



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2022

Pronounced on : 19 .12.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 369 of 2017

Saroja ... Appellant/Respondent/Defendant

Vs.

S.Ravikumar ...Respondent/Appellant/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 21.09.2016 in A.S.No. 32 of 2016 on the file of the Principal Subordinate Court, Salem, reversing the Judgment and Decree dated 04.01.2016 in O.S.No. 178 of 2015 on the file of the I Additional District Munsif Court, Salem.

For Appellant : Mr. D.Shivakumaran

For Respondent : Mr. P.K.Sivakumar



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JUDGMENT

The defendant in O.S.No. 178 of 2015 on the file of the First Additional District Munsif Court at Salem is the appellant herein.

2. The suit in O.S.No. 178 of 2015 had been filed by the respondent / plaintiff seeking a Judgment and Decree against the defendant restraining the defendant from disturbing the peaceful possession and enjoyment of the suit property and for costs of the suit.

3. The suit property is situated at Kathiripatty Village, Ayothiyapattinam Sub Registration District, Salem and had been described as land in S.Nos. 49/5 and 50/1 measuring 0.42 acres and 0.61 acres respectively.

4. By Judgment dated 04.01.2016, the suit was dismissed with costs.

5. The plaintiff then filed A.S.No. 32 of 2016 before the Principal Sub Court at Salem. By Judgment dated 21.09.2016, the



Appeal Suit was allowed and the Judgment of the trial Court was set aside. This has necessitated the defendant to file the present Second Appeal.

6. The Second Appeal had been admitted on the following two substantial questions of law:-

“(1.) Whether the judgment and decree passed by the Lower Appellate Court I reversing the Judgment and decree passed by the Trial Court, despite recording the findings that either of the parties to the suit did not take any steps to appoint the Advocate Commissioner and taken further steps to note down the features of the property?; and

(2) Whether the findings of the Lower Appellate Court is correct in law in putting the burden of proof on the appellant/defendant overlooking the well settled position that it is for the plaintiff to succeed or perish on his own pleadings and evidence?”



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7. Heard arguments advanced by Mr. D.Shivakumaran, learned counsel for the appellant and Mr. P.K.Sivakumar, learned counsel for the respondent.

8. The parties shall be referred in the same nomenclature as they were referred in the Original Suit. The appellant was the defendant and the respondent was the plaintiff.

9. The plaintiff had filed O.S.No. 178 of 2015 claiming that he was allotted the suit property on 10.02.2015 and when he applied to the Salem Taluk Thasildhar, to measure the suit property, the defendant had lodged a complaint. There were exchange of notices and police complaints were lodged against each other and when the Taluk Surveyor tried to measure the suit property, the defendant obstructed and had tried to lay a cart track in the suit property which necessitated, the filing of the suit.



10. In the plaint, it had been stated that the plaintiff is the absolute owner of the suit lands which were allotted to him under a partition deed dated 11.07.2005. He was in possession of the same. The defendant has lands on the southern side of the suit property. There is a road on the western side of the plaintiff's property and the defendant's property. Both the plaintiff and the defendant had access from that particular road. The defendant wanted to put up a cart track in between the plaintiff and the defendant's property running east to west. It was stated that the defendant has no right to put up cart track. There were police complaints lodged and when the Taluk Surveyor tried to measure the property, he was obstructed by the defendant. It was stated that therefore the suit was filed seeking permanent injunction to protect possession.

11. In the written statement, it had been stated that there was a cart track running east to west on the southern side of the plaintiff's property which was present for more than 20 years and that the defendant had been using the said cart track and neither the plaintiff nor anybody else had objected such usage. It had been stated that the defendant had never interfered with the peaceful possession of the



plaintiff. It had been stated that there was no disclosure of cause of action in that plaint.

12. On the basis of the above pleadings, the First Additional District Munsif, Salem, framed the following issues:-

(i) Whether the plaintiff was entitled for the relief of permanent injunction?; and

(ii) To what other reliefs are the parties entitled to?

13. During trial, the plaintiff examined himself as PW-1 and marked Exs. A-1 to A-15. The partition deed dated 11.07.2005 was marked as Ex. A-3, the patta and adangal in favour of the plaintiff were marked as Exs. A-4 and A-5. The field map of survey No. 49 was marked as Ex.A-6 and the tax receipts in favour of the plaintiff were marked as Ex. A-7. The certificate of the Village Administrative Officer regarding possession was marked as Ex.A-9. The notices exchanged were marked as Exs.A-13 and A-14.



