



S.A.(MD) No.288 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD) No.288 of 2011

and

M.P.(MD) No.1 of 2011

1.M.Muthulakshmi

2.M.Varalakshmi

3.M.Balamurugan

4.M.Ramshankar

5.M.Ramalakshmi

... Appellants/Appellants 2 to 6/
LRs of deceased plaintiff

6.P.Muthukrishnan

... 6th Appellant

Vs

1.Hemalatha

... 1st Respondent/Respondent/
Defendant

2.M.Ramachandran

... 2nd Respondent

*[The 2nd respondent and the 6th appellant are parties in
this appeal vide order dated 21.09.2020 made in M.P.
(MD) Nos.1 and 2 of 2012 in S.A.(MD) No.288 of 2011]*

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside
the judgment and decree dated 30.11.2010 made in A.S.No.78 of 2007 on



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the file of the Sub Court, Valliyoor, confirming the judgment and decree dated 19.09.2006 made in O.S.No.32 of 2003 on the file of the District Munsif cum Judicial Magistrate's Court, Nanguneri.

For Appellant : Mr.S.Subbiah
Senior Counsel
assisted by
Mr.G.Aravindhan

For R1 : Mr.S.Siva Thilakar

For R2 : Mr.M.P.Senthil

J U D G M E N T

1.1. The appellants are the legal representatives of the deceased plaintiff. The suit for bare injunction filed by the plaintiff was dismissed by the trial Court. The first appeal filed by the plaintiff, which was later contested by the appellants was also dismissed (pending first appeal, the plaintiff died and his legal representatives were brought on record as appellants 2 to 6 in the first appeal). Aggrieved by the concurrent findings, the appellants are before this Court.



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1.2. According to the plaintiff, the suit property originally belonged to the father of Antony Xavier and after his death, the suit property was allotted to Antony Xavier under an oral partition and he enjoyed the same in pursuance of the oral partition in the family. Subsequently, on 29.04.2002, the suit property was sold to the deceased plaintiff and from that date onwards, the plaintiff had been in possession and enjoyment of the suit property by changing the revenue records. The first respondent/defendant without having any manner of right over the suit property tried to interfere with the peaceful possession and enjoyment of the deceased plaintiff and hence, the plaintiff was constrained to file a suit for bare injunction.

2. The first respondent/defendant filed a written statement and denied the title and possession of the plaintiff over the suit property. According to the first respondent/defendant, she had been in lawful possession of the suit property by paying building tax to the appropriate authority. It was also averred by the first respondent/defendant that her deceased husband Karunyavel founded a society in the name of Ebenezer Carunia Illam with Registration No.20/1976. It was also averred by the first



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respondent/defendant that the said society had become defunct and as per the yadast executed by the said Karunyavel, she has been in possession and enjoyment of the suit property.

3. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the plaintiff failed to prove his title and possession over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff filed a first appeal in A.S.No.78 of 2007 on the file of the Sub Court, Valliyoor and the same was dismissed. Challenging the said judgment and decree, the appellants are before this Court.

4. The learned Senior Counsel appearing for the appellants mainly assailed the judgments passed by the Courts below on the ground that in a suit for injunction simpliciter, the Courts below ought not to have gone into the question of title. It is the submission of the learned Senior Counsel that in a suit for bare injunction, the Court is required to see whether the plaintiff proves his lawful possession over the suit property on the date of the plaint.



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On the other hand, in the present case, the Courts below discussed the title of the plaintiff and found that the plaintiff failed to prove his title over the suit property as pleaded in his plaint.

5. The plaintiff in his plaint claimed that he purchased the suit property from one Antony Xavier, who in turn got the property in an oral partition in his family. However, a perusal of the title document filed by the plaintiff before the trial Court, which was marked as Ex.A.1 would make it clear that the deceased plaintiff purchased the suit property from the Managing Director of Ebenezer Carunia Illam and Inter-Christian Mission Middle School. Therefore, the plaintiff in his pleadings failed to trace his title as per his own title document.

6. A perusal of the pleadings of both the parties would make it clear that there is a serious dispute with regard to the title of the plaintiff over the suit property. Though under Ex.A.1, the plaintiff claimed to have purchased the suit property from the Managing Director of Ebenezer Carunia Illam and Inter-Christian Mission Middle School, the first respondent/defendant in her



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written statement claimed that Ebenezer Carunia Illam was established by her deceased husband and as per the document executed by him, she had been in possession and enjoyment of the suit property. Therefore, there is a serious dispute with regard to the title of the plaintiff over the suit property. The first appellate Court rightly came to the conclusion that the plaintiff failed to trace his title in accordance with his title document and having failed to approach the Courts with true facts, he is not entitled to the relief of injunction. The first appellate Court also observed that in view of the serious dispute with regard to the title over the suit property, a suit for bare injunction is not maintainable in the absence of prayer for declaration.

7. I do not find any substantial question of law to interfere with the findings rendered by the first appellate Court. Hence, this Second Appeal stands dismissed by confirming the judgments and decrees passed by the Courts below. However, it is made clear that the dismissal of the present second appeal would not come in the way of the appellants filing a comprehensive suit for declaration of their title and appropriate relief, if so advised.



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8. In fine, (i) this Second Appeal is dismissed by confirming the judgments and decrees passed by the Courts below; (ii) in the facts and circumstances of the case, there would be no order as to costs; and (iii) M.P.(MD) No.1 of 2011 is closed.

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NCC: Yes/No

Index: Yes/No

Internet: Yes

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To

1.The Sub Judge,
Valliyoor.

2.The District Munsif cum Judicial Magistrate,
Nanguneri.

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



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S.SOUNTHAR, J.

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