



SA. No.453 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

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

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1. Arumugam
2. Panjalai
- 3.Muniammal (Died)
- 4.Anniyappan
- 5.Parthiban
- 6.Lakshmi

... Appellants

Vs.

- 1.Devendran
- 2.Shanmugam
- 3.Jayapal
- 4.Raj Gounder
- 5.Rajammal
- 6.Parvathi
- 7.Maliga(died)
8. Ulakanathan
- 9.Ulakathamal
- 10.Muthamizh
11. Munikannan
12. Parvathi.



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..Respondents

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PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 26.10.2010 made in A.S No. 5 of 2005 on the file of Sub Judge, Vellore reversing the judgment and decree dated 05.01.1995 made in O.S No. 251 of 1991 on the file of the District Munsif, Sholughur.

For Appellants : Mr.A.Gouthaman

For R1 : Not Appeared

For R3, R6 : Not Appeared

For R5 & R8 to R11 : Mr.V.Manohar

R2, R7, R12 & R4 Died

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 26.10.2010 made in A.S No. 5 of 2005 on the file of Sub Judge, Vellore reversing the judgment and decree dated 05.01.1995 made in O.S No. 251 of 1991 on the file of the District Munsif, Sholughur.

2. The appellants herein are the legal heirs of the deceased second



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defendant Sankaran in suit OS No.251 of 1991. The first respondent herein/Devendran filed suit in O.S no. 251 of 1991 on the file of the first District Munsif Court, Sholingur, for the relief of permanent injunction against the defendants in respect of the suit property, the said suit was contested by the defendants 2, 3, 6 and 7 and others remain exparte. The sixth defendants Thagavelu and the seventh defendant Rajammal in the said suit filed the suit in O.S No. 155 of 1991 and OS No. 136 of 1991 respectively, in respect of item No. 6 & 7 of the suit properties against the defendants Devendran and Muniammal. Therefore, all the three suits were jointly tried before the Trial Court, wherein, the Trial Court concluded that item No. 6 and 7 of the suit properties were subject to charge made by the defendants 2, 6 and 7 thereby the suit filed by the Rajammal and Thangavelu in OS Nos. 136 and 155 of 1991 was allowed by declaring their title subject to charge. In respect of suit filed by the Devandran in O.S No. 251 of 1991, the Trial Court held that on the date of the said suit the plaintiff was not in possession of the Item No. 6 and 7 of the suit property on other hand the defendants 6 and 7 proved their title. Accordingly, the suit filed by the Devendran in O.S No. 251 of 1991 was dismissed in respect of item No. 6 and 7 of the suit property. In respect of other items of the suit properties the



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relief not sought for. Against the findings of the Trial Court Devandran and Muniaammal filed As No. 3 of 2005 and Devandran filed A.S Nos. 4 and 5 of 2005. On hearing both sides, the first appellate Court allowed the appeal and concluded that plaintiff is entitled for declaration as he dismissed the suit in O.S Nos. 155 and 136 of 1991. Against the findings of the Trial Court in the appeals, particularly in AS No. 5 of 2005 the second defendant's/Sankaran's legal heirs filed this Second appeal.

3. The learned counsel for the appellants submitted that the lower appellate Court failed to take note of the fact that one Thanigaimani vendor of the second defendant purchased the property in auction through execution proceedings initiated by the plaintiff's mother who was very well aware of the entire Court proceedings but suppressing the said facts her son present plaintiff/Devandran filed the present suit and the same was decreed in his favour which is unjust and liable to be set aside. Further, he argued that lower appellate Court failed to take note of the fact vendor of the second defendant Thanigaimani also purchased the property through Court auction from him, the second defendant/appellant's vendor purchased the property from the said rightful owner as a bonafide purchaser for valid consideration and on the date of purchase itself his vendors was in possession of the



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property the plaintiff was not in possession of the properties in item No. 6 and 7 on the date of the suit and the same was rightly appreciated by the Trial Court but the first appellate Judge without appreciating the evidence properly erroneously decreed the suit in favour of the plaintiff by setting aside the findings of the the Trial court as such is illegal and liable to be set aside. Further, he submits that lower appellate Court erroneously concluded that suit for injunction is maintainable but ignoring the fact that title is under dispute between the parties for that there was no relief of declaration was claimed by the plaintiff he would also submitted that sale deed executed in favour of defendant is voidable and *void ab initio*. Without asking relief of declaration mere suit for injunction is not maintainable but it was not appreciated by the Court below.

This Court admitted the appeal with the following questions of law;

1. Whether the lower appellate Court right in reversing the well considered judgement and decree of the trial Court. Ignoring the law that when there is a dispute with regard to title, a mere injunction without the relief of declaration in not maintainable ?

