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SA.No.1033 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2023

Pronounced on : 16.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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1.Masjid-e-Mamoor Committee,

Rep. by its President,

A.K.Syed Abdul Khader

2.The Honorary Secretary,

A.R.Amanullah,

Both having office at

186, Old No.166-168,

Angappa Naicken Street,

Chennai-1

... Appellants

Vs.

G.Mohanasundaram

... Respondent

PRAYER:

Second Appeal filed under Section 100 of CPC to set aside the judgment and decree dated 04.10.2017 and made in AS.No.304 of 2015 on the file of the



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III Additional Judge, City Civil Court, Chennai dismissing the appeal and confirming the judgment and decree dated 13.07.2015 and made in OS.No.2234 of 2012 on the file of the XIII Assistant Judge, City Civil Court, Chennai and to allow the second appeal.

For Appellants : Mr.N.A.Nissar Ahmed,
Senior Counsel
for Mr.I.Kowser Nissar

For Respondent : Mr.M.A.Lakshmipathi

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 04.10.2017 made in AS.No.304 of 2015 on the file of the III Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 13.07.2015 made in OS.No.2234 of 2012 on the file of the XIII Assistant Judge, City Civil Court, Chennai, thereby decreed the suit.

2. The appellants are the defendants and the respondent is the plaintiff. The case of the plaintiff in brief is that the plaintiff is the absolute owner of house and ground bearing Old No.5, New No.6, present Door No.11, Ibrahim Sahib Street, Muthialpet, Chennai comprised in RS.No.3641. It was



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purchased by the registered sale deed dated 04.03.1996 in document No.112 of 1996 from Tmt.Pattammal & R.K.Nageswari, legal heirs of One, Gangaiah Angamuthu Vayya. Originally the said property belonged to one, Ellammal who purchased the same from one, Ramaswamy Naicker by the registered sale deed dated 30.03.1901. After demise of the said Ellammal, her daughters Periyakannu Ammal and Chinnakannu Ammal succeeded to the said property and sold the same in favour of Gangaiah Angamuthu Vayya by the registered sale deed dated 16.05.1960 registered vide document No.2167 of 1960. His predecessors were in absolute possession and enjoyment of the same. After purchase, the plaintiff is in possession and enjoyment of the same and he obtained all electricity service connection and also from Chennai Metropolitan and Sewerage Board in his name. While being so, the defendants issued notice dated 06.01.2012 alleging that the said land belongs to the defendants committee notified under survey wakf. The defendants have no right or claim over the suit property comprised in survey No.3641.

2.1 Further averred that the defendants are claiming right over the land only comprised in RS.No.3641 while the land belonging to the Mamoor Mosque Committee Endowment is in RS.No.3614 as per the Prince of Arcot Endowment



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Act, 1922 and as such, the land comprised in RS.No.3641 does not belong to the defendants. Hence, the suit.

3. Resisting the same, the defendants filed written statement and stated that even as per the sale deed dated 16.05.1960 of the plaintiff's vendor, revealed that the superstructure and premises No.5, Ibrahim Sahib Street, Muthialpet, Chennai together with leasehold right to the land whereon on the same is situated in Madras Chengalpet Registration District. Therefore, the right of the plaintiff is absolute and at the same time, there is no subsisting leasehold right of the plaintiff granted by the defendants committee. The schedule of property shown in the subsequent sale deed is that superstructure and house bearing Municipal New Door No.6, old No.5, Ibrahim Sahib Street, Muthialpet, Chennai together with land. The transferee cannot have better title than the transferor. Therefore, the plaintiff has played fraud upon the court under the falsehood that he is the absolute owner of the suit schedule property by misquoting the survey number while the right and title of the land remains under survey No.3614 with that of the defendant committee. The record remains that the defendants committee is donated with the suit schedule property along with other larger extent of the property as back as on 23.12.1922 under the Prince of Arcot Endowment Act. The suit land is comprised in RS.No.3614 of



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George Town under certificate No.1981 dated 24.04.1874. Therefore, the objective of such Endowment Act is for the welfare of the community people at large and not for the benefit of an individual. Therefore, the plaintiff is a trespasser and he is not entitled for any relief.

4. On the basis of the pleadings, the trial court framed the following issues:

(a) Whether it is correct that the suit is not maintainable without a prayer for declaration of the title of the suit property?

(b) Whether the plaintiff is entitled for permanent injunction as prayed for?

(c) To what other relief?

