



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 16 / 08 / 2024

JUDGMENT PRONOUNCED ON : 05 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.114 OF 2020

1.L.K.Prakash

2.L.K.Magesh

... Appellants / Appellants /
Plaintiffs

Vs.

1.Sophia

2.Amos

... Respondents / Respondents /
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated October 14, 2019 passed in A.S.No.31 of 2019 on the file of Principal Subordinate Court, Vellore, confirming the Judgment and Decree dated January 22, 2019 passed in O.S.No.133 of 2015 on the file of District Munsif Court at Katpadi.

For Appellants : Mr.K.A.Ravindran
For Respondent : Served – No Appearance

J U D G M E N T



WEB COPY

This Second Appeal is directed by the unsuccessful plaintiffs, against the Judgment and Decree dated October 14, 2019 passed in A.S.No.31 of 2019 on the file of 'Principal Subordinate Court, Vellore' ['First Appellate Court' for short], whereby the Judgment and Decree dated January 22, 2018 passed in O.S.No. 133 of 2015 on the file of 'District Munsif Court at Katpadi' ['Trial Court' for short] was confirmed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

Plaintiffs' Case in Brief:

3. In the Plaint, it is averred that the plaintiffs' father - Krishnasamy originally owned and possessed a property measuring 94 Cents in Survey No.132/1 of Chennangkuppam Village, Katpadi Taluk and another property measuring 37 Cents in Survey No.159 of P.K.Puram (Pazhaya Krishnapuram) Village, Katpadi Taluk. Krishnasamy (plaintiffs' father) and his brother - Rajagopal, had no disputes regarding these properties until Rajagopal's death.

3.1. After Rajagopal's passing, his widow - Rukkumani,



disputed Krishnasamy's title over the aforesaid properties and therefore, Krishnasamy filed a Suit in O.S.No.339 of 1982 for declaration and injunction against Rukkumani and one Ramanujam before the District Munsif Court, Vellore which was later transferred to the District Munsif Court, Gudiyatham and renumbered as O.S.No.753 of 1982. He obtained a decree in his favour on April 30, 1983. Meanwhile, Rukkumani filed a Suit seeking declaration and injunction in O.S.No.833 of 1991 with respect to the same properties, which was dismissed as abated on March 2, 2001.

3.2. The property measuring 94 Cents in Survey No.132/1 was later subdivided into Survey Nos.132/1A and 132/1B consisting of 52 Cents and 42 Cents respectively. Inadvertently, Survey No. 132/1B was omitted by the revenue officials in Patta No.344 standing in Krishnasamy's name. Hence, Krishnasamy submitted an application, and the revenue department corrected this mistake on September 19, 1999 vide their Order dated August 18, 1989. Thereafter, Krishnasamy sold Survey No.132/1A to third parties, who currently possess and enjoy it without dispute. He retained Survey No. 132/1B, which constitutes the Suit Property herein, until his death, after which his heirs viz., the plaintiffs, continued to be in possession and enjoyment thereof.



3.3. Further averred that, Rajagopal had executed a registered

Settlement Deed in favour of his wife - Rukkumani on March 24, 1980 in respect of the properties mentioned in Paragraph No.3 of this Judgment, and the same is not valid as Rajagopal had no title or right over the same. After Rukkumani's death, her heirs - Kamalammal, Babyammal, Kuppusamy, and Sekar sold the Suit Property to one Immanuel by way of registered Sale Deed on January 21, 2008. Revenue Records were transferred to Immanuel's name without notice or inquiry. Immanuel died unmarried. Thereafter, despite plaintiffs' possession and enjoyment, the defendants, who are the said Immanuel's siblings, attempted to encroach upon the Suit Property without any legitimate right or title. Hence, the Suit for declaration and permanent injunction.

Defendants' Case in Brief:

4. The defendants were set *ex-parte* before the Trial Court as well as the First Appellate Court. No Written Statement was filed on their side.

Trial Court:

5. At Trial, on the side of the plaintiffs, the Plaintiff No.1 was examined as P.W.1 and Ex-A.1 to Ex-A.9 were marked. On the side of the



defendants, no witness was examined and no document was marked.

WEB COPY

5.1. Upon hearing the plaintiffs' side and considering the oral and documentary evidence, the Trial Court reserved the matter for Judgment. But thereafter, *suo moto* reopened the case and directed the plaintiffs to file the latest Revenue Records pertaining to the Suit Property. But the plaintiffs failed to comply with the same despite sufficient opportunities. Then, the Trial Court concluded that even according to the plaintiffs, the Revenue Records pertaining to the Suit Property stand in the name of Immanuvel and not the plaintiffs. Further held that the Decree in O.S.No.753 of 1982 filed by Krishnasamy is a Decree of permanent injunction and not declaration of title; that the Suit filed by Rukkumani seeking declaration of title was abated; that, hence there was no adjudication of title in both the litigations. Since the plaintiffs failed to prove their title in the present case also, the Trial Court dismissed the Suit *qua* declaration. Since permanent injunction was granted in the earlier Suit filed by Krishnasamy, the Trial Court granted the relief of permanent injunction alone.



