



S.A(MD).No. 444 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No. 444 of 2022
and C.M.P(MD)Nos. 5392 and 5393 of 2022

Kulanthaivel Appellant/Respondent/Plaintiff

Vs.

Selvaraj ... Respondent/Appellant/Defendant

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 23.04.2018 passed in A.S.No.20 of 2017 on the file of the Principal District Judge, Tiruchirappalli reversing the judgment and decree dated 30.06.2017 passed in O.S.No.258 of 2013 on the file of the II Additional Subordinate Judge, Tiruchirappalli.

For Appellant : Mr.M.Kumar
for Mr.A.Manikandan

For Respondent : Mr. Raguvaran Gopalan
for Mr.K.Prabhakar

J U D G M E N T

This Second Appeal has been filed challenging the judgment and decree of the lower Appellate Court namely, the Principal District Court,



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Tiruchirappalli, dated 23.04.2018 passed in A.S.No.20 of 2017. The appellant is the plaintiff in the suit in O.S.No.258 of 2013 on the file of the II Additional Subordinate Court, Tiruchirappalli. The said suit was filed for permanent injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. The respondent herein is the defendant in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. It is the case of the plaintiff that he purchased the suit schedule property under a registered sale deed dated 24.12.1997 from the legal heirs of Soosai Manickam through their power agent Sivasamy. According to the plaintiff, after the purchase, he had put up an asbestos shed for his agricultural operations over the suit schedule property. Thereafter, in view of omission of measurements in the sale deed dated 24.12.1997, a rectification deed dated 18.09.2007 was executed in favour of the plaintiff by his vendors. According to the plaintiff, since the defendants had interfered with the plaintiff's peaceful possession and enjoyment of the suit schedule property, he was constrained to file a suit for permanent injunction against the defendant.



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3. However, according to the defendant, the suit is not maintainable and it is barred by *res judicata*. According to the defendant, since the plaintiff had purchased the suit schedule property pending disposal of a partition suit in O.S.No.357 of 1990 on the file of the District Munsif Court, Manapparai, the suit is hit by the principle of *lis pendens*. According to the defendant, in the partition suit in O.S.No.357 of 1990 referred to supra, a final decree came to be passed subsequent to passing of a preliminary decree. As per the final decree, Anthony Ammal was allotted 'F' and 'J' portions mentioned in the Advocate Commissioner's report, which is the suit schedule property. The said portions under 'F' and 'J' were subsequently sold by Anthony Ammal to one Jayaraman under a sale deed dated 12.04.2011 and presently, the possession of the suit schedule property is only with Jayaraman pursuant to the sale deed dated 12.04.2011 executed in his name. The defendant has also categorically contended that he has nothing to do with the suit schedule property as the property is presently owned by Jayaraman. He, having purchased the same under a sale deed dated 12.04.2011, is in possession of the same as the absolute owner.



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4. Based on the pleadings of the respective parties, the trial court framed the following issues:

- a) Whether the plaintiff is entitled for the prayer of permanent injunction as prayed for in the plaint?
- b) Whether the suit is hit by the doctrine of *lis pendens*?
- c) Whether the suit is hit by the doctrine of *res judicata*?
- d) To what other reliefs?

5. Before the trial court, on the side of the plaintiff, 9 documents were filed, which were marked as Ex.A.1 to Ex.A.9 and 2 witnesses were examined on his side namely, the plaintiff himself as P.W.1 and another witness Rajasekaran as P.W.2. On the side of the defendant, 6 documents were filed, which were marked as Ex.B.1 to Ex.B.6 and 1 witness was examined namely, the defendant himself as D.W.1.

6. The trial court had decreed the suit in favour of the plaintiff as prayed for in the plaint by giving the following reasons:

- a) It is wrong to contend that every sale or alienation pending a suit shall be hit by principle of *lis pendens* and it needs to be made clear that only the sale or transfer, which is questioned by the parties to the *lis*, who had acquired right over the property, shall be hit by the



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principle of *lis pendens*. The defendant has got no *locus standi* to dispute the title of the plaintiff over the suit schedule property as the suit schedule property even according to the defendant has been sold to a third party, who alone is having right to question the sale in favour of the plaintiff;

b) To sustain a cause of action for a suit for permanent prohibitory injunction seeking to protect the plaintiff's possession, it would suffice if the defendant attempts to interfere with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Hence, the suit filed by the plaintiff is maintainable;

c) When a property has not been divided amongst the co-sharers in metes and bounds, any co-sharer is entitled to sell his undivided share. But however, no co-sharer is permitted to sell the property with specific boundaries. However, it is only the litigants to the partition suit in O.S.No.357 of 1990 or any other person claiming through them can question the sale deed standing in the name of the plaintiff, which has been executed by one of the co-sharers with specific boundaries. When Anthony Ammal herself has not raked up the issue, the defendant cannot have any right to question the sale in favour of the plaintiff.



