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S.A. No. 1065



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 1065 of 2011
and M.P. No.1 of 2011**

N. Mahalingam

... Plaintiff/ Appellant/ Appellant

Vs.

K. Palani

... Defendant/ Respondent/ Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 21.08.2007 passed in A.S. No.231 of 2006 passed by the Principal Subordinate Judge, Salem, confirming the Judgment and Decree dated 03.11.2006 in O.S. No.1613 of 2004 passed by the Principal District Munsiff Court, Salem.

For Appellant : M/s. V. Moorthi

For Respondent : No Appearance



JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below and rejecting the claim of the plaintiff seeking permanent injunction.

2. The case of the plaintiff is that the suit property comprised in R.S. No.89/1 in Sivadapuram village to the extent of 15 cents and some other properties, originally belongs to his grand father Karruppu Chetti Goundar, and he had gifted the same to plaintiff's father K. Natarajan on 13.01.1987, who in turn gifted the same to the plaintiff on 03.11.2003. From the date of execution of gift deed, he was in possession and peaceful enjoyment of the suit property and the patta also stands in the name of the plaintiff. In the meantime, the defendant, who is a relative to the plaintiff, without any proof disturbed the possession and peaceful enjoyment of the plaintiff over the suit property. Hence the suit for permanent injunction is filed by the plaintiff.

3. The defendant has filed a written statement stating that originally the plaintiff's father was having properties in S.No.90/4, 90/13, 90/12 and 1/3 share in the well situated in S.No.89/1, 89/3 and 90/2. Subsequently, those



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properties were sold in favour of the defendant by the plaintiff's father as per sale deed dated 28.02.1989. The plaintiff's father also executed a Power of Attorney dated 28.02.1989 in favour of the defendant for 4 cents of land in S.No.89/1 to deal with the said property and to sell the same. Based on the said Power of Attorney, the defendant had entered into an agreement of sale dated 11.08.2003 with his son and subsequently, sale concluded on 13.10.2003. The Total extent of the land in S.No.89/1-D is 22 cents, in which 7 cents were sold to one Kathirvel by the plaintiff's father, 3 cents were utilised for well, 4 cents were used as pathway and 4 cents already sold by the defendant in favour of his son, as per sale deed dated 13.10.2003 stated supra and his son had also constructed a house, obtained electricity connection and was in possession of the defendant's son. Therefore, out of total 22 cents, only 4 cents are available, whereas the suit is filed for 15 cents of land. It is also stated that there was a money dispute between the plaintiff's father and the defendant and with a view to settle score, the plaintiff's father had filed a suit in O.S. No.755 of 2003 on the file of the District Munsif Court, Salem in which no interim order was obtained by the plaintiff's father. Since, he was not able to get interim order, the plaintiff has filed the present suit against the defendant.



3.1 Based on the pleadings of both sides, the Trial Court framed following issues:

1. *Whether the Power of Attorney deed dated 28.02.1989 is true?*
2. *Whether the Sale deed dated 13.10.2003 is True and genuine?*
3. *Whether the description of property is correct?*
4. *Whether the plaintiff is in possession and enjoyment of the entire suit property?*
5. *Whether the plaintiff is entitled for the relief of permanent injunction?*
6. *To what relief?*

4. Before the Trial Court, the sale deed executed in favour of the defendant was marked and the execution of these sale deeds were also accepted. The Trial Court has considered the case of the plaintiff that patta was issued in his favour and found that the patta which is produced is joint patta, and there is no separate patta issued in favour of the plaintiff. Patta issued also contains the name of the defendant's son. The plaintiff has also admitted that the lands in S.Nos.90/4, 90/13, 90/12, 89/1, 90/2 were already sold in favour of the defendant and the plaintiff has no right over the same and the plaintiff has also failed to prove that the entire extent of the land in the suit



property belongs to him. Since the title has also been disputed by the defendant and the plaintiff has not come forward to file declaration of the suit, thereby the Trial Court has not granted relief as claimed by the plaintiff. This finding of the Trial Court is accepted by the lower Appellate Court for the very same reason.

5. Aggrieved over the concurrent finding of the Courts below, the plaintiff has preferred this appeal and this Court after considering the representation on both sides, admitted the appeal and framed following substantial questions of law:

1. *Whether the Courts below are right in going into the issue of declaration of title over the suit property without framing necessary issue?*

2. *Whether the Courts below are right in rejecting the relief of permanent injunction to the plaintiff, against the defendant, when the defendant has not produced any document to prove his legal entitlement to interfere with the possession of the suit property?*

3. *Whether the Courts below are right in hold that the defendant's son has title and possession over the suit property, in a permanent injunction suit filed against the defendant?*

4. *Whether the Courts below have properly appreciated the oral and documentary evidence produced by the plaintiff in consonance with the relief sought for in the plaint?*



6. The major point raised in this appeal is, whether both Courts are right in deciding the issue of title in the suit for permanent injunction simplicitor and without any issue, the same is permissible or not. The Hon'ble Apex Court in **Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs. and Ors. [(2008) 4 SCC 594]** has laid down guidelines to be followed, in considering the relief of injunction simplicitor, and principles to be followed, if the title to property of the plaintiff is disputed in the injunction suit and in paragraph Nos.15 to 17 observed as follows:

"15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari MANU/TN/0271/1965 : AIR1965Mad355 , the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand, in Sulochana Amma v. Narayanan Nair MANU/SC/0047/1994 : 1994ECR195(SC) , this



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Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed:

Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata.

