



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2022

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.66 of 2010

1.Muthu Kothanar (Died) ...Appellant/Appellant/Defendant

2.Periya Nayaki

3.Chitradevi

4.Shanmugam

5.Sundarraaj

6.Ganesan

...Appellants/.../

LRs of the Deceased Defendant

*(Appellants 2 to 6 are brought on record as
LRs of the deceased sole appellant vide order
dated 10.03.2022 in M.P.(MD)No.1 of 2011)*

Vs.

1.S.Dhanasundaram (Died)

2.Muthazhagan

3.Muthuselvam

...Respondents/Respondents/Plaintiffs

4.Balamurugan

...4th Respondent/ ... /

LRs of the Deceased Defendant

*(Fourth respondent is brought on record as
LRs of the deceased sole appellant vide order
dated 10.03.2022 in M.P.(MD)No.1 of 2011)*

5.T.Vasanthakumari

6.Kayailvizhi

7.Niranjana

8.Ramkumar Raja

... Respondents 5 to 8/ ... /

LRs of the deceased 1st Plaintiff.

*(Respondents 5 to 8 are suo motu impleaded as
LRs of the deceased 1st respondent vide order
dated 10.02.2022)*

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.9 of 2005 on the file of the Sub Court, Pudukkottai, dated 21.04.2006, confirming the judgment and decree passed in O.S.No.527 of 1996 on the file of the Principal District Munsif Court, Pudukkottai, dated 23.12.1998.



For Appellants : Mr.K.Baalasundharam
For Respondents : Mr.P.Thiagarajan for R2, R3, R5 and R8
Mr.RMS.Sethuraman for R4

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JUDGEMENT

Ma.Aranganathan, a noted Tamil literary figure, comes to my mind as I dispose of this second appeal. He did not (to borrow the lines of Dylan Thomas) write for ambition or bread or the strut and trade of charms on the ivory stages. When he passed away, the Madurai Bar organized a memorial meeting. One of the speakers posed a question, "Who is Muthukaruppan?" The renowned writer Shri.Jeyamohan in his homage also remarked that the main character in all his fictional writings bore the constant name of Muthukaruppan.

2.This second appeal arises out of a suit for permanent injunction. The respondents herein who are the sons of one Subbaiah Pillai filed O.S No.527 of 1996 on the file of the Principal District Munsif Court, Pudukkottai for restraining the defendant from interfering with their possession and enjoyment of the suit property. The defendant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the following issues:-

"a) Have the plaintiffs been in possession of the suit- property?

b) Has the defendant prescribed title to the suit- property?

c) Is the suit for bare injunction without seeking the relief of declaration of title not maintainable?

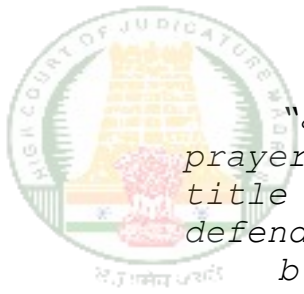
d) Are the plaintiffs entitled to the relief of permanent injunction?

e) To what other relief are the plaintiffs entitled?"

3.The second plaintiff examined himself as P.W.1 and one Periyannayagam was examined as P.W.2 and Exs.A1 to A10 were marked. The defendant examined himself as D.W.1 and one Rangarajan was examined as D.W.2 and Exs.B1 to B5 were marked. After consideration of the evidence on record, by judgment and decree dated 23.12.1998, the suit was decreed as prayed for. Aggrieved by the same, the defendant filed A.S No.9 of 2005 before Sub Court, Pudukkottai. By the impugned judgment and decree dated 21.04.2006, the first appellate Court confirmed the decision of the trial Court and dismissed the first appeal. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on 10.02.2010 on the following substantial questions of law:-

<https://hcservices.ecourts.gov.in/hcservices/>



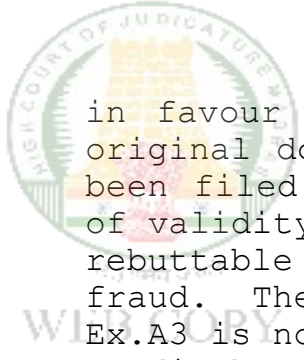
"a. Whether a suit for permanent injunction without prayer for declaration of title is maintainable when the title of the plaintiffs is vehemently denied by the defendant? and

b. Whether plaintiffs are entitled to the equitable relief of injunction when he has not come to Court with clean hands?"

