.A.No.48 of 1995 as produced as Ex.B12 also proved the said facts.. Hence, the plaintiff was aware of the suit proceedings and she took effective steps to claim her right over the property to prove her title over the property but the same was dismissed.

16. During the pendency of the suit, the plaintiff has no right to contend that the decree is collusive nature was obtained by the defendant's vendor and his brother. The Appellate Judge also erroneously concluded that the said decree is collusive nature and not bind the plaintiff. Accordingly, the question of law 1, 2 is answered.

17. Since the purchase made by the plaintiff is hit by doctrine of *lis pendens* and also bound by the decree in O.S.No.1154 of 1984. Accordingly, the appellant/defendant is having entitled to the property of



S.A.No.426 of 2013

20/90 shares. Based upon his title deeds and the plaintiff can claim that right over the property not independently as he prayed for, Therefore, the plaintiff could not claim more than what his vendor had in the property and the decree is binding upon him. Accordingly, the question of law 3 is answered.

18. The Appellate Judge without considering the legal aspects and erroneously concluded that the plaintiff is in possession and enjoyment of the entire suit properties and also observed that more than 12 years, he is in possession and also observed that the Court can incidentally decided on the title of the property and concluded that the plaintiff is lawful owner.

19. As discussed above, during the pendency of the suit proceeding, the plaintiff purchased the property and hit by doctrine of *lis pendens*. However, the plaintiff has not taken any steps to file a suit for declaration and without prove his title, he is not entitled to claim the entire properties. The Appellate Judge without appreciating all these aspects and wrongly concluded that the plaintiff is in possession and enjoyment of the suit properties more than 12 years and also held that the plaintiff is lawful owner



S.A.No.426 of 2013

and granted injunction.

WEB COPY

20. The following authority relied by plaintiff in Anathula Sudhakar vs P.Buchi Reddy(dead) by LR's and others, in Appeal (Civil) No.6191 of 2001 has held as follows.

15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari [AIR 1965 Mad 355] the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of the plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred.

.On the other hand, in Sulochana Amma v. Narayanan Nair [(1994) 2 SCC 14] this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premise that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed: (SCC p. 20, para 9)



S.A.No.426 of 2013

“9. Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata.”

This was reiterated in *Annaimuthu Thevar v. Alagammal* [(2005) 6 SCC 202] .

16. This Court in Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer [(2000) 3 SCC 350] (at SCC pp. 362-63, para 24) noticed the apparent conflict in the views expressed in Vanagiri [Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari, AIR 1965 Mad 355] and Sulochana Amma [AIR 1965 Mad 355] and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in Corpus Juris Secundum (Vol. 50, para 735, p. 229):

“Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title.”

In Vanagiri the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma [AIR 1965 Mad 355] that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is,



where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when an issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title.

17. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the 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 the 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* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). 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.



S.A.No.426 of 2013

(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 straightforward, 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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

21. The another Judgment passed by this Court in Second Appeal

No.64 of 2021 has held as follows:

(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.

© 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



S.A.No.426 of 2013

injunction, Even where there are necessary pleadings and issue, if the matter involve a complicated question 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.

22. Coming to the facts that the plaintiff claimed the entire suit property through two sale deeds but the defendant denied the claim of the plaintiff. The partition suit was filed against the vendor of the plaintiff and the defendant also able to establish that the plaintiff was aware of the suit proceedings by filing of claim application before the execution Court. Based upon the sale deeds, the defendant able to establish the suit property after final decree was passed in the suit. Therefore, the Court below after completion of final decree proceedings in R.E.P.No.173/1993 as per order, the defendant is having 20/90 shares in the suit property.

23. But on seeing the plaint pleadings, the plaintiff has not stated anything about the earlier suit pending between his vendor and the vendor of the defendant, but he was aware of the suit proceedings and the same could be inferred.

24. Suppressing all these facts, he approached the Court claiming that



S.A.No.426 of 2013

he is absolute owner of the suit property and filed a suit for bare injunction.

But the defendant through his written statement narrated all those facts more particularly the title of the plaintiff with regard to the entire suit property. Thus, through sale deed, defendant claimed his shares 20 out of 90 in the suit property. When the title is denied, the plaintiff ought to have taken steps to claim reliefs of declaration, but he failed.

25. The trial Court rightly observed all these facts and dismissed the suit but the Lower Appellate Judge erroneously concluded that the plaintiff is in possession and enjoyment of the suit property for more than 12 years. The Appellate Judge also failed to take note that the Court can incidentally decide the title of the plaintiff even in the suit for bare injunction, but as discussed above, the plaintiff is not owning the entire suit property, as per purchase the defendant having 20/90 shares when the document rightly established those facts, plaintiff is not absolute owner of the suit property. Hence, the findings of the Appellate Judge that the plaintiff is absolute owner of the property is liable to set aside. Accordingly, the question of law 4, 5 is answered.

26. Hence, the plaintiff not proved his title but the defendant has



S.A.No.426 of 2013

proved that the plaintiff purchased the property is hit by doctrine of *lis pendens* and also proved his title even though the plaintiff has not filed suit for declaration.

27. Accordingly, the Judgment and decree of the Appellate Court is set aside and confirmed the Judgement and decree passed by the trial Court. Hence, this second appeal is allowed. Consequently, connected miscellaneous petition is closed.

18.08.2022

Index :Yes/No
msrm

To

1. The Sub-Court, Harur
2. The District Munsif Court, Harur
3. The Section Officer,
V.R,Section

T.V.THAMILSELVI, J.



WEB COPY



S.A.No.426 of 2013

msrm

S.A.No.426 of 2013
M.P.No.1 of 2013

18.08.2022