2. Whether the lower appellate Court right in allowing the appeal, ignoring law that once a property purchased by defendant from court auction



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purchaser, it is necessary for the plaintiff to ask declaratory relief to declare that the sale deed is null and void. Because the properties purchased by defendant is not void and void. It is only voidable in nature

3. Whether the lower appellate Court right in ignoring law that the person who seeks injunction should prove his possession over the property. In these case admittedly the defendant is in possession that is the reasons why the trial Court dismissed the case of the plaintiff

4. For the sake of convenience the parties are denoted as per suit O.S No. 251 of 1991.

5. The brief facts of the case is that the plaintiff claiming right over the item No. 1 to 10 of the suit schedule property based on the Court auction sale in EP No. 397 of 1987, in the said properties the defendant's caused interference hence he filed the suit for the relief of permanent injunction and claimed right over the property based on the Court auction sale held on 03.01.1990 in EP No. 391 of 1987 in OS No. 66 of 1974 on the file of the first Munsif Court, Sholingur. Further, he would contended that from the date of the confirmation of the sale he took possession of the property on 08.05.1990. While so, on 08.08.1990 the defendant caused interference



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hence he filed the suit.

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6. The plaintiff claiming that the suit properties are absolutely belongs to him as he purchased through Court auction sale in OP.P No. 397/1987 in O.S No. 664/1974 on 03.01.1990 and the sale was confirmed on 09.03.1990 and he was taken delivery of possession of 18.05.1990. The main contention of the defendants 2, 6 and 7 only in respect of item No. 6 and 7 of the suit properties. According to the second defendant, he purchased the said property from one Thanigaimani, who purchased the property through Court auction held in O.S No. 529 of 1968 which was filed by the plaintiffs mother Muniammal against his husband Manickam for the relief of damages and seduction. Munaiammal obtained decree and to execute decree she filed EP. No. 337 of 1981 in which the properties were sold by which the said Thanigaimani purchased the property in Court auction on 20.08.1983 and took possession of the property through Court on 08.04.1994 thereafter said Thanigaimani sold the property to the second defendant an extent of 21 cents in item No. 7 of the suit property and sold other 21 cents to one Thangavel/D6. Therefore, in respect of item No. 7 defendants 2 and 6 each claiming 21 cents as absolute owner of the property. In respect of item No. 6 said Thanigaimani sold the same to the sixth defendant Rajammal thereby



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she claiming right over the property. Further, the defendants 2, 6 and 7 are claiming that they are in possession of the property on the date of alleged auction purchase made by the plaintiff as well as on the date of the suit in the year 1991. Further, they also contend that they were not aware of the charge made over in the said property and mother of the plaintiff Muniammal are very well aware of the said fact but suppressing the said fact she allowed the properties for court auction in O.S No. 529 of 1968 and by suppressing earlier suit in OS No. 664 of 1974 therefore considering both side submission finally Court held that purchase made from this plaintiff as void ab initio and also they were not in possession of the property and the defendants 2, 6 and 7 are in possession of the property and not by the plaintiff. Accordingly, suit for permanent injunction was dismissed in OS No. 251 of 1991 as he failed to establish that other two suits filed by the defendants decreed by granting relief of declaration subject to charge it was not statement but the first appellate Court independently analysed the facts and evidence on record held that there is no separate lis is necessary for the plaintiff to get back the possession and as per the Ex.A1, Ex.A2 which are Court auction sale certificate as well as symbolic possession is sufficient to held that he took possession of the property thereby setting aside the



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findings of the Trial Court allowed the appeal in favour of the plaintiff/first respondent. But the first appellate Judge failed to take note of the fact that prior to the auction made by the plaintiff in OS No. 664 of 1974 the vendor of the second defendant Thanigaimani purchased the property in the same Court auction in OS No. 529 of 1968 filed by the plaintiffs mother on 20.08.1983 and took possession of the property through Court on 08.04.1984. Therefore prior to Court auction purchase Thanigaimani put into possession of the property. Further, the plaintiff relied the charge created over the property but there is no evidence to that effect. In fact, said Thanigaimani was third party to the suit filed by the plaintiff and to that effect in records, there is no mentioning about the creation of the charge over the property as bonafide purchaser he purchased the properties through Court auction. It is pertinent to note that mother of the plaintiffs was filed the said suit in OS No. 529 of 1968 wherein, the properties were auctioned by the Court. Therefore, she was very well aware of the Court proceedings prior to the purchase made by the plaintiff. Both were colluded and filed the present suit but the first appellate Judge failed to take note of the above facts. This Court is not a fact finding court but when there is apparent error or facts not been properly appreciated this Court is entitled to interfere in



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respect of fact findings also. Therefore, the findings given by the first appellate Judge by holding that plaintiff is not in possession of the property is erroneous one and liable to be set aside. Furthermore, the plaintiff not claimed the relief of declaration when it was disputed by the defendants 2, 6 and 7 in respect of item No. 6 and 7. But the first appellate Court erroneously decreed the suit as such is liable to be set aside. Accordingly, questions of law are answered. Further the Trial Court rightly held that on the date of alleged Court auction plaintiff not in possession of the item No. 6 and 7 of the suit property the defendants are in possession of the property but the first appellate Court without proper appreciation erroneously held that plaintiff was in possession of the property on the date of the suit as such is liable to be set aside. Accordingly questions of law 3 is answered. Appeal is allowed findings of the first appellate Court is set aside. Consequently suit dismissed as held by Trial Court. No Costs. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.



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To
1.The Section Officer,
V.R Section.

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