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d) Since the parties to the partition suit have not questioned the sale in favour of the plaintiff, the principle of *res judicata* will not apply.

7. Aggrieved by the findings of the trial court, namely, the Sub Court, Tiruchirappalli, in its judgment and decree dated 30.06.2017, passed in O.S.No.258 of 2013, the defendant filed a first appeal before the Principal District Court, Tiruchirappalli, in A.S.No. 20 of 2017. The lower Appellate Court namely, the Principal District Court, Tiruchirappalli, by its judgment and decree dated 23.04.2018 in A.S.No.20 of 2017 reversed the findings of the trial court by dismissing the suit filed by the plaintiff in O.S.No.258 of 2013 on the file of the Sub Court, Tiruchirappalli, by giving the following reasons:

a) The plaintiff has failed to prove his possession over the suit schedule property through documentary evidence. Further, 'F' and 'J' portions allotted to Anthony Ammal in the final decree passed in O.S.No.357 of 1990, in a partition suit, is the suit schedule property. The suit schedule property has been allotted to Anthony Ammal but she is not the plaintiff's vendor. The legal heirs of Soosai Manickam, who were represented by the power agent Sivasamy are the plaintiff's vendors. The legal heirs of Soosai Manickam, who are the vendors of



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the plaintiffs, were also the parties to the partition suit namely O.S.No.357 of 1990. Since the property has been allotted to a different person namely Anthony Ammal under a final decree and not to the plaintiff's vendors, the plaintiff is not entitled for the relief of permanent injunction. Ever since the execution of the sale deed dated 12.04.2011 executed by Anthony Ammal to Jayaraman (brother of the defendant), Jayaraman has been in possession and enjoyment of the property. Having failed to prove his possession over the suit schedule property, the plaintiff is not entitled to get the relief of permanent injunction as sought for in the plaint.

b) There is a sale deed standing in the name of Jayaraman dated 12.04.2011, which is executed by Anthony Ammal and she derived title through a final decree passed in the partition suit. The plaintiff failed to implead the said Jayaraman as a party defendant in the present suit in O.S.No.258 of 2013 and hence, the suit is bad for non-joinder of necessary parties.

c) Admittedly, the vendors of the plaintiff were not allotted 'F' and 'J' portions, which is the suit schedule property under the final decree



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passed in the partition suit in O.S.No.357 of 1990. Therefore, mere suit for permanent injunction is not maintainable.

d) The plaintiff after purchase of the undivided interest has not applied for allotment in the final decree passed in the partition suit. Therefore, the suit is not maintainable in view of Section 44 of the Transfer of Property Act.

e) The plaintiff has not been allotted any specific property in the final decree and he is not a party to the final decree proceedings in O.S.No. 357 of 1990. Since the plaintiff is a purchaser of an undivided interest, which has been allotted to Anthony Ammal under the final decree passed in O.S.No.357 of 1990, he cannot file a suit for permanent injunction and therefore, the suit for permanent injunction is not maintainable.

f) When there is a cloud over the sale deed executed in favour of the plaintiff, he ought to have filed a suit for declaration but instead has filed a suit for bare injunction which is not maintainable.

g) The plaintiff is neither a party to the preliminary decree nor the



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final decree proceedings in O.S.No.357 of 1990 and therefore, the *lis pendens* theory is not applicable to the facts and circumstances of the present case.

h) The evidence of P.W.1 shows that P.W.1 is not doing business at Manapparai as his permanent residential house is situated only at Kalagoundanpatty. Therefore, the plaintiff has not established that he had constructed asbestos shed in the suit schedule property. No documentary evidence has been produced by the plaintiff to prove that he has constructed asbestos shed in the suit schedule property.

i) The plaintiff has also not produced any house tax receipts, water tax receipts and any other revenue records standing in his name to prove his possession over the suit schedule property. He has not obtained permission from the Manapparai Municipality for construction of asbestos shed and therefore, it can be established that the plaintiff is not in possession and enjoyment of the suit schedule property.

