



SA. No.515 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM:

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

SA. No. 515 of 2009

1. M.TITUS DEVACHEYAL
- 2 M.JUSTIN MANVALAN
- 3 M.JANAT PRIYADARSHINI
- 4 M.MERCY RANI

(CAUSE TITLE ACCEPTED VIDE ORDER OF COURT DT
24/02/06 MADE IN CMP 2701/06)

... Appellants

Vs.

- 1 RANGANATHAN(died)
- 2 RAGHURAMAN



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3 NEELAMBAL
4 KALA
5 UMA
6 JAGATHAMBAL
7 SUGUNA
8 SARAVANAN
9 MOORTHY
10 THARANI

(Respondent 3 TO 10 B/R AS LRS OF THE DECEASED 1st respondent
viz RANGANATHANVIDE COURT ORDER DATED 08/09/2021 MADE
IN CMP)
14502 OF 2020 IN SA 515 OF 2009(RHJ)

...Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S No. 112 of 2002 dated 06.08.2003 on the file of the District Judge, Thiruvannamalai setting aside the judgment and decree in O.S No. 402 of 1999 dated 31.10.2002 on the file of the Additional District Munsiff, Thiruvannamalai.

For Appellants : Mr.P.M.Subramaniam, senior counsel



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For R2 : Mr. R.Abdul Mubeen
For R3 to R10: Mr.Suresh.

JUDGMENT

This second appeal has been filed against the judgment and decree in A.S No. 112 of 2002 dated 06.08.2003 on the file of the District Judge, Thiruvannamalai setting aside the judgment and decree in O.S No. 402 of 1999 dated 31.10.2002 on the file of the Additional District Munsiff, Thiruvannamalai.

2. The case of the plaintiff is that the suit property in the plaint schedule is originally belongs to the one Narayan Iyer and his brother Saminatha Iyer @ chinnasamy Iyer. They effected the partition of the scheduled mentioned property along with other joint family properties under the registered partition deed dated 13.07.1903. Both of them were in possession and enjoyment of the same in their life time subsequently as they were away from the suit village in the course of their employment the house became dilapidated and has almost become a vacant site. While so, the plaintiff purchased the said vacant site from the heirs of the original owner under the registered Sale deed dated 16.08.1990. In fact, as per the



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agreement dated 30.12.1980 the possession of the property was delivered to him in the year 1980 itself. Therefore, even from the year 1980 onwards the plaintiff was in possession of the property thereafter he became the absolute owner as per the sale deed of the year 1990. After that, he obtained patta under UDR scheme for the said property. While so, the defendant 1 and 2 father and son who have no right over the property falsely claimed that they are the real owners of the property by way of possession and enjoyment of the property for more than three decades. Therefore, they raised objection before the revenue authorities in respect of issuance of patta, on enquiry on 04.02.1993 their application was dismissed against which they preferred an appeal before the DRO and the same also dismissed in the year 1996. Thereafter, the defendant attempted to trespass the property. Hence, the plaintiff filed the suit.

3. The contention of the defendant is that the neither the plaintiff nor his vendors and their predecessors in title were in possession and enjoyment of the property and also contend that the suit property as described in the plaint is not been possessed and enjoyed by the erstwhile vendor of the plaintiff and heirs family. Thereby denied the partition deed and sale deed relied by the plaintiff. Further, they contended that more than 100 years the



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first defendant and his grandfather were in possession and enjoyment of the property and they have title over the same but by giving false information the plaintiff obtained patta and also the description found in the sale deed, partition deed totally differs thereby the plaintiff is not entitled for any relief as he claimed in the suit prayed to dismiss the suit.

4. After considering the oral and documentary evidence and the trial court concluded that Ex.A3 to Ex.A8 clearly shows that the plaintiff was in possession and enjoyment of the suit property and decreed the suit in favour of the plaintiff.

