



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on: 27.02.2024

Pronounced on: .03.2024

CORAM

**THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**S.A.No.205 of 2020**

**and**

**CMP. No.4173 of 2020**

Masilamani

...Appellant

Vs.

- 1.Mani Alias Vanithamani
- 2.Anandan
- 3.Saravanan
- 4.Jayalakshmi
- 5.Nalini
- 6.Suganthi

...Respondents

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside decree and judgment dated 21.11.2019 in A.S. No.87 of 2015 on the file of Sub Court, Tirupattur reversing the decree and judgment dated 27.04.2015 in O.S. No.201 of 2009 on the file of the Principal District Munsif, Tirupattur.

For Appellants : Mr.R.Rajarajan

For Respondents : Ms.R.Ramesh for R1  
No Appearance for R2 to R6



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## **JUDGMENT**

The plaintiff, in a suit for injunction, who initially succeeded before the trial Court, but lost before the First Appellate Court is the appellant.

2. The parties are described as per their litigative status before the trial Court.

3. The material facts that are necessary for deciding the present Second Appeal are as follows:

3.1. It is the case of the plaintiff that the first defendant is the father of the plaintiff. The second defendant is the wife of the first defendant and defendants 3, 4 and 6 are the siblings and 5<sup>th</sup> defendant is the husband of the 4<sup>th</sup> defendant. According to the plaintiff, the suit property comprises 6 cents out of 84 Ares in S.N.919/9. Though the properties were inherited by the first defendant and though there was no formal partition in the family, there was a family arrangement pursuant to which, the defendants 1 and 2 viz., the parents sold the suit property to one Selvaraj on 01.12.2005. The said Selvaraj, in turn, in and by sale deed dated 27.11.2008, sold the suit



property to the plaintiff. The plaintiff has mutated revenue records in his favour and had been in possession of the suit property without any interference from any person whomsoever. Rejecting the defence set up by the defendants, the Trial Court decreed the suit. However, on Appeal, the First Appellate Court allowed the Appeal and thereby dismissed the suit.

4. The learned counsel for the appellant has placed reliance on the following decisions:

(i) *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and Others* reported in (2008) 4 SCC 594.

(ii) *Thanji Ammal Vs. Kuttachi Ammal and others* in S.A. No.941 of 2006 dated 07.03.2014.

5. The 4<sup>th</sup> defendant filed a suit for partition in O.S. No.26 of 2009, claiming an 1/4<sup>th</sup> share. However, the 4<sup>th</sup> defendant did not prosecute the suit and the said suit was dismissed for default. In the said suit, the plaintiff was also arrayed as a party. It is the case of the defendants that the suit is only for a bare injunction and the same was not maintainable, without the relief of declaration of title of the plaintiff.

6. It is the further case of the learned counsel for the defendants that



the 4<sup>th</sup> defendant did not authorize her father, first defendant to dispose of the suit property, by issuing any power of attorney. It is also contended that being an ancestral property, the plaintiff's purchase under Ex.A1 was not valid and without seeking a relief for declaration of title, the suit for bare injunction was liable to be dismissed.

7. The learned counsel for the respondents has placed reliance on the following decisions:

- (i) *M.Ramamoorthy and another Vs. R.Thirunavukkarasu* in S.A. No.1570 of 2005.
- (ii) *Uma Devi Nambiar and Ors Vs. T.C. Sindhan (Dead)* reported in AIR 2004 SC 1772
- (iii) *Subramanian Vs. Kosalai Ammal and others* reported in 2014-3-L.W.397.

8. *Subramanian'* case, referred herein supra, is relied for the proposition that when title is in dispute, the plaintiff has to include the relief of declaration and not merely seek a relief of injunction. In *M.Ramamoorthy'* case, referred herein supra, this Court held that even when title had been disputed by way of written statement, a suit for bare injunction could not be maintained without amending the plaint seeking the relief of declaration.



9. On 26.02.2020, the above Second Appeal was admitted on the following substantial questions of law:

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“ a) *Is not the First Appellate Court wrong in dismissing the suit when the plaintiff / appellant has proved his title and possession of the suit property by virtue of Exs.P1 to P3.*

b) *Whether the First Appellate Court is correct in dismissing the suit by holding that the respondents 1 and 2 / defendants 4 and 5 are the absolute owners of the suit property when they did not produce any document to establish their title and possession of the suit property.*”

10. I have heard Mr.R.Rajarajan, learned counsel for the appellant and Mr.R.Ramesh, learned counsel for the first respondent. There is no appearance for R2 to R6.

