



S.A.No.324 of 1996

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.324 of 1996

Karuppuchamy

... Appellant

Vs.

1.Panja Thevar
2.Shanmugasundaram Pillai
3.Kannan
4.Sundararajan

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Sivagangai made in A.S.No.46 of 1992, dated 06.09.1994 reversing the judgment and decree of the learned District Munsif, Manamadurai made in O.S.No.457 of 1988, dated 09.04.1991.

For Appellant : Mr.T.Antony Arulraj

For Respondents : Mr.K.Chengiz Khan



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J U D G M E N T

The appellant is the plaintiff. He filed a suit in O.S.No.457 of 1988, on the file of the District Munsif Court, Manamadurai for declaration and injunction. The said suit was decreed in favour of the plaintiff, therefore, the respondents/defendants filed an appeal in A.S.No.46/1992, on the file of the Sub-Court, Sivagangai. The appellate Court after hearing the appeal and re-appreciating the evidence, dismissed the suit by setting aside the judgment and decreed passed by the trial Court.

2. After completing the pleadings and framing of issues, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 4 documents were marked as Ex.A1 to Ex.A4. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and 17 documents were marked as Ex.B1 to Ex.B17.

3. After trial, the trial Court granted judgment and decree in favour of the plaintiff. Aggrieved by the judgment and decree passed by the trial Court, the defendants filed an appeal before the Sub-Court,



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Sivagangai in A.S.No.46/1992. The learned Sub-Judge, after hearing the arguments, allowed the appeal and set aside the judgment and decree passed by the trial Court. Now, challenging the said judgment and decree passed by the first appellate Court, the plaintiff has filed the present second appeal before this Court.

4. The brief facts of the case of the appellant as per the plaint is that the suit property originally belongs to Arunachalam Pillai and Somasundaram Pillai. Somasundaram Pillai has got two sons, namely, Muthusamy Pillai and Vellaichamy Pillai. The vendor of the plaintiff i.e., Devikarani is the branch of Muthusamy Pillai. The suit properties were under the enjoyment of Muthusamy Pillai and Vellaichamy Pillai. The Vellaichamy branch has no right in the suit property. Therefore, initially, the first defendant entered into an agreement with the vendor of the plaintiff and subsequently, one reason or other, he did not come forward to get the sale deed and therefore, Devikarani sold the property to the plaintiff under the registered sale deed, dated 23.05.1988. Therefore, the appellant is entitled to the suit property and the vendor of the appellant was enjoying the



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property and she sold the property to the appellant and handed over the possession and later the first defendant tried to interfere with the suit property on the ground that he got the sale deed from the second and third defendants, who have got a right and enjoyment of the property. Therefore, the appellant was constrained to file the suit against the respondents/defendants for declaration and injunction.

5. The case of the respondents/defendants is that the suit properties originally belonged to Somasundaram Pillai and Arunachalam Pillai. Somasundaram Pillai has got two sons, namely, Muthusamy Pillai and Vellaichamy Pillai. Defendants 2 & 4 are the branches of the Vellaichamy Pillai. The second defendant is the husband of Meenal and the fourth defendant is the son of Meenal. Therefore, after the death of the Meenal, they are entitled to the suit property and hence, they sold the property to first defendant and therefore, the first defendant is the absolute owner of the property and he is enjoying the property and even the Forest Department recognized the right and possession of the first defendant. Therefore, the appellant has no right and title over the possession and he is



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not entitled to declaration and injunction and he is not in possession of the property.

6. Based on the pleadings, the trial Court framed the following issues:-

“i)Whether the plaintiff is entitled to the suit property based on the sale deed?

ii)Whether the plaintiff has perfected by adverse possession in the suit property?

iii)Whether the vendor of the plaintiff has got any right in the suit property?

iv)Whether the second and fourth defendants are entitled to the suit property?

v)Whether the suit is barred for non-joinder of necessary party?

vi)Whether the sale in favour of the first defendant is a valid and bind the plaintiff.

vii)Whether the second defendant is the one of the legal heirs of the owner of the property?

viii)Whether the suit properties allotted to the Vellaichasmy, S/o.Somasundram

ix)Whether the Vellaichamy is the one of the legal



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heirs of the original owner Somasundaram Pillai?

x)Whether the Devikarani is the legal heir of the Muthusamy Pillai, who is son of the Somasundaram?

xi) What other relief the plaintiff is entitled to?”