14. On the side of the defendant, the defendant was examined as DW-1 and a third party was examined as DW-2. The defendants marked Exs. B-1 to B-4. Exs. B-1 and B-3 were the notices exchanged between the parties and Ex.B-4 were photographs of the land.

15. On the basis of the evidence recorded, the learned First Additional District Munsif, extracted the evidence of PW-1 wherein he had stated that there was a pathway running east to west on the southern side of his lands and that the defendant was using the pathway to transport sugar cane by a tractor. It was however held that since the said pathway was admitted to be used by the defendant, it cannot be said to be interference with peaceful possession and therefore the suit was dismissed.

16. The plaintiff then filed A.S.No. 32 of 2016 before the Principal Sub Court at Salem. The learned Sub Judge framed two points for consideration, namely, whether there was a panchayat road to the west of the plaintiff's and the defendant's lands and whether the appeal should be allowed.



17. It was found by the first appellate court that both sides had not taken steps to appoint an advocate commissioner to find as a fact, whether there was a cart track between the lands of the plaintiff and the defendant. It was also found that in the documents produced by the plaintiff and the defendant, there was no mention of a pathway. It was also observed that the defendant had stated that there was a road to the west of the plaintiff and his lands and from the said road, the agricultural products were transported. It was held that the defendant cannot interfere with the peaceful possession of the plaintiff. The Appeal Suit was therefore allowed and the Judgment and Decree of the trial Court dismissing the suit were set aside. The defendant has then filed the present Second Appeal.

18. The plaintiff had filed the suit seeking permanent injunction restraining the defendant from interfering with peaceful possession. It was found as a fact that the plaintiff had stated that there was a pathway on the cart track on the southern side of his lands and the defendant was



transporting sugar cane.

19. It is however seen that there is no such cart track available on the records produced by both the sides. If at all there is a cart track and the defendant was using the cart track then he should have filed a suit for declaration of availability of such cart track. In the absence of such relief being sought by the defendant by atleast filing a counter claim, it will be difficult for this Court to render any finding in favour of the defendant.

20. It is admitted by the defendant that there is a panchayat road on the west of both the plaintiff's and the defendant's lands. The First Appellate Court had correctly pointed out that no Commissioner had been appointed to find out the lay of the land, namely, whether there was a cart track to the southern side of the lands of the plaintiff and to the north of the lands of the defendant. The Court must proceed only on the basis of the available records.

21. In *Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs*



and others, reported in (2008) 4 SCC 594, the Hon'ble Supreme court had laid down the following dictum in para 21:-

“21. 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.

(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.”

22. This dictum has been further affirmed in ***T.V.Ramakrishna Reddy Vs. M.Mallappa and another reported in (2021) LL SC 423***. The first substantial question of law is answered that the First Appellate Court was justified in granting the relief of injunction. The defendant who urged that there was a cart track should have sought a declaration to that effect. One of the ways to establish that fact was by filing application for appointment of an Advocate Commissioner and in the absence of the same, the Court can only go in accordance with records available. Therefore, I hold that the Judgment of the First Appellate Court has to be sustained.

23. With respect to the second substantial question of law, the plaintiff had produced as Ex.A-3 the title deed to his property and also the patta and adangal as Exs. A-4 and A-5. It is trite to point out that possession follows title in vacant land. The plaintiff having established



title, naturally is entitled for the relief of injunction. The substantial question of law is answered accordingly.

C.V.KARTHIKEYAN, J.

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24. I find no ground to interfere with the Judgment of the First Appellate Court. The Second Appeal stands dismissed. No costs.

25. The parties are of course at liberty to file a suit for a declaration regarding availability or otherwise of the cart track. Evidence in that regard should be considered as a separate issue independent of the finding regarding possession of the plaintiff in O.S.No. 178 of 2015 from which this Second Appeal has emanated and wherein such possession has been affirmed.

19.12.2022

Index :Yes/No

Internet:Yes/No

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1. Principal Subordinate Court, Salem.

2. I Additional District Munsif Court, Salem.

Pre-Delivery Judgment made in

S.A.No. 369 of 2017