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S.A.No.403 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2024

JUDGMENT PRONOUNCED ON : 22 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.403 OF 2021

AND

C.M.P.NO.7666 OF 2021

Arulmighu Renuga Devi Amman Thirukoil
Vijayapuram,
Thiruvarur Taluk & Munsif
Represented by its Executive Officer

... Appellant /
Appellant /
Plaintiff

Vs.

Thiyagarajan

... Respondent /
Respondent /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 5, 2020 made in A.S.No.10 of 2019 on the file of the Sub Court, Thiruvarur confirming the Judgment and Decree dated October 24, 2017 made in O.S.No.102 of 2015 on the file of the District Munsif Court, Tiruvarur.

For Appellant : Mr.G.Govarthanan

For Respondent : Mr.K.Sridhar
for M/s.K.Sridhar Associates



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JUDGMENT

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This Second Appeal is directed against the Judgment and Decree dated August 5, 2020 passed in A.S.No.10 of 2019 by the 'Sub Court, Tiruvarur' [henceforth 'First Appellate Court' for brevity], confirming the Judgment and Decree dated October 24, 2017 passed in O.S.No.102 of 2015 by the 'District Munsif Court, Tiruvarur' [henceforth 'Trial Court' for brevity].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case:

3. The Suit Property is a tiled shop located in Vijayapuram, Thiruvarur, with a total extent of 680 sq. ft., comprising 50 sq. ft. in Town Survey No. 830/2, 54 sq. ft. in Town Survey No. 830/3, 282 sq. ft. in Town Survey No. 1000, and 294 sq. ft. in Town Survey No. 1001. The plaintiff – Temple rented out the same to one G.Sabapathi Chettiar and his son – S.Sivakumar. They were remitting the rent duly and regularly but later defaulted. As the plaintiff attempted to recover the rent due as well as the



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possession of the Suit Property, over the night of July 4, 2015, the defendant, who has no right or interest in the Suit Property, demolished the Suit tiled shop. The next day *i.e.*, on July 5, 2015, the defendant attempted to erect a new construction thereupon, but the same was prevented by the plaintiff's intervention. Purportedly, the defendant has entered into some transaction in respect of Suit Property with the said G.Sabapathi Chettiar and his son - S.Sivakumar, who are mere tenants. Whatever be the transaction, it is unlawful. The defendant is a trespasser. The defendant has no right over the Suit Property and he cannot put any construction thereupon. The plaintiff apprehends that the defendant may at any time cause mischief in the Suit Property. Reserving its right to file a separate Suit for eviction of the defendant, the plaintiff has filed this Suit for permanent injunction against the defendant not to carry out any construction in the Suit Property, costs and other reliefs.

Defendant's case:

4. The defendant filed Written Statement whereby he denies the plaint averments except those specifically admitted therein. Further, it is averred therein that the total extent of 294 sq. ft. in Town Survey



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No.1001 originally belonged to one Kathija Bibi, who under four

Settlement Deeds conveyed the it entirely to her sons, daughters and grandchildren between the years 1955 and 1960. In turn, the settlees executed Sale Deeds for consideration in favour of Sabapathi Chettiar, Ramasamy Chettiar and Nadarajan Chettiar between the years 1955 and 1960. Thereafter, vide a Family Partition Deed dated September 14, 1980, the entire extent of 294 sq. ft. in Town Survey No. 1001 was allotted to G.Sabapathi Chettiar as 'A' schedule property therein. After passing of G.Sabapathi Chettiar, his two sons and wife partitioned their properties vide registered Partition Deed February 14, 1991, whereby the entire extent of Town Survey No. 1001 was allotted to one of G.Sabapathi Chettiar's son viz., S.Ganesan as Item No. 1 of 'B' schedule therein. The said S.Ganesan sold the same to one P.R.M.Duraikannu. The defendant purchased for value the entire extent of Town Survey No. 1001 along with the superstructure thereupon in the year 1991 from P.R.M.Duraikannu vide Sale Deed dated July 12, 1999, after verifying the title deeds. The defendant is not aware of the other Suit survey numbers and they are not in his possession. After purchase, while he was renovating and repairing the superstructure in Town Survey No.1001, without any pre-suit notice the plaintiff has filed this Suit. The town survey register will not confer title to



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the plaintiff. The defendant denies that he completely demolished the superstructure in Town Survey No. 1001 on July 4, 2015 and attempted to construct a new one thereupon the next day. Accordingly, he sought to dismiss the Suit.