7. The trial Court also framed the following Additional Substantial Questions of law.

i)Whether the plaintiff was in possession of the suit property?

ii)Whether the plaintiff is entitled to get the relief of declaration and permanent injunction?

8. The learned counsel for the appellant would submit that the suit property originally belonged to Arunachalam Pillai and Somasundaram Pillai. Somasundaram Pillai has got two sons, one Muthusamy Pillai and Vellaichamy Pillal. The suit property was allotted to only Muthusamy Pillai. Muthusamy Pillai has got three sons namely, Sonaiya Pillai, Gurusamy Pillai and Amirtham Pillai. Gurusamy Pillai and Amirtham Pillai did not have any issue. Sonaiya Pillai has got one son, namely, Thangam. The



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vendor of the plaintiff Devikarani is the legal heir of the Thangam. The said Devikarani was residing at Chennai and all the communications were sent to Chennai address. In the suit property, Karuvela trees were grown up and the Forest department has sent the communications to only Devikarani. Since the property allotted to Muthusamy Pillai hence, his legal heirs are only entitled to the suit property, the defendants 2 & 4 have no right over the property. Even prior to purchase of the suit property from the defendants 2 & 4, the first defendant entered into the sale agreement with one Devikarani, due to some reason he did not register sale deed. Therefore, the appellant purchased the property from Devikarani, since Devikarani is the absolute owner of the property. Even the first defendant admitted that Devikarani entered into the sale agreement with him and subsequently, he was not ready to register the same. Further, the defendants 2 to 4 have no right or title in the property. The Forest Officer has sent a communication only to Devikarani residence, which clearly shows that Devikarani was in possession of the property and based on that, the first defendant already entered into the agreement and subsequently, the first defendant did not



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purchase the property and thereafter only, the appellant/plaintiff purchased the property from Devikarani. The appellant/plaintiff has got the right and title over the property. The defendants 2 to 4 have no right or title over the property nor they are enjoying the property. Therefore, the purchase said to have made in favour of the first defendant is not valid and it will not bind the appellant. Though the trial Court rightly appreciated the oral and documentary evidence, granted the decree, whereas, the first appellate Court failed to re-appreciate the evidence erroneously held that the appellant has not proved his case, which warrant interference.

9. The learned counsel for the respondents would submit that the plaintiff has to prove his case and he cannot take the advantage of the weakness of the defendants. As the plaintiff, he has to prove the right and title. When the suit for declaration is filed, he has to establish the right and title of the vendor, unless the plaintiff cannot get any relief of declaration. The appellant has failed to prove the case. The trial Court has failed to appreciate the evidence. The burden of proof is always with the plaintiff and he has to prove the initial burden, then only the ownership shifted.



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Unless he established the ownership, he cannot shift the burden to the defendants. The trial Court failed to appreciate the fundamental principles that the plaintiff has to prove his case, he cannot take the advantage of the loopholes left by the defendants and weakness of the defendants. The first appellate Court has rightly considered the entire pleadings, oral and documentary evidence, allowed the appeal and dismissed the suit. The learned counsel for the respondents has placed reliance on the following judgments:-

(I) Smriti Debbarma (dead) through legal representatives vs. Prabha Ranjan Debbarma and others reported in 2023 91) MWN (civil) 299

(ii) Union of India and others vs. Vasavi Co-operative Housing Society Limited and others reported in 2014(2) Supreme Court Cases 269.

10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

11. Initially, at the time of filing the grounds of appeal, the



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appellant has not made out any substantial questions of law. The records shows that the Registry has returned the memorandum of grounds of appeal and therefore, subsequently, the questions of law were framed. Further, this Court has not admitted the appeal and did not formulate any substantial questions of law. After returning the appeal, the appellant has raised certain substantial questions of law.