5. On the side of the plaintiff, he had examined PW1 and marked Ex.A1 to Ex.A15. On the side of the defendants, they had examined DW1 and marked Ex.B1 to Ex.B3. An advocate commissioner was appointed and he was examined as court witness i.e. CW1 and his report and plan were marked as Ex.C1 and Ex.C2. On perusal of oral and documentary evidence, the trial court decreed the suit. Aggrieved by the same, the defendants filed appeal suit and the same was dismissed and confirmed the judgment and decree passed by the trial



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court. Hence, the defendants have preferred the present second appeal. While admitting the second appeal, this Court admitted the second appeal on the following substantial questions of law:

(a) Whether the Courts below were right in entertaining the suit irrespective of bar under Section 85 of the Wakf Act, 1995?

(b) Whether the Courts below were right in holding that the suit for bare injunction would be maintainable without a prayer for declaration of title?

6. Mr.N.A.Nissar Ahmed, the learned Senior Counsel appearing for the appellants / defendants submitted that the suit itself is not maintainable when there is a specific bar under Section 85 of the Wakf Act, 1995 and the civil court has no jurisdiction to try the suit. Injunction cannot be granted as against the true owner. Even as per the sale deed dated 16.05.1960, only the leasehold right over the land had been transferred in favour of the plaintiff. The Mamoor Mosque Endowment is administered by the Committee. Therefore, both are one and the same. The defendants resisted the suit by filing written statement and categorically stated with regards to the title of the suit schedule property and claimed to be wakf property. Even then, the plaintiff failed to seek for any relief over the title. Therefore, the suit itself was not maintainable for bare injunction



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when there is a cloud over the title. In support of his contention, he relied upon the following judgments:

(a) ***H.H.The Prince of Arcot, Endowments Vs. The Tamilnadu Wakf***

Board and Others reported in **2006 (4) LW 479**

(b) ***Anathula Sudhakar Vs. P.Buchi Reddy(dead) by LRS & Ors.***

reported in **2008 (6) CTC 237**

(c) ***Rajasthan Wakf Board Vs. Devki Nandan Pathak & Ors***

reported in **2017 AIR (SC) 2155**

7. Per contra, the learned counsel for the respondent / plaintiff would submit that the plaintiff and his predecessors in title are in possession and enjoyment of the suit property from the year 1901. As far as the plaintiff is concerned, he purchased the suit property on 04.03.1996. From and out of the sale, he is in possession and enjoyment of the suit property. Therefore, the suit for permanent injunction alone without seeking the prayer of declaration is very much maintainable. The property mentioned in RS.No.3614 of George Town was not endowed in favour of the defendant committee but in favour of Mamoor Mosque Endowment. Therefore, the defendants have no right or claim over the suit property. The plaintiff categorically proved his case by way of documentary



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evidence and his vendor and the plaintiff are in possession and enjoyment of the suit property from the year 1901 onwards. He further submitted that any person in peaceful and settled possession of the property is entitled to the relief of permanent injunction even against the true owner. There is no need to ask for relief of declaration. In fact, the defendants also failed to prove their title over the suit property by adducing sufficient documentary evidence. Therefore, the suit for permanent injunction is very much maintainable and both the courts below rightly held that the plaintiff is entitled for relief of permanent injunction in respect of the suit property.

8. Heard, Mr.N.A.Nissar Ahmed, Senior Counsel appearing for the appellants and Mr.M.A.Lakshmipathi, the learned counsel for the respondent.

9. The plaintiff filed suit for permanent injunction in respect of the suit property comprised in survey No.3641 to the extent of 532 sq.ft. He purchased the suit property from Tmt.Pattammal and R.K.Nageswari who were the legal heirs of One, Gangaiah Angamuthu Vayya vide registered sale deed dated 04.03.1996 which was marked as Ex.A3. The said Gangaiah Angamuthu Vayya purchased the said property by the registered sale deed dated 16.05.1960 from his vendors and the same was marked as Ex.A2. Admittedly, the plaintiff



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is in possession and enjoyment of the same. On perusal of Ex.A2, the sale deed of the plaintiff's vendor, it is revealed that superstructure and premises No.5 Ibrahim Sahib Street, Muthialpet, Madras together with leasehold right to the land thereon. Therefore, the right of the plaintiff is not absolute and that apart, there is no subsisting leasehold right in favour of the plaintiff. On perusal of schedule mentioned in the plaintiff's sale deed dated 04.03.1996 which was marked as Ex.A3 revealed that the superstructure and house bearing Municipal new door No.6, old No.5, Ibrahim Sahib Street, Muthialpet, Madras together with land. It is a settled proposition of law that the transferee cannot have better title than the transferor.

