



S.A.(MD)No.136 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.136 of 2017

and

C.M.P.(MD)No.2167 of 2017

C.Virumayee

... Appellant

/Vs./

V.Ramachandran (Died),
R.Panchavarnam,
W/o.(late) R.Ramachandran.

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 07.11.2014 made in A.S.No.125 of 2010 on the file of the Principal Sub Court, Madurai, confirming the judgment and decree dated 20.07.2010 made in O.S.No. 107 of 2008 on the file of the Principal District Munsif, Madurai Town, by allowing the second appeal.

For Appellant : Mr.J.Lawrence

For Respondent : Mr.Ramesh



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JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit in O.S.No.107 of 2008 on the file of the file of the Principal District Munsif Court, Madurai, is the appellant herein. The respondent is the defendant in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for permanent injunction to restrain the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The plaintiff claimed that she is the absolute owner of the suit schedule property. According to her, she had purchased a larger extent, which includes the suit schedule property from one Muthammal on 05.12.1974. According to the plaintiff, on 05.11.1981, she sold a portion of the larger extent and retained the suit schedule property. According to the plaintiff, she is in absolute



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possession and enjoyment of the suit schedule property as per the revenue records. According to the plaintiff, the defendant filed a petition before the Tahsildar seeking to delete the plaintiff's name from the revenue records. On the petition filed by the defendant to delete the name of the plaintiff from the revenue records in respect of the suit schedule property, the Tahsildar had allowed the petition deleting the name of the plaintiff from the revenue records in respect of the suit schedule property. The plaintiff had also preferred an appeal against the said order of the Tahsildar, which according to the plaintiff, is still pending.

3. According to the plaintiff, emboldened by the Tahsildar's order deleting the name of the plaintiff from the revenue records, the defendant attempted to encroach upon the suit schedule property with the aid of his henchmen on 10.02.2008. In such circumstances, the plaintiff filed a suit for permanent injunction against the defendant as stated supra.

4. However, as seen from the written statement filed by the defendant, he claims that the defendant's mother, Mayakkal purchased 5 ¼ cents in Old S.No.1343/1 from one Amirthammal on 29.01.1940 and



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acquired title in respect of $\frac{3}{4}$ cents through adverse possession.

According to the defendant, the legal heirs of the said Amirthammal including the defendant are entitled to the suit schedule property measuring an extent of 6 cents. According to the defendant, in the year 1974, the plaintiff purchased the property located on the west of the property purchased by the defendant's mother. However, according to the defendant, the portion allegedly retained by the plaintiff is actually a Municipal Lane and it is false to claim the retained portion as the plaintiff's property. The defendant also contends that the plaintiff is not in possession and enjoyment of the suit schedule property and is not entitled to the relief of permanent injunction. Based on the pleadings of the respective parties, the trial Court framed the following issues:

(a) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ?

(b) Whether the suit for bare injunction without relief of declaration is maintainable?

(c) To what other reliefs, the plaintiff is entitled to?



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5. Before the trial Court, the plaintiff filed eight documents, which were marked as Exs.A1 to A8 and one witness was examined, namely, the plaintiff herself as P.W.1. On the side of the defendant, 165 documents were filed, which were marked as Exs.B1 to B165 and one witness was examined namely, the defendant himself as D.W.1. After giving careful consideration to the plaintiff's case that the western portion in T.S.1343 /1 belongs to one Sooriyakannan and eastern portion in T.S.No.1343/1, which is the suit schedule property belongs to the plaintiff, the trial Court, in its judgment and decree dated 20.07.2010 in O.S.No.107 of 2008 has rejected the said contention by giving the following reasons:

(a) If the contention of the plaintiff is true, Sooriyakannan's property must be bounded on the eastern side of the suit schedule property belonging to the plaintiff. However, the defendant has denied this in paragraph No.6 of his written statement. According to the defendant, Sooriyakannan's property is bounded on the eastern side by Municipal Lane in respect of the suit schedule property. It is also the case of the defendant that the alleged retained eastern portion in T.S.No. 1343/1 is now a Municipal Lane;



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(b) Since the plaintiff, who asserts that the retained eastern portion, which is the suit schedule property belongs absolutely to her, the burden of proof is upon the plaintiff to prove as per Sections 101 and 102 of the Indian Evidence Act that (a) retained eastern portion in T.S.No.1343/1 is the suit schedule property and it is not a Municipal Lane; (b) the plaintiff is in possession and enjoyment of the retained eastern portion in T.S.No. 1343/1.

