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S.A.(MD)No.341 of 2015



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE. S. SOUNTHAR

S.A.(MD)No.341 of 2015
and
Cros.Obj.(MD)No.25 of 2015

S.Sonaimuthu

...Appellant / 4th Respondent
/ 4th Defendant

/Vs/

1.Ganesan Asari

....1st Respondent / Appellant
/ Plaintiff

2.State of Tamil Nadu

Rep.through the
District Collector,
Maruthupandiyar Nagar,
Sivagangai Town,
Sivagangai District.

3.Thiruppuvanam Panchayat Union

Represented by its Commissioner,
Manamadurai Taluk,
Sivagangai District.

4.The Panchayat President,

Thiruppachethi,
Manamadurai Taluk,
Sivagangai District.

5.Muthuraja

...Respondents 2 to 5
/ Respondents 1 to 3 and 5
/ Defendants 1 to 3 and 5



PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, and Cross Objection filed under Order 41 Rule 22 of CPC, against the judgment and decree dated 19.08.2014 passed in A.S.No.26 of 2012 on the file of the Sub-Court, Sivagangai which reversing the judgment and decree passed in O.S.No.145 of 2003 on the file of the Principal District Munsif, Manamadurai dated 10.11.2011.

For Appellant : Mr.C.Vakeeswaran
For R1 : Mr.S.Natarajan
For R2 to R4 : Mr.C.Baskaran
Government Advocate
For R5 : Notice dispensed with

JUDGMENT

The fourth defendant in the suit is the appellant. The first respondent herein filed a suit for declaration of title and injunction. The trial Court dismissed the suit. On appeal filed by the first respondent, the first appellate Court confirmed the findings of the trial Court with regard to the prayer for declaration, however, reversed the findings of the trial Court with regard to the prayer for injunction and granted a qualified injunction restraining the appellant and other respondents from interfering with the possession of first respondent over a lesser extent of



property as mentioned in the decree. Aggrieved upon the qualified injunction granted by the first appellate Court, the fourth defendant is before this Court. The first respondent also filed a cross objection in cross objection in Cros.Obj.(MD)No.25 of 2015 challenging the dismissal of the first appeal in respect of the declaration prayer.

2. According to the first respondent / plaintiff, the suit property was gifted to his grandfather, Periyasamy Asari, under Ex.A1, gift deed dated 27.04.1909. It was averred in the plaint that Periyasamy Asari had put up a thatched house in the suit property and resided there. After death of Periyasamy Asari, the father of the first respondent, namely, Mahalingam converted the thatched house into a tiled house and resided there. After death of Mahalingam, the first respondent has been in possession and enjoyment of the suit property by paying tax to the local authority. It was also averred by the first respondent that in recognition of his possession over the suit property, he was issued with Natham Nilavarai Thittam patta under Ex.A16. It was also averred that the first respondent had been in possession and enjoyment of the suit property by putting up house and black smith shop (kollu pattarai). It was further averred in the plaint that the respondents 2 to 5 attempted to interfere



with the possession of the first respondent claiming that the house and black smithy (kollu pattarai) of the first respondent were in poramboke properties. It was further averred that the appellant herein attempted to interfere with the right of the first respondent without any manner of lawful claim and hence, the first respondent was constrained to file the suit for declaration and for injunction.

3. The appellant herein filed a written statement denying the title of the first respondent over the suit property. The appellant specifically averred in his written statement that the suit property was given to Periyasamy Asari, grandfather of the first respondent, for the purpose of putting up Pillaiyar temple with no right of alienation. Therefore, it is the case of the appellant that the property was not given to Periyasamy Asari in his individual capacity. It was further averred that patta granted in the name of the first respondent was cancelled by the Revenue Divisional Officer in a specific proceedings, which was marked as Ex.B9. It was averred that the first respondent himself petitioned to the second respondent stating that his house was removed by the authorities and hence, the averment found in the plaint as if he was in possession of the suit property was not correct. It was further averred that as per the



Field Map, the extent of said S.No.178/3 is only 0.00.52 ares, but not 3000 sq.feet as claimed by the first respondent. On these pleadings, the appellant sought for dismissal of the suit. The respondents 2 to 5 also filed a written statement denying the right and possession of the first respondent over the suit property.

