



S.A.(MD).No.488 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.488 of 2017

and

C.M.P.(MD)No.10254 of 2017

1.Rajagopal

2.M.G.@Rajendran

... Appellants

/Vs./

1.Guruvaiah

2.Panjaliammal

3.Kalimuthu

...Respondents

(No notice is required for the 3rd respondent herein, since he set ex-parte before the Trial Court and did not take any steps to appear before the Appellate Court)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed by the Court of the Sub-Ordinate Judge, Srivilliputtur, in A.S.No.4 of 2011 on 24.03.2017. The Appellate Court has confirmed the Judgment and Decree passed by the Trial Court / Principal District Munsif Court, Srivilliputhur in O.S.No. 148 of 2008, dated 09.07.2010.

For Appellant	: Mr.A.Rajaram
For R1 and 2	: Mr.R.Sundar Srinivasan for Mr.P.Thiagarajan
R3	: Exparte



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JUDGMENT

The defendants 2 and 3 are the appellants herein. The plaintiff had filed a suit for injunction restraining the defendants from further alienating the property and also injunction restraining the defendants from interfering in the peaceful possession and enjoyment of the suit property.

2.The brief facts are that originally, the suit property belongs to Subban and Alagiri. The said Subban and Alagiri had divided the property through oral partition and these two facts are admitted by both the plaintiff as well as the defendants. The claim of the plaintiffs is that they had purchased 47 cents of land from the said Subban on 19.09.1995, which is marked as Ex. A1 and thereafter they are in possession and enjoyment of the property. Subsequently, the plaintiffs had alienated 5 cents of land to 3rd party namely Murugasen on 13.09.2000. And alienated 10 cents land to 3rd party namely Mokkasamy on 04.05.2007 which is marked as Ex A5.



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3. The first defendant Kalimuthu is the son of Subban. The said Alagiri was having two sons namely Chinnaperumal and Periyaperumal. The said Chinnaperumal was having three sons namely Rajagopal (2nd defendant), Alagiri and Shanmugavel. The third defendant Rajendran had purchased some properties from Rajagopal and Shanmugavel through sale deed dated 24.03.2008 Ex. B2. Again, the third defendant Rajendran had purchased some properties from Rajagopal, Kalimuthu and Murugan through sale deed dated 14.06.2007 Ex. B3. Hence the 3rd defendant is claiming right over the suit property. The defendants are relying on Ex. B1 patta that is issued in the year 2007 in the name of Chinnaperumal and Periyaperumal and hence 3rd respondent is claiming that he had purchased the land in question from the said sons of Alagiri. In short, the defendants are relying on Ex. B1 patta and claiming title over the property.

4. The 1st defendant had remained exparte and the 2nd and 3rd defendants alone had filed the present second appeal. The second appeal was not admitted and it is listed under the caption of “notice of motion”.



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5. The first substantial question of law that was raised by the defendants 2 and 3 / appellants is that when the title of the property is under cloud then the suit has to be filed for declaration and injunction. Especially when the defendants 2 and 3 had denied the title in the writ statement then, it is incumbent on the plaintiffs to amend the prayer for declaration and injunction. When the plaintiffs have not taken steps to do so, then the suit for bare injunction is not maintainable. Further the Lower Court failed to frame the issue when the title was disputed by the 2nd and 3rd defendants. The Learned Counsel appearing for the 2nd and 3rd defendants / appellants relied on judgment rendered in the case of **Anathula Sudhakar Vs. P.Buchi Reddy** reported in **(2008) 4 Supreme Court Cases 594** wherein it is held as under:

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the



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plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.”

6. After hearing the rival submissions this Court had given its anxious consideration. The judgment cited by the defendants is not helping the defendants, rather it is helping the plaintiff. Whenever an injunction is sought the issue of title may directly and substantially arise for consideration and without a finding thereon it will not be possible to decide the issue of possession. It is an incidentally issue rather than main issue and the Trial Court incidentally has to see the title of the property.

7. In the present case, both the plaintiffs as well as the defendants



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had admitted the fact that originally the property belongs to Subban and Alagiri and there was an oral partition between the said Subban and Alagiri. When the defendants had admitted that Subban is also entitled to the property and when Subban has sold his share in the properties to the plaintiffs, then the defendants are restrained from disputing the title over the property. At the most, it can be a dispute between the parties to identify the property. When there is no dispute in the title of the property for Subban, then the declaration is not necessary. When the defendants accept the right of Subban and when the Subban has executed a sale deed in favour of the plaintiffs then the sale deed would conclusively prove the sale transaction. Therefore, the plaintiffs are having title over the property through their sale deed. When the plaintiffs have subsequently sold 15 cents, the possession is also proved. When the plaintiffs have proved the title through the sale deed and the plaintiffs had proved the possession over the property, then the plaintiffs are entitled to injunction. Even as per the judgment cited supra the prayer for declaration is necessary, when the possession is not with the plaintiffs. Since the Lower Court and the Appellate Court had come to the conclusion that the



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plaintiffs are in possession, which this Court is also concur with the said finding, then the prayer for declaration is not necessary.

8. The next substantial question of law that was raised is when Exhibit B2 will conclusively prove the title over the property for the defendants which is sale deed executed in favour of 3rd defendant by the 2nd defendant. Moreover, the Ex B1 is patta issued in the name of the defendants and the same would prove the nature of the properties as ancestral properties and hence the defendants 2 and 3 / appellants have a better title than the plaintiffs. It is seen that the Ex B2 and Ex. B3 are sale deeds executed in the year 2007 and 2008. But the plaintiff's sale deed is executed in the year 1995, which is executed 12 years prior to the sale deed of the defendants. Hence, it is unlikely that the property belongs to the defendants and therefore this Court is of the considered opinion that the plaintiffs had proved their case based on their sale deed. Then the plea of the defendants that the plaintiffs are trying to prove their case on the weakness of the defendants is incorrect.



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9. Further the cloud over the title which has been raised over the plaintiffs' title is only for the sake of litigation without any documentary or oral evidence. The defendants are denying the title for the sake of the suit alone. Therefore, the Trial Court and the Appellate Court have come to the correct conclusion. The substantial questions of law that are raised in the second appeal are answered as stated supra.

10. Hence, the second appeal is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

04.12.2023

Index : Yes / No
NCC : Yes / No

Tmg



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



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Tmg

Judgment made in
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