5. During the pendency of the second appeal, the defendant passed away and his legal heirs were brought on record. The learned counsel for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgements and decrees and dismiss the suit. According to the learned counsel for the appellants, the Courts below have sustained the claim of the plaintiffs because of the perceived weaknesses in the case of the defendant. The plaintiffs trace the title to Ex.A3 sale deed dated 05.03.1954 said to have been executed in favour of their father Subbaiah Pillai by Thiru.Sundaram, the father of the defendant. The defendant had questioned the genuineness of the said document. The original sale deed was not produced by the plaintiffs. Therefore, the presumption under Section 90 of the Indian Evidence Act, 1872 was not available. The plaintiffs have anchored their case more on the patta obtained in their favour virtually on the eve of filing of the suit. Ex.A4 patta transfer order reads that the earlier pattadhar was one Muthukaruppan. The counsel for the appellants laboured much on this. If the title stood in the name of Sundaram and then was transferred to Subbaiah Pillai, there was no scope for the revenue record reflecting the name of Muthukaruppan. The learned counsel repeatedly raised the question "Who is Muthukaruppan?". According to him, the plaintiffs have failed to answer this and therefore they have to be non-suited. Since the suit property is a vacant site and the plaintiffs did not speak about the mode of enjoyment, a simple suit for injunction without prayer for declaration is not maintainable.

6. Per contra, the learned counsel for the respondents submitted that no case for interference has been made out.

7. I carefully considered the rival contentions and went through the evidence on record. There is some confusion as to who the earlier pattadhar was. Ex.A4/patta transfer order reads that in the place of Muthukaruppan, the name of Subbaiah Pillai stood substituted. It is true that the plaintiffs have not been able to shed light on this mysterious character Muthukaruppan. But that would not weaken their case which rests primarily on the sale deed dated 05.03.1954 (Ex.A3). The name of the defendant's father is Sundaram. The specific stand of the plaintiffs is that the defendant's father Sundaram executed the sale deed dated 05.03.1954



in favour of their father Subbaiah Pillai. It is true that the original document has not been filed. But the certified copy has been filed. Under Section 60 of the Registration Act, presumption of validity attaches to any registered document. Of course, it is a rebuttable presumption. In this case, the defendant had pleaded fraud. Therefore, the burden lay only on the defendant to show that Ex.A3 is not a genuine document. The defendant had miserably failed to discharge the burden cast on him.

8.The suit property is a vacant site. To show that the suit property was purchased by their father, the plaintiffs marked Ex.A9 sale deed dated 01.02.1961 standing in the name of one Perumal. Subbaiah Pillai's land has been shown as the southern boundary for the property sold under Ex.A9. Thus, in a subsequently registered sale deed, the property purchased by the plaintiffs' father has been shown as the southern boundary. I am more than satisfied that the plaintiffs have established their title over the suit property. The suit property is a vacant site. Therefore, possession follows title (2001-1- LW.724 (Arasappan Karayalar and Another v. Subramania Karayalar)).

9.More than anything else, the plaintiffs have marked the patta issued in favour of their father as Ex.A5. The patta transfer order has also been marked. The defendant had not filed any appeal or revision questioning the mutation of patta in favour of the plaintiffs' father. On the side of the defendant, there is absolutely zero evidence regarding his possession over the suit property. On the other hand, the plaintiffs by overwhelming evidence have shown that not only they have title but also possession over the suit property.

10.Next comes the question if the suit was maintainable in the absence of a prayer for declaration of title. The Hon'ble Supreme Court in the decision reported in [2008 (6) CTC 237 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and Others)] held as follows:-

"17.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."

A mere plea challenging the plaintiff's title is not sufficient. Something more is required. The defendant had not adduced any evidence casting cloud over the plaintiffs' title. That is why, the courts below concurrently answered the issue framed in this regard in favour of the plaintiffs. The defendant had also not established that the plaintiffs have approached the court with unclean hands. The substantial questions of law are answered against the appellants. The decisions of the courts below are confirmed and the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ias/skm

To

1.The Subordinate Judge,
Pudukkottai.

2.The Principal District Munsif,
Pudukkottai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-11441[F] dated 11/03/2022)

S.A. (MD)No.66 of 2010

10.03.2022

SVS (CO)

GC (02.05.2022) 5P 6C