4. The trial Court, on consideration of oral and documentary evidence available on record, came to a conclusion that the suit property was not given to grandfather of the first respondent, namely Periyasamy Asari in his individual capacity and consequently, the first respondent was not entitled to declaration as prayed for. The trial Court also based on evidence available on record, came to the conclusion that the first respondent was not entitled to the consequential relief of injunction and dismissed the suit. Aggrieved by the same, the first respondent filed an appeal in A.S.No.26 of 2012 on the file of the Sub Court, Sivagangai. The first appellate Court confirmed the findings of the trial Court with regard to the declaration prayer. However, the first appellate Court came to the conclusion that the possession of the first respondent over lesser extent of property was admitted and hence he was entitled to qualified injunction restraining the appellant and other respondents from



interfering with his possession by due process of law. Aggrieved by the same, the appellant has come up by way of this Second Appeal. Challenging the Judgment of the first appellate Court confirming the findings of the trial Court with regard to the prayer for declaration, the first respondent also filed a cross objection in Cros.Obj.(MD)No.25 of 2015.

5. This Court, at the time of admitting the Second Appeal, formulated the following the substantial questions of law:

“1. Whether the Lower Appellate Court has committed an error in law in granting the relief of permanent injunction with a qualification that it shall be restricted to evicting the Plaintiff without adopting, due process of law, when the relief of injunction has been sought for as a consequential relief based on the main relief of declaration of title?

2. Whether the Lower Appellate Court has committed an error in law in not considering the fact that the adjudication of rights of the parties in a suit filed by the Plaintiff himself for injunction shall be construed as a due process of law?

6. The learned counsel appearing for the appellant, elaborating the substantial questions of law formulated at the time of admission,



submitted that when first appellate Court came to the conclusion that the first respondent / plaintiff was not entitled to the main relief of declaration ought not to have granted the consequential relief of injunction. The learned counsel further submitted that Ex.A1, Gift deed in favour of Periyasami Asari established that the suit property was given for construction of Pillaiyar Temple and it was not given to Periyasamy Asari in his individual capacity. The first respondent has not come to the Court with true facts. The learned counsel further submitted that patta issued in favour of the first respondent under Ex.A16 was cancelled by the Revenue Divisional Officer by subsequent proceedings under Ex.B9 and the same was suppressed by the first respondent. The learned counsel by taking this Court to the reports of the Advocate Commissioner, Exs.C1 to C4, submitted that if the suit property is measured with reference to Ex.A1, it covers the house of the third person, namely Malliga, Pillaiyar Temple and Madurai Ring Road Etc. Therefore, it is the submission of the learned counsel that the first respondent has not given proper measurements of the suit property and consequently his prayer for injunction must fail.



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7. The learned Senior Counsel appearing for the first respondent submitted that the possession of the first respondent over lesser extent of suit property was very much admitted by the appellant even in his written statement. Therefore, there is no dispute with regard to the possession of the first respondent. The learned counsel further submitted that when a party approached the Court with a larger relief, in the facts and circumstances of the case, the Court can always grant a lesser relief. In the case on hand, the first respondent prayed for declaration of his title and unqualified injunction in his favour. However, the first appellate Court thought it fit to grant lesser relief of qualified injunction to protect the possession of the first respondent. Therefore, the decree passed by the first appellate Court granting qualified injunction in favour of the first respondent need not be interfered with. The learned Senior Counsel by taking this Court to the recitals found and Ex.A1, Gift Deed executed in favour of Periyasami Asari submitted that the property was given to Periyasami Asari with a condition that he has to perform certain obligations. Merely because the property is burdened with certain obligations, it cannot be said that the property was not gifted to Periyasami Asari. Therefore, the Courts below mis-appreciated the



recitals found in Ex.A1 and wrongly dismissed the prayer for declaration of title.

8. The learned Senior Counsel appearing for the first respondent, in respect of his contention that the Courts are empowered to grant a lesser relief, relied upon on the Judgment of the Hon'ble Supreme Court in the case of *Sopanrao and another vs. Syed Mehmood and others* [2019 (4) CTC 730].

9. The learned Government Advocate appearing for the respondents 2 to 4 submitted that recitals found in Ex.A1, Gift Deed make it clear that the property was not given to Periyasami Asari individually and hence, the Courts below were justified in dismissing the prayer for declaration. He further submitted that a perusal of Exs.C1 to C4 would make it clear that the first respondent failed to give correct description of the suit property and hence, he is not entitled to the relief of injunction in the absence of proper identity of the property in his favour.



10. Heard the arguments of the learned counsel appearing for the appellant, the learned Senior Counsel appearing for the first respondent / cross objector and the learned Government Advocate appearing for the respondents 2 to 4. Perused the records and typed set of papers.

11. The learned counsel appearing for the appellant filed a memo dated 20.12.2022 stating that the fifth respondent is not a necessary party as he is not seeking any relief against him. The memo is recorded. Notice to the fifth respondent is dispensed with.