First Appellate Court:

6. Aggrieved by the Judgment and Decree passed by the Trial Court, the plaintiffs approached the First Appellate Court by way of an appeal under Section 96 of the Code of Civil Procedure, 1908 ['CPC' for short]. The First Appellate Court upon hearing the plaintiffs' side and analysing the oral and documentary evidence, concurred with the findings of the Trial Court and dismissed the appeal.

Substantial Questions of Law:

7. Aggrieved with the Judgment and Decree of the First Appellate Court, the plaintiffs preferred this Second Appeal and the same was admitted on July 7, 2020 on the following Substantial Questions of Law:

“1. Whether the Courts below were right in grant of relief of injunction, more so the plaintiff's father had obtained a decree of injunction took money advance the predecessor in the interest of the defendants in O.S.No.753 of 1982?

2. Whether the Courts below were right in refusing the relief of declaration on the ground that the plaintiff has not established his title despite the decree in O.S.No.753 of 1982



having become final?"

WEB COPY

Argument:

8. K.A.Ravindran, learned Counsel for the appellants/ plaintiffs would argue that the Ex-A.2 is the Decree passed in O.S.No.753 of 1982 in favour of Krishnasamy with respect to the Suit Property and another property. Further, the Suit for declaration and injunction filed by Rukkumani in O.S.No.833 of 1991 was dismissed on March 2, 2001. The Trial Court and the First Appellate Court failed to consider these facts.

8.1. Further would argue that, though the defendants appeared through advocate before the Trial Court, despite the sufficient opportunities given, failed to file Written Statement and thereafter, were set *ex-parte*. Before the First Appellate Court, the first defendant remained *ex-parte*, while the second defendant who appeared through advocate initially, did not contest the case thereafter. In fact, the second defendant's counsel had reported 'No Instructions'. Hence, as per Order VIII Rule 5 of CPC, non-filing of Written Statement would mean that the contents of the Plaint are admitted by the defendants. In this regard, he would rely on ***Thirunghanasambandam's Case*** [Judgment of this Court in



Thirungnanasambandam -vs- Kannan and Others, reported in 2018 (6)

CTC 198 (Mad)]. Accordingly, he would pray to allow the Second Appeal and decree the Suit.

9. Despite sufficient service, and despite the defendants' names being shown in the cause list continuously on all listings, none appeared on behalf of the respondents / defendants.

Discussion:

10. This Court has heard the learned Counsel for the appellants / plaintiffs and perused the materials available on record in light of the Substantial Questions of Law.

11. This Court has perused Ex-A.1 which is the Plaint filed by Krishnasamy, the father of the plaintiffs, against Rukkumani and another in O.S.No.753 of 1982 seeking injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of the Suit Property therein. The Suit Property therein includes the Suit Property herein. Ex-A.2 is the *ex-parte* Decree passed therein in favour of Krishnasamy. There was no adjudication of title at all in the Suit for



injunction in O.S.No.753 of 1982.

WEB COPY

12. Ex-A.3 is the Complaint filed by Rukkumani against Krishnasamy, one Puspha and one V.A. Dharmalingam in O.S.No.833 of 1991 seeking declaration and injunction. It is averred therein that the Suit Properties therein along with other properties originally belonged to the brothers - Rajagopal (Rukkumani's husband) and Krishnasamy (plaintiffs' father); that in Partition between the brothers, the Suit Properties therein were allotted to the share of Rajagopal; that Rajagopal later executed registered Settlement Deed dated March 24, 1980 in favour of Rukkumani; that in these circumstances, Krishnasamy, who lost his rights over the Suit Properties therein after partition, entered into a Sale Agreement with the other defendants therein with respect to the Suit Properties therein trying to interfere with the possession and enjoyment of Rukkumani; that, hence, she filed the Suit for declaration and injunction (in O.S.833 of 1991) based on the said registered Settlement Deed. To be noted, the Suit Properties therein includes the Suit Property herein.

13. Ex-A.4 is the Written Statement filed by Krishnasamy in O.S.No.833 of 1991, wherein he has admitted that he and his brother - Rajagopal orally partitioned the Suit Properties therein along with other



properties several years back prior to 1946; that the plaintiff therein's husband - Rajagopal lost his right in the Suit Properties therein as the defendant - Krishnasamy perfected title by adverse possession; that since a Decree has already been passed in respect of the Suit Properties therein in O.S.No.753 of 1982, the Suit is barred by *res judicata*; that, hence, the Suit is liable to be dismissed.

14. Ex-A.5 is the Decree passed in O.S.No.833 of 1991, wherein it has been stated that Rukkumani passed away on November 8, 1993 and therefore, the Suit stands abated.