5. Challenging the findings of the Trial Court, the defendant's filed the appeal before the District Judge, Thiruvannamalai, in AS No. 112 of 2002, wherein the first appellate judge independently analysed the facts and evidence of the case concluded that the plaintiff not able to identify the property but he purchased the property with the same extent as found in Ex.A1 partition deed however not tallied with the description of the property found in the plaint schedule. Besides, he has not taken steps to claim the title of the property and there is no material evidence to prove the possession and enjoyment of the property in the year 1980-90 and also observed that patta granted by the revenue authorities not a document of title. Further the



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appellate Judge not accepted that the suit property originally belongs to the Narayaan Iyer family. Accordingly, appeal was allowed thereby suit was dismissed by concluding that defendants are in possession and enjoyment of the suit property.

6. Aggrieved over the findings of the first appellate Court, the plaintiff filed this second appeal. This Court admitted the appeal with the following substantial questions of law:

1. Whether the judgment and decree of the first appellate Court in reversing the decree and judgment of the trial Court is legally sustainable in as much as the first appellate court has ignored Ex.A3 to Ex.A8 which prove possession of the appellate with respect to suit properties?

2. Whether the judgment and decree of the first appellate court is legally sustainable in as much as it has come to the conclusion that the suit filed by the appellants for relief of injunction is futile since the title of the appellants to the suit properties cannot be considered in the suit for permanent injunction ?

3. Whether the judgment and decree of the first appellate court is legally sustainable in as much as it has come to the conclusion that the appellants have not proved their possession regarding the suit property



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ignoring the Ex.A3 to A8?

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7. The learned counsel for the appellants submitted that since the plaintiff produced the document to prove his title and possession, enjoyment of the property but the first appellate Court erroneously concluded that the plaintiff has not proved the possession. Though it was property appreciated by the Trial Court, the first appellate Court erroneously set aside the findings of the Trial Court as such is erroneous. On perusal of the records before the Trial Court plaintiff produced document Ex.A1 to A12, Ex.A1/ partition deed of the year 1903 relied by the plaintiff which is title deed of his vendor's predecessor in title, from his vendor the plaintiff purchased the property from the legal heirs of Narayana Iyer through sale deed of the year 1990 which was marked as Ex.A2 those documents claimed as title documents in respect of the suit property. But in fact, as there is no survey Number mentioned in the sale deed.

8. By way of reply, the learned counsel for the defendants submitted that in the suit of permanent injunction and without claim of declaration the Trial Judge erroneously gave a findings in respect of title of the property in favour of the plaintiff which was rightly set aside by the first appellate Judge. Besides, he was not proved that he was in possession and enjoyment



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of the property from the date of the alleged sale agreement of the year 1980 by the plaintiff.

9. The learned counsel for the appellant submitted that Ex.A1 to Ex.A12 documents filed by the plaintiff's proved the title as well as his vendor's title and also established that before 1992 there was sub division in respect of the property as survey number mentioned before. Therefore the said survey Number not mentioned in Ex.A1 partition deed subsequently survey No. 207/2A1 was allotted to the suit property and the same was confirmed by the patta issued by the revenue authorities which marked as Ex.A3.

10. On perusal of Ex.A1/partition deed, it shows that the suit property is belongs to the plaintiff's vendor's predecessor in title that is belongs to the Narayana Iyer family after their demise from their legal heirs plaintiff purchased the property in the year 1990 before that he entered into a sale agreement in the year 1980 from that onwards possession was delivered to him and he was in possession of the suit property. Eventually no document produced to show that the plaintiff was in possession of property from the year 1980 onwards, but recitals of the sale deed/Ex.A2 shows that on



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30.12.1980 sale agreement was arrived between the parties and subsequently in the year 1990 by confirming the sale agreement the sale deed was executed for the valid consideration by the legal heirs of the Narayana Iyer family. Even though there is no other document to show that from the year 1980 the plaintiff is in enjoyment of the property the recitals in registered sale deed clearly established that from the year 1980 property was handed over by the vendors to the plaintiff. However, defendant's not produced any document to disprove the recitals of the written document Ex.A1 and Ex.A2. As rightly pointed out by the Trial Court there is no evidence on the side of the defendant to disprove the plaintiff's document. Further as rightly held by the Trial Court the plaintiff was in possession from the year 1980 which needs no interference of this Court. After purchase the plaintiff obtained the patta from the revenue authorities and the same was proved by him and the same was challenged by the defendants before the revenue authorities but the authorities confirmed the patta. Admittedly, as per the findings of the DRO the plaintiff's proved his title, he is entitled for the patta, as on date order is in force not been set aside by any other higher authorities. After issuance of patta in the year 1992 the plaintiff paid kist which was marked as Ex.A4 to Ex.A8 which is sufficient to