10. Whereas the case of the defendants is that the defendants committee is denoted with the suit schedule property along with other large extent of the property as early as on 23.12.1922 under the Prince of Arcot Endowment Act. The suit land comprised in RS.No.3614 of George Town under certificate No.1981 dated 24.04.1874, which was marked as Ex.B3. The specific case of the defendants is that though the plaintiff filed suit in respect of the property comprised in RS.No.3641, the plaintiff is squatting over the property comprised in survey No.3614. While pending the suit, an advocate commissioner was appointed and his report was marked as Ex.C1 and it



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revealed that “a cursory look at the sketch provided by the surveyor discloses that what is provided in the suit schedule as the property of the plaintiff is correct as far as the door number is concerned, but the survey number given in the suit schedule does not match with the Field Measurement Book, sketch provided by the surveyor. As per the village Field Measurement Book, the survey number is 3614, whereas the suit schedule property is pertaining to survey number 3641. Therefore, though the plaintiff is in possession and enjoyment of the property, his title to the property is under dispute and there is a cloud over the title. That apart, there is also a threat of dispossession and as such, the plaintiff ought to have filed suit for declaration of title and consequential injunction.

11. That apart, while pending the appeal suit, the defendants filed application in CMP.No.1032 of 2016 under Order 41 Rule 27 of CPC to receive the additional documents. Those documents revealed that the defendants had taken steps to remove the encroachers i.e. the plaintiff from the suit schedule property including the order passed by the Gazetted Officer under Tamilnadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 in case No.PP.No.14/Che/2016. However, the first appellate court dismissed the said application on the ground that the documents which are produced as additional



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evidence, are not applicable to the case on hand and they are no way helping the court to come to a just and right conclusion. However, those documents revealed that the defendants created cloud over the title in respect of the suit property and as such, the plaintiff should have filed the suit for declaration and consequential injunction. Therefore, the suit for permanent injunction is alone not maintainable and the plaintiff is not entitled for any relief of permanent injunction. Accordingly, the second substantial question of law is answered in favour of the defendants.

12. When the plaintiff is not in lawful possession of the property, he is not entitled to an injunction against rightful owner. The lawful owner of property but not in possession of the property, cannot seek the relief of injunction simpliciter, without claiming the relief of possession. Where the plaintiff is in possession but his title to the property is in dispute or under cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. A prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud to the title of plaintiff to the property.



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13. The specific case of the defendants is that the defendant committee

is donated with the suit schedule property along with other larger extent of the property as early as on 23.12.1992 under the Prince of Arcot Endowment Act and the suit land is comprised in RS.No.3614 of George Town under certificate No.1981 dated 24.04.1874 which is marked as Ex.B3. Hence, the order passed by the first appellate court in CMP.No.1032 of 2016 is set aside. Accordingly, the petition in CMP.No.1032 of 2016 is ordered as those documents are very much necessary to decide the appeal.

14. Further, on perusal of Ex.A2, revealed that the superstructure was conveyed with leasehold right. However, nowhere whispered about who is the lessor of the suit land. Whereas Ex.A3 revealed that the vendor of the plaintiff also conveyed the title over the suit property. In Ex.B3, it is mentioned as “Prince of Arcot Endowment Act, 1922 and Mamoor Mosque in the Ibrahim Sahib Street, RS.No.3614 of George Town under certificate No.1981 dated 24.04.1874. Accordingly, the suit property was conveyed to the defendant society. Masjid E Mamoor Committee is nothing but Mamoor Mosque. Both are one and the same. As per Ex.B3, the land in survey No.3614 of George Town under certificate No.1981 dated 24.04.1874 was gifted by the Prince of Arcot under the Prince of Arcot Endowment Act, 1922. Therefore, the suit



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property belongs to Wakf and civil court has no jurisdiction to deal with the suit property. It is barred under Section 85 of Wakf Act, 1995. Accordingly, no suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal. Therefore, the suit itself is hit by *coram non judice*. Hence, the jurisdiction of the civil court to decide such matters is also barred by virtue of the provisions contained in Section 85 of Wakf Act, 1995. Accordingly, the first substantial question of law is also answered in favour of the defendants.

15. In view of the above, the judgment and decree dated 04.10.2017 made in AS.No.304 of 2015 on the file of the III Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 13.07.2015 made in OS.No.2234 of 2012 on the file of the XIII Assistant Judge, City Civil Court, Chennai are set aside and the second appeal is allowed. Accordingly, the suit filed by the respondent herein in OS.No.2234 of 2012 on the file of the XIII Assistant Judge, City Civil Court, Chennai is dismissed. There shall be no order as to costs.

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Speaking/non-speaking

Index : Yes/No

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The III Additional Judge,
City Civil Court,
Chennai
- 2.The XIII Assistant Judge,
City Civil Court,
Chennai

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