Trial Court:

5. At trial, one Rajendran, Executive Officer of the plaintiff -Temple was examined as P.W.1 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiff. On the side of the defendant, the defendant was examined as D.W.1, one Raja was examined as D.W.2 and Ex-B.1 to Ex-B.8 were marked. Ex-C.1 and Ex-C.2 –Advocate Commissioner’s Report and Plan were marked as Court documents.

6. After full-fledged trial and hearing both sides, the Trial Court concluded that originally an extent of 294 sq. ft. in Town Survey No.1001 and superstructure thereupon were owned by Kathija Bibi. She executed four Settlement Deeds conveying the entire extent of Town Survey No. 1001 to her sons, daughters and grandchildren between the years 1955 and 1960. The defendant derives title from the said Kathija Bibi from the year 1955 through Ex-B.1 to Ex-B.8. There is nothing



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available on record to prove that defendant's vendor's vendors viz.,

G.Sabapathi Chettiar and S.Sivakumar were tenants under the plaintiff –

Temple in respect of Town Survey No.1001. Ex-A.5 - Demand Registers is a self-serving document and do not confer title. Ex-C.1 and Ex-C.2 do not identify the survey number where the property occupied by the defendant is comprised. Ex-B.1 to Ex-B.8 documents *prima facie* establish the defendant's title in Town Survey No.1001. Hence, the plaintiff is not entitled to the relief of permanent injunction as prayed for. Accordingly, the Trial Court dismissed the Suit.

First Appellate Court:

7. Feeling aggrieved by the Trial Court's Judgment and Decree, the defendant preferred an appeal in A.S.No.10 of 2019 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, held that the plaintiff failed to prove that Town Survey No. 1001 belongs to it as well as its possession over the same as on the date of plaint. It held that the defendant denied the plaintiff's title through Ex-B.1 to Ex-B.8 documents and also derives title from the year 1955 onwards from Kathija Bibi. The plaintiff



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ought to have filed the Suit for the relief of declaration also. By following

Anathula Sudhakar's Case (cited *infra*), the First Appellate Court dismissed the appeal and concurred with the findings of the Trial Court.

Second Appeal:

8. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the plaintiff has preferred this Second Appeal, which was admitted on November 26, 2021 on the following substantial questions of law:

- “1. *Whether the property owned by the Hindu Religious Charitable and Endowment (H.R. & C.E.) Department of Government of Tamil Nadu can be conveyed by a lessee to a third party?*
2. *Whether the trespasser can seek relief of title and possession in respect of the Suit property against the true owner?”*

ARGUMENTS:

9. Mr.G.Govarthanan, learned Counsel for the appellant / plaintiff would argue that the Trial Court and the First Appellate Court failed to consider Ex-A.2 - Town Survey Register and Ex-A.5 – Rent Demand Register in the right perspective and negated the claim of the plaintiff and the same is erroneous. Therefore, the Judgment and Decree of



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Trial Court as well as First Appellate Court is liable to be set aside.

Accordingly, would pray to allow the Second Appeal.

10. Mr.K.Sridhar for M/s.K.Sridhar Associates, learned Counsel on record for the respondent / defendant would argue that the defendant derived title from Kathija Bibi in respect of 294 sq. ft. land in Town Survey No. 1001 along with the superstructure thereupon from the year 1955 onwards. Ex-A.2 - Town Survey Register does not confer title and it is an erroneous entry in respect of Town Survey No. 1001. The plaintiff did not produce any documents to show that the defendant's vendor's vendors were tenants under the plaintiff – Temple. The plaintiff without verifying the title properly have filed the Suit against the defendant. The Trial Court as well as the First Appellate Court concurrently found that the defendant is in possession and enjoyment of the entire extent of Town Survey No. 1001 by deriving title from Kathija Bibi from 1955 onwards. There is no warrant to interfere with the same. Further, since the plaintiff's claim of title has been denied by Ex-B.1 to Ex-B.8 documents, the Suit for permanent injunction simpliciter is not maintainable in respect of Town Survey No. 1001. Further, there is no question of law, much less substantial question of law in this Second



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Appeal. Accordingly, he would pray to dismiss the Second Appeal.