11. Admittedly, the present suit is only a suit for the relief of permanent injunction and not for declaration of any right or title in favour of the plaintiff. The core question that needs to be decided in such a suit for the relief of permanent injunction based on title, is whether the plaintiff has pleaded and proved that the plaintiff has been in physical possession and enjoyment of the suit property on the date of filing of the suit. The trial Court has considered the contention of the first respondent and arrived at a finding that the 4<sup>th</sup> defendant never objected to the enjoyment of the suit property by the parents and also admitted that the share of the children were



given only by way of sale deeds. The trial Court also found that there was a sale deed executed by the parents of the 4<sup>th</sup> defendant in favour of the 4<sup>th</sup> defendant's son and in respect of the another sister, it was executed in favour of the sister's husband. Factoring all these documents entered into amongst the family members, the trial Court found that the plea of family arrangement in the family was true and thereby, the plaintiff's sale deed would not become invalid. The trial Court also found that the plaintiff to be in possession based on Exhibits A1 to A6. The plaintiff has produced Ex.A4 patta in his name and also Ex.A3, patta in the joint names of the defendant, one China Thambi and the plaintiff. The plaintiff has also lodged a police complaint, in view of the interference by the defendants on 05.05.2009, thus, clearly establishing that there was a threat to his possession. The cause of action arose admittedly on the said attempts to interfere with the plaintiff's peaceful possession and enjoyment. According to the plaintiff, there is no threat to his title and in such circumstances, the plaintiff need not be driven to the necessity of seeking declaration of his title which was never in cloud.

12. The First Appellate Court however, proceeded to reverse the well considered findings of the trial Court on a mis-reading of the evidence and



pleadings. Admittedly, the defendants had not filed any document to establish that they have been in possession of the suit property. The 4<sup>th</sup> defendant has also not challenged the sale deed executed by her parents, despite coming to know of the plaintiff's purchase of the suit property from her parents. One another circumstance that goes against the defendants is that by way of a suit for partition and separate possession by one of siblings of the third defendant viz. 4<sup>th</sup> defendant, filed a suit but the same was not prosecuted. The defendant was very much a party to the said suit, as also the plaintiff. Atleast when the said suit was dismissed for non prosecution, the 4<sup>th</sup> defendant should have taken independent steps to have her 1/4<sup>th</sup> share declared. However, the fourth defendant has chosen to remain totally silent and only when the plaintiff approached the Court seeking the relief of permanent injunction to protect his possession, the defendant has chosen to raise all available pleas to ensure that the plaintiff does not get any relief.

13. In such circumstances, applying the ratio laid down by the Hon'ble Supreme Court in the case of *Anathula Suthahar's* case, referred herein supra, I do not find the suit for permanent injunction requiring



dismissal, as there was admittedly no real cloud to the title of the plaintiff, warranting him to seek for declaration. In *Thanji Ammal's* case, (referred herein supra), this Court has held that there was no absolute bar under the Specific Relief Act to file a suit for bare injunction, even when the title is in dispute.

14. The trial Court has rightly appreciated the oral and documentary evidence and decreed the suit. The First Appellate Court, has proceeded to reverse the well merited findings of the trial Court only based on the evidence of P.W.1 that he had admitted that the suit property was allotted to the fourth defendant under an oral partition. Even assuming that the fourth defendant was allotted the suit property in an oral partition and her parents had chosen to dispose of the same to third party purchasers, the fact that the 4<sup>th</sup> defendant has till date not challenged the said sale deeds would only lead the Court to draw an inference against the conduct of the 4<sup>th</sup> defendant. Moreover, in a suit for permanent injunction, the requirement is only for the plaintiff to establish that the plaintiff had been in possession and enjoyment of the suit property, which he has successfully met by production of the sale deed, revenue records and also police complaint lodged, seeking protection



of his possession. Per contra, not even a single document has been filed or exhibited on the side of the 4<sup>th</sup> defendant. Therefore, the mere admission of P.W.1 cannot be the sole criteria, to dismiss the suit for permanent injunction. The First Appellate Court has failed to see that the suit being decided on Appeal was only a suit for a bare injunction and not a suit for declaration of any title or right in the suit property. The substantial questions of law are therefore answered in favour of the appellant.

15. In view of the above, I am constrained to set aside the judgment of the First Appellate Court and restore the decision of the Trial Court. Accordingly, this Second Appeal is allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

**08.03.2024**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation : Yes/No.  
Speaking order/Non-speaking order  
rkp  
To  
1. The Sub Judge, Tirupattur.  
2. The Principal District Munsif, Tirupattur.



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**P.B.BALAJI, J.**

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