



SA.No.548 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.548 of 2022
and
C.M.P.No.9650 of 2023

Balamurugan

... Appellant

- Vs -

1. Mookayee Ammal

2. Sivaperuman

... Respondents

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 14.02.2020 made in A.S.No.98 of 2016 on the file of the Subordinate Court at Kallakurichi confirming the Judgment and decree dated 18.11.2016 made in O.S.No.172 of 2012 on the file of the II-Additional Munsif Court at Kalakurichi.

For Appellant : Mr.T.L. Thirumalaisamy

For Respondents 1 and 2 : Mr.K.A. Mariappan for
M/s G.V. Seethalakshmi



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JUDGMENT

This Court disposes of this Second Appeal as per the instructions of My Lord the Hon'ble Chief Justice vide administrative order dated 29.09.2023.

2. The instant second appeal has been filed at the instance of the plaintiff.

3. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

4. The brief facts, which led to filing of the suit, are as follows:

The suit properties belonged to plaintiff's father both ancestrally and by way of self acquisition. He was in actual physical possession and enjoyment of the same. Whiles, he executed a registered gift deed on 28.03.2012 settling the suit properties in favour of the plaintiff. Hence, by virtue of the said settlement deed, the plaintiff has been in possession and enjoyment of the suit properties as the absolute owner of the same. The revenue records also stand in his name. Whereas, the defendants attempted to interfere with his possession. Hence, the plaintiff came forward with a suit



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seeking the relief of permanent injunction.

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5. The said suit was resisted by the defendants by contending that the said settlement deed dated 28.03.2012 is null and void, as the plaintiff's father did not have any right to execute such settlement deed. According to the defendants, as against the father of the plaintiff herein and his brother, first defendant filed a suit in O.S. No.1057 of 1994 on the file of the Second Additional District Munsif Court, Kallakurichi. Wherein, the trial Court granted a decree of declaration on 27.03.1997 in respect of item Nos.1 to 4, 8 and 11 to 17 of the suit properties and also directed the first defendant to take possession through Court in respect of the decreed properties. Aggrieved by the Judgment of the Trial Court dated 27.03.1997, the first appeal was filed by the defendants therein in A.S. No.70 of 1997 on the file of the Subordinate Court, Kallakurichi. However, the First Appellate Court by Judgment dated 25.10.1999 modified the Judgment of the Trial Court holding that, in items No.1 and 8, 0.10 cents, in Item No.3, 1/5th share, in Item No.4 and Item Nos. 11 to 17 belongs to first defendant herein and set aside the Judgment of the Trial Court in respect of item No.2 of the suit properties in O.S.No.1057 of of 1994. Therefore, the instant suit



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is hit by the principles of *res judicata* as the plaintiff has not come forward with true and correct facts, rather he suppressed the material facts.

Evidence and Documents:-

6.Before the Trial Court the plaintiff examined himself as P.W.1 and two more witnesses as P.W.2 & P.W.3 and marked 13 documents as Ex.A1 to Ex.A13. On behalf of the defendants, the D2 was examined as D.W.1 and six documents were marked as Ex.B1 to Ex.B6.

Findings of the Courts below:-

7.The Trial Court, after having gone into various aspects, ultimately dismissed the suit on the ground that when some items of the suit properties were declared as the properties of the defendants and the defendants disputed the plaintiff's title over the suit properties, in the absence of seeking the relief for declaration, the mere suit for the relief of permanent injunction alone, is not maintainable. Aggrieved by the Judgment of the Trial Court, the plaintiff approached the First Appellate Court by filing an appeal. However, the First Appellate Court confirmed the findings recorded by the Trial Court and dismissed the suit by the impugned judgment. Aggrieved by the same, the plaintiff is before this Court by way of this second appeal.



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8. On 07.06.2023, the Second Appeal was admitted on the following substantial questions of law:-

“(i) Were not the Courts below in egregious error in insisting that the appellant ought to have sought declaration of his title when in terms of Ex.A11 and confirmed in S.A.No.43 of 2003 the plaintiff's right to be in possession of the suit property have been upheld? and

(ii) Were not the Courts below in error in declining a decree of prohibitory injunction when the tenor of Ex.A10, Ex.A11 and also the Judgment in S.A.No.43 of 2003 only requires the defendant/1st respondent institute a separate suit for the recover of possession which the defendant has not instituted?”

Submissions of the counsels:-

9. The learned counsel for the appellant has invited the attention of this Court to the judgment rendered in S.A. No.43 of 2003 dated 02.12.2009 based on which, he submits that in the earlier round of litigation, even though this Court confirmed the findings of the First Appellate Court through which, the possession of the first defendant herein- Mookayee Ammal was disbelieved, the present suit filed by the plaintiff for permanent



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injunction is very well maintainable. Hence, he prayed to allow the second appeal.

