



S.A. No.54 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No.54 of 2019
and
C.M.P.No.1151 of 2019

N.Neduncheliyan

... Appellant

Vs.

1. T.K.Purushothaman
2. T.K.Amudha
3. T.K.Sasirekha
4. Shanthi
5. Minor Rubashree
rep. by her next friend/mother
Shanthi

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 20.09.2018 made in A.S.No.6 of 2017 on the file of Subordinate Judge, Uthangarai, reversing the judgment and decree dated 23.12.2016 passed in O.S.No.17 of 2009 on the file of District Munsif cum Judicial Magistrate, Uthangarai.



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For Appellant : Mr.R.Bharath Kumar

For Respondents : Mr.M.R.Radhakrishnan
for R1 to R5

JUDGMENT

The appellant is the plaintiff and he had filed a suit in O.S.No.17 of 2009 against the respondent/defendant for the relief of declaration and consequential relief of permanent injunction in respect of suit property as prescribed in the plaint schedule in Survey No.107/2 an extent of 1.23 acres and the land in Survey No.109/1 an extent of 2.80 acres with Well and a thatched house with other amenities.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. The case of the plaintiff is that his mother Suseela having a sister viz., Kokilammal, who had executed a Will on 30.12.2000 in favour of plaintiff. Thereafter, on 18.11.2001, the testator Kokilammal died. Thereafter, he became as absolute owner as per the Will. Further, he would content that originally, the suit property belong to his father Rangasamy @ Namadevan, who attempted to alienate and sell the property in the auction and in order to escape from the clutches of debts, on 13.08.1973 his father



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executed a sham and nominal sale deed in favour of his wife's sister viz., Kokilammal. But, the possession of property with the plaintiff's father and on the same day there was a reconveyance sale agreement was executed. Subsequently, in the year 1988, the plaintiff's father Namadevan was died. Thereafter, the plaintiff was in possession and enjoyment of property. While so, Kokilammal also executed a Will in his favour, thereby as absolute owner, he enjoyed the property. The defendants causing interference and claiming right over the property. Hence, he filed a suit for declaration and permanent injunction against the legal heirs of Kokilammal.

4. The respondents/defendants contested the suit stating that the property is belong to 1st defendant's wife viz., Kokilammal. Since the 1st defendant was died, his legal heirs contested the suit stating that the property belongs to their mother absolutely by way of purchase made from the plaintiff's father Namadevan for a valid consideration and thereafter, the property was possessed and enjoyed by the plaintiff's family as lessee and they used to pay the lease amount regularly. After the demise of 1st defendant, the plaintiff attempted to grab the property through a fabricated



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Will, thereby disputing the plaintiff's right and title over the suit property.

5. Before the trial court, the trial judge framed six issues and the foremost issues are “whether the suit property is absolutely belong to plaintiff” and “whether the sale deed dated 13.08.1973 stands in the name of Kokilammal is a sham and nominal document and also whether the Will is true or valid and finally whether the plaintiff is entitled for permanent injunction.”

6. Both parties have adduced oral and documentary evidence. On the side of plaintiff, P.W.1 to P.W.4 were examined and the documents Ex.A1 to A6 were marked. On the side of defendants, D.W.1 to D.W.5 were examined and the documents Ex.B1 to B14 were marked. On considering all the evidence on record, the trial judge held that as per the recitals of Sale deed Ex.A5 dated 13.08.1973, which was executed by plaintiff's father by himself and on behalf of his minor children viz., plaintiff and one Gopalakrishnan. While so, in order to settle the loan borrowed by plaintiff's father Namadevan from one Panchayat Union as well as from one Kuppa gounder. Therefore, the property was sold and the sale proceeds was utilised to settle the loan borrowed by plaintiff's father. Accordingly, the first issue



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was decided that sale deed is valid one and not a sham and nominal one. In respect of reconveyance sale agreement, the trial judge held that plaintiff's father not taken steps for getting reconveyance deed. However, possession of property is with the plaintiff and the same could be considered as permissive possession. In respect of Will Ex.A1 dated 30.12.2000, the trial judge held that the Will contains three pages and the signature found in the first page is totally differs from first and second page, so there was a suspicion over the Will that all the three pages are not executed at the same time and first page was written in a Rs.50 stamp paper and other two pages were written in hand, besides, the trial judge compared the signature found in the alleged Will along with admitted document Ex.A6 Reconveyance deed. The signatures were attempted to trace from the admitted document and created Ex.A1 Will, thereby held that Will is fabricated one. Accordingly, the relief claimed by the plaintiff based on the Will was dismissed, however, in respect of permanent injunction, the trial judge held that the suit property was under the possession of plaintiff. Therefore, he is entitled for permanent injunction. Accordingly, the suit was partly allowed.