(c) The issue as to whether the eastern portion in T.S.No.1343/1 belongs to the plaintiff or it is a Municipal Lane can be effectively resolved only by means of local inspection conducted by an Advocate Commissioner. The plaintiff, though fully aware of the defendant's contentions in the written statement, did not come forward to seek an inspection by the Commissioner so as to prove that the eastern portion, which is the suit schedule property belongs to her absolutely and is not a Municipal Lane.

(d) The trial Court has also given due consideration to a Judgment of this Court in the case of **Kannammal and Another vs. Mannammal and Others** reported in **2001 (1) MLJ 628**, wherein it has been held that it is the duty of the plaintiff to clear the doubt, when the defendants have



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filed a number of documents to actually measure the property and established that they are in possession of the property as per the title deeds. The defendant, having filed a numerous documents to show that he has title in T.S.No.1343/1, in which the suit schedule property is located, the aforesaid ratio laid down by this Court in the case of **Kannammal and Another vs. Mannammal and Others** reported in **2001 (1) MLJ 628**, referred to supra clearly applies to the instant case. Therefore, adverse inference can be taken against the plaintiff and it can be concluded that the retained eastern portion, which is the suit schedule property does not belong to the plaintiff and is only a Municipal Lane;

(e) The property tax receipt dated 23.10.2007 (Ex.A8) does not pertain to the suit schedule property, but pertains to the property bearing D.No.62A, Aarapalayam Velar Street, Madurai. Therefore, Ex.A8 property tax receipt does not prove that the plaintiff is in possession of the suit schedule property;

(f) Since the defendant has denied the plaintiff's title over the suit schedule property, without seeking the relief of declaration of title, the suit filed by the plaintiff for bare injunction is not maintainable.



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6. Aggrieved by the Judgment and Decree dated 20.07.2010 passed by the Principal District Munsif Court, Madurai Town, in O.S.No. 107 of 2008, the plaintiff filed a first appeal before the Principal Sub Court, Madurai, in A.S.No.125 of 2010. The lower appellate Court, namely the Principal Sub Court, Madurai, in its judgment and decree dated 07.11.2014 in A.S.No.125 of 2010 also confirmed the findings of the trial Court, by dismissing the appeal on the ground that when there is a cloud over the title of the plaintiff over the suit schedule property, a bare injunction suit is not maintainable without seeking the relief of declaration with regard to the title of the plaintiff over the suit schedule property.

7. As seen from the judgment and decree of the lower appellate Court, the plaintiff had also filed Interlocutory Applications before the lower appellate Court for appointment of an Advocate Commissioner to measure the suit schedule property as well as to amend the plaint prayer by seeking the relief of declaration. While dismissing the first appeal, the Principal Sub Court, Madurai, by its judgment and decree dated 07.11.2014 in A.S.No.105 of 2010, has rejected the Interlocutory



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Applications on the ground that the plaintiff, despite having sufficient opportunity to amend the plaint prayer to include the relief of declaration in the suit, has not chosen to do so, but has only filed the applications before the lower appellate Court and therefore, the said applications cannot be entertained at the belated stage.

8. Admittedly, the defendant has taken a categorical stand that the suit schedule property does not belong to the plaintiff, but it is a Municipal Lane. He has also taken a plea that the bare injunction suit is not maintainable, when there is a cloud over the plaintiff's title over the suit schedule property. When that is the consistent stand of the defendant, the plaintiff necessarily ought to have filed the amendment application to include the prayer of declaration in the plaint as well as filed an application for appointment of an Advocate Commissioner, before the trial Court, but instead she has chosen to file the same only before the lower appellate Court, which have been rightly dismissed by the lower appellate court in its judgment and decree dated 07.11.2014 passed in A.S.No.125 of 2010 on the ground of laches.