j) It is bounden duty of the plaintiff before purchasing the property to enquire about the title of his vendors by verifying the parent



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document as well as encumbrance certificate. But in the present case, P.W.1 has deposed in his evidence that he did not know anything about the suit proceedings between his vendors, the legal heirs of Soosai Manickam and Anthony Ammal and he is also not aware whether the suit schedule property was allotted to Anthony Ammal in the final decree proceedings.

k) It is settled law that when a third party purchases undivided interest from one of the co-sharers, he is not entitled to claim the relief of permanent injunction. He has to seek the remedy through a partition suit by himself. Having not done so, the suit filed by the plaintiff is not maintainable.

Discussion:

8. Admittedly, the appellant/plaintiff had purchased the suit property only during the pendency of the partition suit in O.S.No.357 of 1990. Admittedly, the vendors of the plaintiff were also parties to the said partition suit. A preliminary decree was passed in the said partition suit and thereafter, a final decree was also passed on 04.06.2001. Admittedly, the vendors of the plaintiff were not allotted the suit schedule property in the



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final decree dated 04.06.2001 passed in O.S.No.357 of 1990. Therefore, it is clear that the vendors of the plaintiff, who were co-sharers in respect of all the properties, which are the subject matter of the partition suit in O.S.No. 357 of 1990, became disentitled to the suit schedule property as the suit schedule property was allotted to Anthony Ammal in the final decree dated 04.06.2001 passed in O.S.No.357 of 1990. The said Anthony Ammal has also subsequently sold the property to Jayaraman under a registered sale deed dated 12.04.2011. The plaintiff also did not implead himself as a party to the suit in O.S.No.357 of 1990 which culminated in the passing of the final decree under which the suit schedule property was allotted to Anthony Ammal and not to the plaintiff's vendors. The vendors of the plaintiff should have a marketable title over the suit schedule property and only then, they can convey the same to the plaintiff by way of absolute title. However, without having a valid marketable title over the suit schedule property, the plaintiff's vendors have sold the same to the plaintiff under a sale deed of the year 1997.

9. The lower Appellate Court has rightly held that there is a cloud over the title of the plaintiff and therefore, the suit for permanent injunction is not maintainable and if at all, the plaintiff is having any remedy, he ought



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to have filed a suit for declaration to declare his title over the suit schedule property or he could have impleaded himself in the partition suit in O.S.No. 357 of 1990, which has attained finality by passing of the final decree dated 04.06.2001.

10. This Court is of the view that the lower Appellate Court has rightly given the reasons for reversing the findings of the trial court, which are only in accordance with law and based on the oral and documentary evidence available on record. However, the trial court has erroneously decreed the suit in favour of the plaintiff despite the fact that there is a cloud over the title of the plaintiff as seen from the oral and documentary evidence available on record and despite the fact that the vendors of the plaintiff did not have title to convey the suit schedule property under the sale deed of the year 1997. The suit schedule property was allotted to Anthony Ammal under a final decree dated 04.06.2001 in O.S.No.357 of 1990. Instead of filing a suit for declaration to declare his title over the suit schedule property, by claiming that he is the owner of the same by virtue of a sale deed of the year 1997, the plaintiff has chosen to file a suit for permanent injunction that too when undoubtedly as seen from the oral and documentary evidence available on record there is a cloud over the plaintiff's title. The lower Appellate Court has rightly appreciated the evidence available on record



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and has rightly come to the conclusion that the suit filed by the plaintiff is not maintainable by giving the valid reasons only in accordance with law.

The trial court has erroneously decreed the suit in favour of the plaintiff which is not in accordance with law. Hence, the substantial questions of law raised by the appellant/plaintiff in the grounds of appeal are all issues, which have been already considered by the lower Appellate Court in its judgment and decree dated 23.04.2018 in A.S.No.20 of 2017 on the file of the Principal District Court, Tiruchirappalli, only based on oral and documentary evidence available on record and only in accordance with law. Therefore, there are no debatable issues of fact and law involved for further consideration by this Court under Section 100 C.P.C. Accordingly, there is no merit in this Second Appeal.

11. In the result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12. If so advised, the appellant/plaintiff is granted liberty to file a suit for declaration to declare his title over the suit schedule property.

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Index : Yes/No
Internet: Yes/No



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To,

- 1.The Principal District Judge, Tiruchirappalli
2. The II Additional Subordinate Judge, Tiruchirappalli
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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