10. The learned counsel for the plaintiff/appellant would further vehemently contend that the findings recorded by the First Appellate Court in confirming the judgment of the Trial Court, dismissing the suit for not seeking the relief of declaration is unwarranted, as there was a decree in favour of the plaintiff in O.S.No.1057 of 1994 and it was confirmed by the judgment of this Court in S.A.No.43 of 2003 dated 02.12.2009. The learned counsel for the appellant would also submit that in the earlier suit, the plaintiff herein was not granted any injunction and it was the finding that certain properties therein are in the possession of the defendants therein namely the father of the plaintiff herein and his brother and that the plaintiff has not filed the present suit for recovery of possession.

11. *Per contra* the learned counsel for the defendants/respondents would submit that in the earlier suit, which has been referred to by the plaintiff herein, in O.S.No.1057 of 1994 was appealed in A.S. No.70 of 1997. Wherein, the First Appellate Court, in respect of item Nos.1, 8 and 10, 0.10 cents, in Item No.4, 1/5th share and Item Nos. 11 to 17 declared the



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right of the D1. The learned counsel for the respondents would also submit that in the earlier suit, the Trial Court has not granted the decree for permanent injunction and in the first appeal, the First Appellate Court also granted the relief of permanent injunction in respect of Item Nos.1, and 0.10 cents in item No.3 1/5th share, in item no.4 and in respect of Item nos. 11 to 17. Therefore, he would further submit that the plaintiff has approached this Court with unclean hands. Hence, he prayed for dismissal of the second appeal

12. This Court has given its anxious consideration to either side submissions.

Analysis of the Submission:-

13. The core substantial question of law arising in this second appeal is as to whether in the presence of earlier decree namely Ex.A10, whether the plaintiff is to file a suit for the relief of declaration. If we go by the earlier decree, the Trial Court in O.S. No. 1057 of 1994 granted declaration in respect of item Nos. 1,3,8 and 11 to 17 of the suit properties. Whereas, the relief for injunction was not granted. In the first appeal in A.S.No.70 of 1997, the First Appellate Court granted a decree for declaration and



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permanent injunction only in respect of Item Nos.1, and 0.10 cents in item No.3 1/5th share, in item no.4 and in respect of Item nos. 11 to 17 and the decree for injunction was not granted in favour of the first defendant. It was the contention by the defendants/respondents before this Court that in view of the judgment in the earlier suit, the settlement deed, which stands in the name of the plaintiff is null and void and that the suit properties belong to the defendants herein.

14. On a close reading of the plaint avernments, it is clear that the suit properties are not the absolute properties of the plaintiff. Whereas, he became the owner after the demise of his father Mr.Kandasamy and that his father Mr.Kandasamy derived his title through their ancestors and also by way of self acquisition. The common ancestors of the plaintiff and the first defendant are one and the same. The First Appellate Court found that though a decree for declaration was granted in favour of the first defendant for certain properties, the plaintiff has sought for the relief of permanent injunction suppressing the earlier judgment of the First Appellate Court.

15. It was also the finding of the First Appellate Court that when the



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plaintiff as well as defendants have common ancestor and that the defendants disputed the very title of the plaintiff and the execution of the settlement deed, it is mandatory on the part of the plaintiff to seek the relief of declaration also. Therefore, only upon the two grounds both the Court dismissed the present suit. In respect of the first substantial question of law, as already discussed herein above, in Ex.A11 decree no injunction was granted. However, in the First Appeal injunction was granted in favour of the first defendant, as confirmed by this Court in the earlier second appeal.

16. Therefore, when the first defendant's title has been declared in the earlier suit in respect of item Nos.2,3,6 & 7 of the suit properties in the present suit, and when the defendants are in possession and enjoyment of the suit properties, the attempt made by the plaintiff seeking mere permanent injunction, without seeking the relief of declaration, is contrary to the settled legal principles. In this regard it is useful to refer to the Judgment of the Apex Court in the case of **Ananthula Sudhakar Vs. P.Buchi Reddy(Dead) by LRS and ORS [2008 (4) SCC 594]**. Thus, the substantial questions of law are answered in favour of the respondents.



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17. In the result, this second appeal is dismissed and the Judgment of the First Appellate Court is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

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C.KUMARAPPAN, J

smn

To

1. The Subordinate Judge's Court at Kallakurichi
2. The II-Additional Munsif Court at Kalakurichi.

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