



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.951 of 2010

Murugesan

... Appellant/Appellant/3rd Defendant

Vs.

1.Selvam

2.Moorthy

3.Rani

4.Veera Chinnu

... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.66 of 2009 on the file of the Sub Court, Theni, dated 27.10.2009, confirming the judgment and decree passed in O.S.No.251 of 2007 dated 29.01.2009 on the file of the District Munsif Court, Theni.

For Appellant : Mr.M.Mariappan

For Respondents : Mr.A.Arumugam,
For M/s.Ajmal Associates.

JUDGEMENT

The third defendant in O.S.No.251 of 2007 on the file of the District Munsif Court, Theni is the appellant in this second appeal. The respondents herein filed the said suit seeking the relief of permanent injunction. The appellant herein filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues.

2.The first plaintiff/Selvam examined himself as P.W.1 and marked Exs.A1 to A6. The appellant herein examined himself as D.W.1 and the Deputy Thasildar, Theni Taluk was examined as D.W.2 and Exs.B1 to B6 were marked. Through witnesses two documents were marked.

3.The suit schedule comprises three items namely, Plot Nos.276, 277 and 278. While Plot No.276 was vacant site at the time of filing of the suit, Plot Nos.277 and 278 had superstructures. The suit was dismissed as regards Plot Nos.277 and 278. It was however decreed as regards Plot No.276 vide judgment and decree dated 29.01.2009. Aggrieved by the same, the third defendant filed A.S.No.66 of 2009 before Sub Court, Theni. By the impugned judgment



and decree dated 27.10.2009, the decision of the trial Court was confirmed and the first appeal came to be dismissed. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on 21.12.2010 following substantial questions of law:-

" 1.Whether the lower appellate Court, being the final Court of appeal on fact, has failed to frame necessary issues of disputed questions of fact?

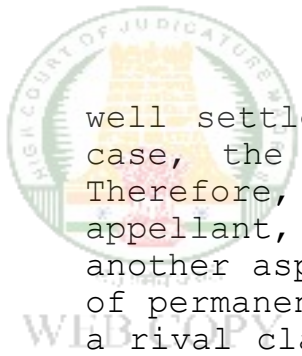
2.Whether the finding of the Courts below to the effect that the plaintiffs were able to prove their possession of the suit first schedule property is perverse? and

3.Whether the findings of the Courts below are perverse as the fabrication of documents alleged by the appellant/ 3rd defendant was not properly considered?"

5.The learned counsel for the appellant 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 appellant and set aside the judgments and decrees passed by the Courts below insofar as Plot No.276 is concerned.

6.Per contra, the learned counsel for the respondents/plaintiffs submitted that the impugned judgment and decree do not call any interference.

7.I carefully considered the rival contentions and went through the evidence on record. The plaintiffs filed a suit for permanent injunction in respect of three plots on the strength of Exs.A1 to A3. According to the plaintiffs, Ex.A1 is a true copy of the assignment order issued in their favour in respect of Plot No.276. I went through the contents of Ex.A1. It is obvious that the name of the assignee has been over-written. The erasure is evident on the very face of it. More than anything else, Ex.A1 is said to be a true copy. On the other hand, the appellant had marked Ex.B1 dated 18.07.1991, which is the original assignment order in respect of Plot No.276. As per Ex.B1, the assignment was made in favour of Mariammal, W/o.Rajan. The said Mariammal had sold Plot No.276 in favour of the appellant under Ex.B2 dated 19.09.2007. D.W.2, the Deputy Thasildar had also testified that Plot No.276 was assigned only in favour of Mariammal. Thus, the appellant herein by overwhelming evidence established his defence. But strangely the Courts below chose to ignore the documentary evidence and went by the factum of possession. The appellant appears to have conceded that the plaintiffs are in possession of Plot No.276. But then, Plot No.276 is only a vacant site. In respect of vacant site, the



well settled principle is that possession follows title. In this case, the appellant had established his title over Plot No.276. Therefore, the Courts below ought to have held that it was the appellant, who is in possession of Plot No.276. There is yet another aspect of the matter. When the plaintiffs sought the relief of permanent injunction, the third defendant/appellant herein set up a rival claim and independent title in himself by projecting Exs.B1 and B2. Thus, the plaintiffs' title came under serious cloud. Therefore, the plaintiffs ought to have amended their suit prayer and sought the relief of declaration. 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)]** had held that where the plaintiff's title had come under a cloud, he cannot maintain a simple suit for injunction but must ask for the relief of declaration also. In this case, the plaintiffs had not sought any declarative relief. Therefore, the suit was not maintainable.

8. Another aspect to be borne mind is that injunction is an equitable remedy. A person seeking injunction must approach the Court with clean hands. Ex.A1 is obviously a fabricated document. This could not have been casually ignored. When the departmental official had clearly testified that Plot No.276 was assigned only in favour of Mariammal, that was sufficient to non-suit the plaintiffs in toto. Therefore, the substantial questions of law are answered in favour of the appellant and that the impugned judgments and decrees are set aside insofar as Plot No.276 is concerned and the second appeal is allowed and the suit dismissed in toto. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Sub Court, Theni.
- 2.The District Munsif Court, Theni.

Copy to:

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



+1 CC to M/s.M.SENTHILKUMAR, Advocate (SR-11747[F] dated 14/03/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12052[F] dated 15/03/2022)

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TR (18.04.2022) 4P 7C