12. As far as the contention raised by the learned counsel appearing for the first respondent / cross objector with regard to the dismissal of the suit in respect of the prayer for declaration, a perusal of recitals found in Ex.A1, gift deed executed in favour of Periyasami Asari, grandfather of the first respondent would make it clear that the property was given only for the purpose of putting up Pillaiyar Temple. It was not given to Periyasami Asari for putting up his residential house. Therefore, neither Periyasami Asari nor his descendents are having absolute right over the suit property. Therefore, the Courts below, by properly appreciating the recitals found in Ex.A1, came to the conclusion that the



first respondent / plaintiff cannot claim absolute right over the property under Ex.A1 and dismissed the prayer for declaration of title. I do not find that the appreciation of recitals by the Courts below is vitiated by any perversity. Therefore, the said finding of the Courts below is confirmed.

13. The learned counsel appearing for the first respondent / cross objector forcefully submitted that when the appellant himself admitted the possession of the first respondent over lesser extent of the suit property in his pleadings, the first appellate Court was justified in granting a qualified injunction to protect his possession. The first respondent in his plaint averment has stated that in recognition of his possession, Natham Nilavarai Thittam patta was issued in his favour under Ex.A16. However, as contended by the learned counsel appearing for the appellant, the said patta was cancelled by the order passed by the Revenue Divisional Officer under Ex.B9. Therefore, it is clear that the first respondent, who approached the Court seeking equitable relief of injunction projected his case, based on a document, which was already set aside by the higher authority. However, in the plaint pleadings, the first respondent claimed that the property was given to his grandfather, Periyasami Asari under Ex.A1 and he had put up a house thereon.



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14. As discussed earlier, the recitals in Ex.A1 make it clear that the property was given for the purpose of putting up Pillaiyar Temple and it was not given to Periyasami Asari individually for putting up his own house. Therefore, the claim made by the first respondent as if he was entitled to the absolute right over the suit property under Ex.A1 is far from truth. Therefore, it is clear that the first respondent is guilty of suppression of material facts. It is settled law that a person who seeks equity must do equity. The first respondent, who approached the Court with tainted hands cannot expect the Court to exercise its discretionary power in his favour.

15. With regard to the proposition that the Courts are empowered to grant a lesser relief as against the larger relief prayed by the plaintiff, there is no quarrel that the Courts are empowered to grant a lesser relief. However, in the case on hand, the first respondent approached the Court with tainted hands. Therefore, the first appellate Court ought not to have exercised its equitable jurisdiction and granted a qualified injunction in favour of the first respondent. Therefore, the judgment and decree relied upon by the learned Senior Counsel appearing for the first respondent



reported in *Sopanrao and another vs. Syed Mehmood and others*
reported in [2019 (4) CTC 730] will not advance his case.

16. The Advocate Commissioner's reports, which were marked Ex.C1 to C4 would suggest that if the property is measured with reference to Ex.A1, it covers Pillaiyar Temple, house of Malliga and Madurai Ring Road. The Survey Field Map, Ex.B6, relevant to S.No. 178/3 would make it clear that east west measurement of the survey number on the northern side is five meters, the east west measurement on the southern side is 5.8 meters, the north south measurement on either side is 8.8 meters, the property on east of S.No.178/3 is 178/4 and 5, wherein the Pillaiyar Temple is situated and the property on the north of S.No.178/3 is 178/1, which is poramboke (voorani). Therefore, it is clear that the first respondent has not given proper description of the suit property. The extent given in the plaint description as if the extent of S.No.178/3 is 3,000 sq.ft., may not be correct.

17. In view of the conclusion reached by this Court that the first respondent has not approached the Court with true facts and the description of the property as given in the plaint schedule is not correct.



The first appellate Court ought not to have granted a qualified injunction in favour of the first respondent. Consequently, the same is liable to be interfered with.

18. In view of the discussions made earlier, the substantial questions of law framed at the time of admission are answered in favour of the appellant and this Second Appeal is allowed by setting aside the Judgment and decree passed by the first appellate Court. The cross objection filed by the first respondent is dismissed.

19. In a nutshell,

(a) this Second Appeal is allowed by setting aside the Judgment and decree passed by the first appellate Court insofar as the relief of injunction is concerned;

(b) the Judgment and decree passed by the first appellate Court in respect of the prayer for declaration is confirmed;

(c) Cros.Obj.(MD)No.25 of 2015 filed by the first respondent is dismissed;



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(d) In the facts and circumstances, there shall be no order as to costs.

Index: Yes / No
NCC : Yes / No
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S.A.(MD)No.341 of 2015



S. SOUNTHAR, J.

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TO:

- 1.The Sub-Court, Sivagangai.
- 2.The Principal District Munsif, Manamadurai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.341 of 2015
(2/2)

01.03.2023