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DISCUSSION:

11. This Court has heard the submissions made on either side and perused the materials available on record.

12. Case of the plaintiff – Temple is that it is the owner of Suit Property and the same was rented out to G.Sabapathi Chettiar and his son - S.Sivakumar. This Court has perused Ex-A.2 – Town Survey Register issued by the Commissioner, Thiruvarur Municipality. It is seen that in the Adangal column which is column no.18, the plaintiff's name is found against the superstructure measuring 27.5 sq. mtr. = 296 sq. ft. in Town Survey No. 1001. It is classified as a Ryotwari Plot. Further, Ex-A.5 – Rent Demand Register shows that G.Sabapathi Chettiar and S.Sivakumar are the lease holders in respect of Suit Property (all four survey numbers) for the fasli year 1423 and 1424 [Calender year of 2013-2014 and 2014-2015] and that they have rent arrears of Rs.2,84, 955 and current rent of Rs.21,780/- , totaling Rs.3,06,735/- yet to be paid. Despite denial of plaintiff's title in respect of Town Survey No.1001, the plaintiff failed to trace his title. Moreover, except Ex-A.5, the plaintiff has not filed any



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other documents such as rent receipts in support of their case that

G.Sabapathi Chettiar and S.Sivakumar are tenants under them. It is settled

position of law that entry in the revenue records alone does not confer title.

This Suit is one for permanent injunction *simpliciter* not to carry on

construction or any alteration in the Suit Property. There is no relief for the

declaration of plaintiff's title. Ex-C.1 and Ex-C.2 – Advocate

Commissioner's report and plan are silent about the survey number in

which the portion occupied and enjoyed by the defendant is located. While

the plaintiff failed to trace their title over the Suit Property, especially

Survey No.1001, the defendant successfully traces his title from Kathija

Bibi from 1955 onwards by producing Ex-B.1 to Ex-B.8. This Court has

perused Ex-B.1 to Ex-B.8 which consists of Sale Deeds and Partition

Deeds. They *prima facie* establish the defendant's title over Town Survey

No. 1001. Specific case of the defendant is that he is not related to other

Suit survey numbers and that he is not in possession of them. In these

circumstances, the plaintiff ought to have amended the plaint to include the

relief of declaration of title. To be noted, the plaintiff – Temple did not file

the Suit for eviction or recovery of possession. In this regard, it is fruitful

to cite the decision of Hon'ble Supreme Court in **Anathula Sudhakar v. P.**

Buchi Reddy, reported in **(2008) 4 SCC 594** has summarized the law in



this regard as hereunder:

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“21.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 the 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 interference with the 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 [Annaimuthu Thevarv. Alagammal, (2005) 6 SCC 202]). 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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

13. The First Appellate Court has rightly placed reliance on



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Anathula Sudhakar's Case and dismissed the appeal. There is no irregularity or illegality in the concurrent findings of the Trial Court as well as the First Appellate Court which are based evidence available on record. Hence, there is no warrant to interfere with the same.

14. As stated *supra*, the plaintiff failed to establish that the Suit Property, especially the total extent of 294 sq. ft. land in Town Survey No. 1001 and superstructure thereupon, belongs to the plaintiff – Temple which is under the superintendence of Tamil Nadu Hindu Religious and Charitable Department. Hence, the first Substantial Question of Law does not arise in this case.

15. As already alluded to *supra*, the defendant has *prima facie* established his title by tracing it to one Kathija Bibi from the year 1955 onwards vide Ex-B.1 to Ex-B.8. In these circumstances, the plaintiff ought to have traced his title over the Suit Property, or at least over Town Survey No.1001. The defendant cannot be termed as a trespasser when the plaintiff has not established that it is the true owner. Hence, the second Substantial Question of Law does not arise as well in this case.



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Result:

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16. In the result, the Second Appeal stands dismissed as devoid of merits along with costs for this Second Appeal. Consequently, connected Civil Miscellaneous Petition is closed.

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

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1.The Sub Court
Tiruvarur.

2.The District Munsif Court
Tiruvarur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.403 OF 2021

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