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9. Admittedly, as seen from the evidence available on record, the defendant has disputed the title of the plaintiff over the suit schedule property. The name of the plaintiff, which was found in the patta for the suit schedule property has admittedly been deleted pursuant to an order of Tahsildar and as on date, the name of the plaintiff is not found in the revenue records for the suit schedule property. The outcome of the appeal filed by the plaintiff as against the order of the Tahsildar deleting his name from the patta is also not known as seen from the evidence available on record.

10. Sufficient documents have been filed by the defendant before the trial Court, which have been marked as Exs.B1 to B165, disputing the title of the plaintiff over the suit schedule property. Since the defendant has raised a cloud over the title of the plaintiff over the suit schedule property by producing documents, which have been marked as exhibits, necessarily, a bare injunction suit is not maintainable. Whenever there is a cloud over the title and the defendant is able to establish the same by producing the documents, only a suit for declaration to declare the plaintiff's title for the suit schedule property is maintainable and not a



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bare injunction suit. Being a suit for bare injunction, and that too, when there is cloud over the title of the plaintiff's title over the suit schedule property, both the Courts below have correctly held that the suit filed by the plaintiff for bare injunction is not maintainable.

11. The learned counsel appearing for the appellant relied upon a judgment of a learned Single Judge of this Court in the case of **Kannammal and Another vs. Mannammal and Others** reported in **2001 (1) MLJ 628**, in support of his contention that the lower appellate Court ought not to have rejected the appellant's application seeking for appointment of an Advocate Commissioner and the application filed for amendment seeking to amend the plaint prayer by including the relief of declaration. He would submit that as seen from the aforesaid decision, whenever there is a cloud over the title, the application for amendment to include the relief of declaration and the application for appointment of an Advocate Commissioner will have to be allowed in favour of the plaintiff, but according to him, the lower appellate Court has erroneously dismissed the applications on the ground of laches on the part of the plaintiff for not having filed the same before the trial Court.



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12. When a categorical stand was taken by the defendant in his written statement that the suit schedule property does not belong to the plaintiff and it is a Municipal Lane and he has raised a cloud over the title of the plaintiff over the suit schedule property by filing several documents, which have been marked as exhibits, necessarily the plaintiff ought to have filed an application for amendment to include the relief of declaration as well as also filed an application for appointment of an Advocate Commissioner only before the trial Court and not before the lower appellate Court.

13. The judgment relied upon by the learned counsel appearing for the appellant referred to supra did not deal with a case, where the appellant had filed the applications for amendment to include the relief of declaration in the plaint and for appointment of an Advocate Commissioner before the lower appellate Court, but it was a case, where the Court, on its own, based on the facts and circumstances of the case, gave liberty to the plaintiff to seek for appointment of an Advocate Commissioner and for amendment before the lower appellate Court by remanding the matter back to the lower appellate Court for fresh



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consideration, after granting the aforesaid liberty to the plaintiff. In the instant case, despite a categorical stand having been taken by the defendant in the suit that the plaintiff is not the owner of the suit schedule property, which according to him, is a Municipal Lane, the plaintiff is not entitled for the relief of permanent injunction and the defendant having raised a cloud over the plaintiff's title by filing several documents, which have been marked as exhibits, the decision relied upon by the learned counsel appearing for the appellant referred to supra, which was rendered by this Court based on the facts and circumstances of that particular case does not aid the appellant / plaintiff.

14. For the foregoing reasons, the issues raised by the appellant in the grounds of this second appeal have been duly considered by the Courts below in accordance with law and the substantial question of law formulated by this Court, namely whether the suit for permanent injunction is maintainable without seeking a declaratory title is answered in favour of the respondent / defendant by holding that since there is a cloud over the title of the plaintiff over the suit schedule property, necessarily a bare injunction suit is not maintainable without seeking a



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relief of declaration of the plaintiff's title over the suit schedule property.

15. In the result, there is no merit in this second appeal. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

26.04.2023

Index : Yes / No
NCC : Yes / No
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TO:

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



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.136 of 2017

Dated:
26.04.2023