7. Against the relief of permanent injunction granted in favour of



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plaintiff, the defendants preferred an appeal in A.S.No.6 of 2017. The first appellate judge independently analysed the facts and evidence on record and finally held that the findings rendered by the trial judge that plaintiff's claim of title over the suit property has not been proved. Furthermore, the plaintiff has not questioned about the alleged sale deed dated 13.08.1973 as sham and nominal one nor they proved the Will beyond reasonable doubt. Therefore, the main relief of declaration was rightly rejected by the trial court. But the trial court granted the relief of permanent injunction against the true owners/defendants as such is erroneous one, since the plaintiff is only in permissive possession of the suit property as a Watchman according to the evidence of defendants and there was no lease document executed between the party. When the plaintiff has no title over the property, the possessory right of party has to be decided based on the pleadings and the documents. Since the plaintiff has not produced any document nor proved his title to establish the continuous possession and enjoyment of property, the plaintiff is not permissive occupier. Hence, the relief of permanent injunction is granted by the trial court in favour of plaintiff, as such is erroneous one. Accordingly, the appeal suit is allowed. Challenging the said



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findings of first appellate judge, the plaintiff preferred this Second Appeal.

8. It is an admitted fact that the plaintiff has not challenged the findings given by the trial court in respect of relief of declaration, however, he contended that he is in possession of property. Therefore, the trial court has rightly granted the relief of permanent injunction at the most, the defendants are entitled to evict him by due process of law, but the first appellate judge failed to take note of the said aspect.

9. The learned counsel for appellant would submit that the first appellate judge failed to take note of the fact that the defendants themselves admits that the plaintiff is in possession of the property and also admits that he has paid the lease amount to them. But, the courts below failed to appreciate the evidence adduced by D.W. 1 to that effect. Hence, he prayed to set aside the findings of first appellate judge.

10. On considering the aforesaid facts, this Second Appeal is admitted on the following question of law :-

(a) Whether the lower appellate court is correct in law reversing the well-considered judgment and decree of the trial court granting the injunction to the plaintiff. Taking into consideration the possession of the plaintiff of the suit property



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after holding that the plaintiff is in permissive occupation in the suit property?

(b) Whether the lower appellate court is correct in setting aside the relief of injunction especially when the defendant has not taken any steps to cancel the permission of recovering possession of the suit property?

11. The learned counsel for respondents/defendants would submit that as per the trial court findings, the plaintiff has not proved the title over the property, thereby the relief of declaration was rejected. Against which, he has not preferred any appeal. Therefore, as on date, the respondents/defendants are the true owners of the property, who are legal heirs of original owner of Kokilammal. So, against true owners, permanent injunction cannot be granted. Accordingly, the first appellate judge rightly set aside the findings of trial court in respect of relief of permanent injunction, which needs no interference by this court. Hence, he prayed to dismiss the Second Appeal as no merit.

12. Heard and considered rival submissions made by learned counsel for appellant as well as respondents and perused the materials available on



13. Considering both side submissions, it reveals that according to plaintiff, the suit property originally belong to his father Namadevan and in order to escape from clutches of debt, he executed a sale deed, which is sham and nominal document in favour of his wife's sister Kokilammal on 13.08.1973. Subsequently, a reconveyance deed was executed, which was marked as Ex.A6, but the possession of property is with the plaintiff's father. He possessed and enjoyed the same till his life time and thereafter, the plaintiff enjoyed the property. During the life time of Kokilammal, she also executed a Will in his favour Ex.A1 dated 30.12.2000, thereby he became absolute owner. The defendants, who are legal heirs of Kokilammal caused interference. Hence, he filed a suit for declaration and permanent injunction.