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establish that the plaintiff in possession of the property. The first appellate judge erroneously concluded that plaintiff not proved his possession and enjoyment of the suit property as well as the document relied by the plaintiff by ignoring Ex.A3 to Ex.A8 as such is unjust and liable to be set aside. Accordingly finding of the first appellate judge is set aside and question of law 1 is answered.

11. The foremost objection raised by the defendants is that in the year 1992 patta sanctioned in his favour the defendant not inclined to file the suit for declaration on the other hand he filed the present suit for permanent injunction without relief of declaration suit as such is not maintainable. Besides, findings of the Trial Court in respect of title of the property by framing first issues to that effect also erroneous one the same was rightly set aside by the first appellate judge needs no interference prayed to dismiss the appeal as no merits.

12. By way of reply, the learned counsel for the appellant submits that even the plaintiff is having clear title there he needd not file suit for declaration. Further, the possession was disturbed by the defendant's hence he filed the suit for injunction even other wise the Trial court is empowered to decide the issue of title instantly while deciding issue in the present suit to



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that effect he relied the judgment of the Apex Court, *in the case of Anathula Sudhakar Vs. P.Buchi Reddy(Dead) by LRs. & others reported in 2088(6) CTC 237:*

11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of



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plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

13. By relying the above said proposition the learned counsel for the appellants argued that through document Ex.A1 to Ex.A12 the plaintiff proved his title same was rightly appreciated by the Trial Court but the said legal proposition not been appreciated by the first appellate Court. Countering the same the learned counsel for the defendants submitted that when defendant raised objection to the plaintiff's title the plaintiff bound to file the suit for declaration but without which title of the plaintiff should not be decided in the bare injunction suit but the Trial court erroneously framed the issues and the same was set aside by the first appellate judge to support his contention he relied the judgement of this court in the case of Venkatachalam and another Vs. Nallathambi reported in 2013 (4) CTC 45 and in another case between State of A.P & others Vs. D.Raghukul Pershd (D) by LR.s. & others.

14. Considering the submissions on either side and also on perusal of



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the records, it reveals that the plaintiff relied the Ex.A1 to A2 title deed of himself and his predecessors' title thereby contended that by way of purchase through sale agreement dated 30.12.1980 he was in possession and enjoyment of the property to that effect he produced title deed and patta, kist receipt. Though the extent is varies as per settled proposition the same can be proved by the boundaries and also the plaintiff proved through Ex.A2 and Ex.A3 who was in possession of the property for more than 3 decades and also identified the property through sale deed belongs to one Vijayanaryaan Iyer. Moreover, the order passed by the revenue authorities also proved that after considering his title and possession the patta was granted in favour of plaintiff. The objection raised by the defendant was dismissed by the revenue authorities which is still in force. But there is no document adduced on the side of the defendants that they enjoyed the property. Considering all the documents, plaintiff have better title than the defendant the same was rightly observed by the Trial Court but the first appellate court erroneously dismissed the suit that the relief of declaration was not specifically prayed in the suit without which findings of the Trial Court in respect of title of the property is to be ignored but the plaintiff established his title hence the relief of permanent injunction is sufficient.



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The judgement relied by the plaintiff is squarely applicable to this case but the authorities relied by the defendants is not support this case. Accordingly, questions of law 2 and 3 are answered.

15. Therefore, the plaintiff rightly proved that he is having title and the same was rightly observed by the Trial Court which needs no interference. Accordingly, the appeal is allowed. Findings of the first appellate judge is set aside. Suit decreed as prayed for. No Costs. Pending petition(s), If any, stands closed.

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T.V.THAMILSELVI,J.

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To

1. The District Judge, Thiruvannamalai
2. The Additional District Munsiff, Thiruvannamalai.
3. The Section Officer,
V.R Section.

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