12. The plaintiff has to establish the right and title over the property. The plaintiff/appellant filed the suit for declaration and injunction for which, the plaintiff has to establish the right and title over the suit property. Admittedly, the plaintiff/appellant purchased the property under the registered sale deed. The plaintiff/appellant claiming title only under Ex.A1 sale deed was said to have been executed by Devikarani under the registered sale deed dated 23.05.1988 and the suit is filed in the same year soon after purchasing of the suit property, therefore, the plaintiff has to first establish that the vendor of the plaintiff has got absolute right and title over the property.

13. A careful perusal of the records shows that the appellant



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admitted that one Somasundaram Pillai is the original owner, he has got legal heirs by name Muthusamy Pillai and Vellaichamy Pillai. The vendor of the appellant viz., Devikarani is the branches of the legal heirs of the Muthusamy Pillai. Therefore, the plaintiff has to prove that the Muthusamy Pillai, who is the son of the Somasundaram Pillai, has got absolute right and title over the property and therefore, from Muthusamy Pillai, his legal heirs derived the title and lastly, the Devikarani has absolute title over the property. Therefore, it is the duty of the appellant as a plaintiff has to establish the right and title and also his vendor has got the right and marketable title over the property. Unless the plaintiff has established that he has got right and title over the property, he is not entitled to the suit for declaration. It is a settled proposition of law that the plaintiff has to prove his case on his own strength and he cannot take the advantage of the weakness of the defendants. Though the learned counsel for the appellant has vehemently contended that even the first defendant has no case to prove that the vendor has got right over the property, more so, the first defendant had entered into the agreement even prior to the appellant purchased the



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property from Devikarani. Therefore, the first defendant cannot questioned the title of the Devikarani and hence, he has to establish the title of the Devikarani and also the communication sent only Devikarani address, the address which was communicated is only the address of the Devikarani and therefore, the defendants admitted the title of the Devikarani and possession of the Devikarani.

14. As already stated that the plaintiff has to prove his case on his own strength since because the first defendant has entered into the agreement, subsequently, he did not proceed with the same. As a plaintiff, who is the purchaser from the Devikarani, has to prove the right and title of the Devikarani and Devikarani has got the better title to convey the title to the appellant and also at the time of sale, she was in possession and the possession was handed over to the appellant and on that day, the appellant was in possession of the suit property. Unless he has established, he is not entitled to get declaration and injunction and therefore, this Court finds that there is no substantial questions of law involved in the second appeal. Both the parties have not proved that the suit property absolutely allotted to the



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Muthusamy Pillai or Vellaichamy Pillai, but unfortunately, Devikarani is the branch of the Muthusamy Pillai and the appellant, who purchased the property from the branches of the Muthusamy Pillai. It is the duty of the appellant/plaintiff to prove that the property belongs to Somasundaram Pillai and allotted to the Muthusamy Pillai and he has absolute title and the same carried up to the Devikarani without any interruption and the Devikarani has got absolute right, title and possession over the property same conveyed to the appellant, therefore, this Court finds that the appellant failed to prove his case and shifted the burden, especially, the fact of absolute title and possession over the property. Therefore, the judgment of the trial Court is perverse. The appellant as a plaintiff has failed to prove his case for the relief of declaration and injunction, hence the first appellate Court interfered with the judgment of the trial Court and allowed the first appeal. As already stated that there is no substantial questions of law involved in this case. The appellant as a plaintiff has to prove his case on his own strength. Since the defendants have not equally established their right and title, therefore, the plaintiff not automatically entitled to decree



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against the defendants. Therefore, in view of the above discussion, this Court does not find any merit in the second appeal since there is no substantial questions of law emerged to answer in this second appeal. The first appeal is based on the factual aspects and also only on re-appreciation of evidence and though the trial Court has not properly appreciated the evidence, the first appellate Court has rightly re-appreciated the evidence and allowed the appeal, hence, there is no merit in the second appeal.

15. Accordingly, the second appeal is dismissed. No costs.

NCC : Yes/No

Index : Yes/No

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Internet: Yes/No

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To

1.The Sub-Judge,
Sivagangai.

2.The District Munsif,
Manamadurai.



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3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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