14. Admittedly, the Will was marked as Ex.A1, but the signature found in the Will creates suspicion over the signature of Testator. The trial court compared the signature of testator Kokilammal along with admitted



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document marked as Ex.A6 and made an observation that the signatures in the admitted document attempted to trace and created a Will Ex.A1, thereby held that Will has not been proved beyond reasonable doubt. Further, the trial court also held that as per recitals of sale deed in order to discharge debts, the plaintiff's father sold the property to mother of contesting defendants Kokilammal for a valid consideration and it is not a sham and nominal document. Accordingly, the relief of declaration was not granted as the plaintiff has not proved the Will. Moreover, the said findings rendered by the trial court has not been challenged by the plaintiff.

15. Furthermore, so far as the relief of permanent injunction is concerned, the trial court found that based on the oral as well as documentary evidence, it reveals that ever since from the date of sale deed, plaintiff's father was in possession of property and after his demise, the plaintiff is in possession of property as permissible occupier, they are entitled for permanent injunction. Against that findings, the first appeal was preferred by the defendants was allowed holding that the defendants are true owners, against whom, the plaintiff is not entitled to get any relief of permanent injunction. Challenging the said findings, plaintiff preferred this



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16. On perusal of evidence of D.W.1, it reveals that he admits the possession not only the plaintiff, but also plaintiff's father. Further, D.W. 1 also admits that from 13.08.1973 till the demise of his mother Kokilammal, the plaintiff possessed and cultivated the land and paid the lease amount to his mother. After demise of his mother, lease amount was given to their vendors till 2014. D.W.1 in his evidence also reveals that out of profit from the cultivation, the lease amount was given to contesting defendant's mother Kokilammal. Furthermore, D.W.1 also submitted that they have not taken any steps to get possession of property after the demise of their mother Kokilammal from the year 2001. The plaintiff produced the kist receipt before the trial court. Indeed, the defendants also produced chitta, adangal, but all those documents are after the suit. From 1973 onwards, though sale deed stands in the name of contesting defendant's mother Kokilammal, no document was produced on the side of defendants to prove that they were in possession and enjoyment of property. Eventually, they have admitted that the suit property is under the possession of plaintiff and he has paid the lease amount by their own evidence. But the first appellate judge failed to



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appreciate the said evidence. In support of his contentions, he relied ratio laid down in the authority reported in **2021 (3) SCC 675** in the case of ***A.Subramanian and another vs. R.Panneerselvam***, wherein the Apex Court held as follows:-

“A Specific Relief Act, 1963 – S. 38 – Suit for permanent injunction to restrain defendants from disturbing peaceful possession and enjoyment of plaintiff over the suit property – Principle that plaintiff cannot seek bare permanent injunction without seeking prayer for declaration of title – When not applicable – Peaceful possession of the suit property by plaintiff established on record and admitted by defendant – There being no dispute as to title, nor plaintiff raising any issues as to its title in the suit, as defendant's prior suit for declaration of title and possession of the suit property standing dismissed and such dismissal attaining finality”

By relying the aforesaid authority, the learned counsel for appellant argues that the plaintiff is in possession of suit property, thus, the defendants bound to take steps for recovery of possession as per manner known to law. Though it was properly appreciated by the trial judge, the first appellate judge erroneously set aside the said findings. Considering the proposition



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laid down in the above referred case, it is squarely applicable to the facts of the case in hand for the reason that the evidence of D.W.1 itself proves that the suit property was under the possession of plaintiff, but the same has not been rightly appreciated by the first appellate judge. From the year 1973 onwards possession is with the plaintiff's family, neither defendants nor their mother Kokilammal taken steps to cancel the permission by filing a suit for recovery of possession. In such circumstances, the plaintiff is entitled for the relief of permanent injunction until he is evicted by due process of law. The first appellate judge has failed to appreciate the legal proposition, which needs interference of this court. Accordingly, the findings of first appellate judge is set aside by answering question of law (b). So also, the first appellate judge without considering evidence on record dismissed the claim of permanent injunction as such is erroneous one and liable to be set aside. Accordingly, the question of law (a) is answered. In the result, the findings of first appellate judge held in A.S.No.6 of 2017 is set aside until the plaintiff is evicted under due process of law, until then he is entitled for the relief of permanent injunction. Accordingly, suit is partly decreed by confirming the findings of trial judge. Thus, Second Appeal is



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allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

The Sub-Judge,
Uthangarai.

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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