This was reiterated in Annaimuthu Thevar v. Alagammal MANU/SC/0416/2005 : AIR2005SC4004.

16. This Court in Sajjadanashin Sayed Md. v. Musa Dadabhai Ummer MANU/SC/0122/2000 : [2000]1SCR1095 , noticed the apparent conflict in the views expressed in Vanagiri and Sulochana Amma and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in Corpus Juris Secundum (Vol.50, para 735, p.229):

Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of



ownership or title.

In Vanagiri, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over 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



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interference with 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.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or



wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

7. In this case, the plaintiff has filed suit for permanent injunction claiming his right over the suit property based on the gift deed executed in his favour. The defendant has also contended the claim based on a sale deed executed in his favour and also set up a case that, the defendant was having right over only 4 cents of the land in S.No.89/1 i.e., suit property.

8. The issue framed by the Trial Court shows that, though suit is filed for relief of injunction, based on the pleadings made by both sides, the Trial Court framed the issues including the question of title raised by both sides. In issue Nos. 1 and 2, the Trial court after appreciating the evidence placed on record by both sides, considered the validity of the title claimed by both sides. The evidence adduced in their regard also shows that both adduced evidence knowing fully well about the issues involved in the suit, more particularly, both sides marked their title deeds to support their case. Thereafter, in issue Nos.3 to 5, the Trial Court has considered the issue of possession and relief of injunction.



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9. The lower Appellate Court has considered only one point, arising for determination of the appeal i.e., "whether the plaintiff is entitled for permanent injunction as prayed for", and reappreciated entire evidence including the issue of title to the suit property, right of parties using or enjoying the suit property. After appreciating the title deeds adduced on both sides, such as Ex.A.1, Ex.B.1, Ex.B.12 and Ex.B.13, accepted the case of defendant and rejected the case of the plaintiff.

10. Both Courts have considered the validity of the title deeds relied on by the defendant and also after considering the validity of settlement deed - Ex.A.1, relied on by the plaintiff, both Courts rendered the finding about the possession. The possession claimed by the plaintiff is based on recitals in the schedule of property mentioned in Ex.A.1, i.e., the extent of land and right of way in Survey No.s 89/1D to the extent of 15 cents of land. The defendant relied on Exs.B.1, B.12 and B.13 and contended that 7 cents of land was already sold, as per Ex.B.12 by the plaintiff's father and grand father. The schedule of property therein, shows that, it includes 1/3rd well portion, coconut tress numbering 6 and also right of way.



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11. Ex.B.1 - Power of Attorney was executed by the plaintiff's father for 4 cents of land in the same survey numbers and based on Ex.B.1, 4 cents of land was sold to defendant and a separate suit in O.S.No.755 of 2003 on the file of the District Munsif Court, Salem was filed by the plaintiff's father questioning the validity of the sale deed in Ex.B.3 and was pending. Ex.B.13 is another sale deed executed by the plaintiff's father and grand father, thereby another 1/3rd portion of well and right of pathway was sold in favour of defendant's father one Palani. These documents have been appreciated by both Courts and concurrent findings have been given stating that the plaintiff's father already sold major portion of land except 4 cents. This Court finds the findings are based on evidence placed on record and those documents have not been misread by the Courts below. This Court also finds that, since both sides relied on various documents to show the nature of property and also the enjoyment of property including the extent of property, in which the parties are in possession, the Trial Court has rightly entered into the issue of title to the properties claimed by both sides. This Court finds that the Courts below have rightly considered these issues and the same is in accordance with the



precedent laid down by the Apex Court in *Anathula Sudhakar case* cited *supra*.

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12. Even, if this Court accepts the appellant's contention that there is no issue, relating to declaration of title, omission to frame the issue of declaration of title would not be a valid ground to set aside the declaration of title for the reasons stated hereafter. Admittedly, both sides enter into evidence to prove their right over the suit property, based on their title deeds. They were not mis-directed but focused on proving their title, to reject the claim of their opponent. There is no rule of evidence, prohibiting evidence led on one issue shall not be used for arriving decision of another issue. This view is fortified by the two decisions of the Apex Court in *Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta [AIR 1988 SC 396]* and *Savitri Pandey Vs. Prem Chandra Pandey [AIR 2002 SC 591]*. In *Bhairab Chandra Nandan's case*, it is observed in the concluding paragraph as that, though formally no issue was framed, the parties went to trial and adduced evidence with regard to an issue in mind and have drawn attention of the Court with regard to another relevant fact, therefore, there is no need for remand the matter once again for reconsideration. In *Savitri Pandey's case*, even though there was no issue



framed, since parties had adduced evidence, the Court is empowered to decide the question of desertion as ground of divorce. Accordingly, the substantial questions of law 1 and 2 are answered.

13. This Courts finds that both Courts below rightly considered the issue of Title, based on pleadings, after properly appreciating the evidence placed on record, rightly held that the plaintiff is not in possession of entire suit property and he is entitled to claim injunction only to the extent of 4 cents and same was not properly described in the schedule of property in the plaint, thereby both Courts not inclined to grant injunction, as prayed for. Accordingly, the substantial questions of law 3 and 4 are answered.

14. In the result, this second appeal is dismissed with costs, and the judgment and decree of the Courts below are hereby confirmed. Consequently, connected miscellaneous petition stands closed.

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Index: Yes/No

Speaking Order : Yes/No



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Neutral Citation Case : Yes/No

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To:

1. The Section Officer,
VR Section,
High Court,
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