15. From the above, it is crystal clear that, title was never adjudicated in the aforesaid cases. The Suit Properties therein includes the Suit Property herein. The plaintiffs claim title only through Krishnasamy, mainly on the basis of Ex-A.2 and Ex-A.5. Ex-A.2 - *Ex-parte* Decree for injunction, when title was never considered in the case, either directly or incidentally, would never confer any title on Krishnasamy or people claiming through him. Similarly, Ex-A.5 clearly shows that the question of title was never decided and the Suit was dismissed as abated.



16. Other than Ex-A.1 to Ex-A.5, the plaintiffs have filed Ex-A.6 to Ex-A.9 to support their case. Ex-A.6 is the Memorandum issued by the Tahsildhar, Gudiyatham, which shows that, on the petition submitted by Krishnasamy, the Firka Surveyor measured the lands in Survey Nos. 132/1A and 132/1B, and marked their boundaries with stones in the presence of Village Administrative Officer and General Public. Ex-A.6 does not confer any title on the plaintiffs.

17. Ex-A.7 is the Patta Pass Book standing in the name of Plaintiff No.1 (L.K.Prakash). It pertains to Survey Nos.136/3, 136/5 and 132/1A of Chennangkuppam Village and not Survey No.132/1B of Chennangkuppam Village which constitutes the Suit Property herein.

18. Similarly, Ex-A.8 contains two Kist Receipts. One is dated February 13, 1990 (Fasli Year 1399) and relates to Patta No.344 which pertains to Survey No.132/1A of Chennangkuppam Village, whereas Survey No.132/1B of Chennangkuppam Village is the Suit Property herein. Another is dated May 1, 1990 (Fasli Year 1399) and relates to Patta No.580 which relates to Survey No.159 of Pazhaya Krishnapuram (P.K.Puram) Village, whereas the Suit Property herein is



situate in Chennangkuppam village.

WEB COPY

19. Ex-A.9 is a Notice issued under Section 9 of Tamil Nadu Surveys and Boundaries Act, 1923. Mere Ex-A.9 is not sufficient to confer title on the plaintiffs over the Suit Property. The purpose behind the Section 9 Notice is that all the interested parties are informed and presented with an opportunity to be heard while ascertaining boundaries. Moreover, in Ex-A.9, there appears to be some over writings such that it is not possible to ascertain as to on whose name it has been issued. Hence, Ex-A.9 also does not aid the plaintiffs' case.

20. As narrated above, none of the documents produced on the side of the plaintiffs prove the plaintiffs' title nor their possession and enjoyment of the Suit Property herein. The plaintiffs have not established their case at all. Hence, this Court is of the view that the plaintiffs are not entitled to the relief of declaration as well as permanent injunction.

21. At this point, this Court deems fit to extract the Plaint prayer hereunder:

*“4. It is therefore prayed that this Hon'ble court may be pleased to pass a judgment and decree
a) Declare the plaintiff's right and title over the suit*



schedule mentioned property

- b) *Granting consequential permanent injunction restraining the defendants and their men, agents and servants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property*
- c) *Directing the defendants to pay the cost of the suit*
- d) *And pass such other orders according to the circumstances of the case”*

21.1. To be noted, when the main relief of declaration is itself denied, the consequential relief of permanent injunction cannot be granted in isolation. As stated *supra*, the plaintiffs have not established their possession and enjoyment of the Suit Property. To be noted, in the Written Statement filed in O.S.No.833 of 1991 by Krishnasamy, he has admitted that the Suit Properties therein (which includes the Suit Property herein) were allotted to Rajagopal in an Oral Partition way back prior to 1946 and has pleaded adverse possession. The said Suit stands abated. Though the plaintiffs have not not pleaded adverse possession expressly in this case, this Court is able to infer the same from a comprehensive reading of the Complaint herein. But they have failed to prove adverse possession in this case. None of the essentials of adverse possession has been established by the plaintiffs. Mere pleadings do not amount to proof. Hence, the Trial Court



as well as the First Appellate Court has erred in granting permanent injunction restraining the defendants. The same is grave injustice and liable to be set aside [See Section 103 of CPC].

22. *Thirungnanasambandam's Case* relied on by the learned Counsel, wherein in case of a Suit for Specific Performance this Court held that non-filing of Written Statement amounts to acceptance of the Plaint pleadings by the defendant, would not applicable in case of a Suit for title such as the instant case.

Conclusion:

23. In view of the foregoing narrative, the decision of the Trial Court as well as the First Appellate Court in dismissing the Suit *qua* declaration is correct in law but their decision in granting permanent injunction is not sustainable in law. Substantial Questions of Law are answered accordingly.

24. Resultantly, the Second Appeal stands dismissed in the following terms:

- (a) The Judgment and Decree of the Trial Court



S.A.No.114 of 2020

as well as the First Appellate Court are set aside completely;

- (b) The Original Suit is hereby dismissed;
- (c) Considering the nature of the dispute, there shall be no order as to costs.

05 / 11 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK
To

1.The Principal Subordinate Court
Vellore.

2.The District Munsif Court
Katpadi.

R. SAKTHIVEL, J.

TK



WEB COPY



S.A.No.114 of 2020

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.114 OF 2020

05 / 11 / 2024