



S.A.No.272 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.02.2024	Pronounced on: 01.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.272 of 2017
and CMP. No.6383 of 2017

1.Jayabalan
Kannan (Died)
2.Sivanantham
3.Arul
4.Rajaram

...Appellants

Vs.

1.Karthikeyan
2.Ravi
3.Sivakumar
4.Murugan
5.Santhammal
6.Padma
7.Manjula
8.Chitra

(The respondents 2 to 8 are given up in
this Second Appeal since they are set
exparte in A.S)

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil
Procedure to set aside the Judgment and Decree dated 30.10.2013 and



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made in A.S. No.66 of 2012 on the file of the Subordinate Judge, Arani, confirming the Judgment and Decree dated 21.11.2008 and made in O.S. No.381 of 1995 on the file of District Munsif Court, Polur.

For Appellants : Mr.A.Bharathi

For Respondents : Mr.K.N.Pandian

JUDGMENT

The defendants in a suit for permanent injunction are the appellants in the above Second Appeal.

2. The parties are described as per their litigative status before the trial Court.

3. The first respondent in the above Second Appeal, as plaintiff, filed a suit in O.S. No.381 of 1995 claiming that the suit property belonged to him absolutely and the plaintiff had earlier filed a suit against the first defendant in O.S. No.409 of 1994 for declaration of title and for consequential permanent injunction. In the said suit, the Court had granted



an injunction and the suit was pending.

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4. According to the plaintiff, in order to tide over the defect in the defendants' claim over the suit properties, during the pendency of the suit in O.S. No. 409 of 1994, the first defendant has sold the property to the 5th defendant. According to the plaintiff, the sale is hit by the doctrine of *lis pendens*. Further according to the plaintiff, the defendants 1 to 9, joined together and attempted to kidnap the plaintiff, in order to compel him to withdraw the suit in O.S. No.409 of 1994 and that the defendants are powerful people in the locality, with political background and therefore, the plaintiff sought for an injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also seeking for another permanent injunction to restrain the first defendant from creating any encumbrance over the suit property.

5. The first defendant filed a written statement denying the plaintiff allegations and stating that the plaintiff was never in possession of the suit property and even though an interim injunction was granted in the earlier suit, the subject matter of the suit has become infructuous. According to the first defendant, the sale in favour of the first defendant is valid and the



allegations of collusion, kidnapping were stoutly denied.

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6. The parties went for trial and the trial Court decreed the suit as prayed for by the plaintiff. Aggrieved by the judgment and decree of the trial Court, the defendants preferred an Appeal. The First Appellate Court, taking note of pendency of the earlier suit and death of the first defendant and the fact that the sale deed in Ex.B1 was registered only after filing of the suit in O.S.No.409 of 1994 dated 07.11.1994, proceeded to confirm the findings of the trial Court and dismissed the Appeal.

7. Aggrieved by the said judgment and decree of the Courts below, the defendants 5 to 9 alone have chosen to prefer the present Second Appeal.

8. On 18.04.2017, the Second Appeal was admitted on the following substantial question of law:-

“ Whether the Courts below are correct in upholding the case of the 1st respondent/plaintiff inspite of the fact that the earlier suit for comprehensive prayer in O.S. No.409/1994 on the file of the Court of the District Munsif, Polur, Tiruvannamalai District, came to be dismissed as not pressed without obtaining leave?”



9. I have heard Mr.A. Bharathi, learned counsel for the appellants and Mr.K.N.Pandian, learned counsel for the respondents.

10. The learned counsel for the appellants revolved his arguments around the substantial question of law and would also take me through the pleadings in the suit as well as earlier suit and also the registered documents in Ex.A3 to Ex.A8 and Ex.B1, sale deed to fortify his contentions that the plaintiff has not established the factum of his being in possession as claimed in plaint and was therefore, not entitled to injunction.

11. The learned counsel for the appellants would also state that when a comprehensive suit had already been filed for declaration and permanent injunction, there was absolutely no cause of action for filing subsequent suit and further more, pending the second suit, the earlier suit has also been withdrawn by the plaintiff.

12. The learned counsel for the appellants would also rely decision of the Hon'ble Supreme Court in the case of *Padhiyar Prahladji Chenaji (Deceased) through LRs Vs. Maniben Jagmalbhai (Deceased) through LRs and others* reported in (2022) 12 SCC 128, where the Hon'ble Supreme



Court referring to provisions of Sections 31, 34, 38 and 41 of the Specific Relief Act, 1963 held that when the plaintiff fails to get substantive relief by way of declaratory prayer, then the relief of injunction would become consequential in nature and the same has to fail.

13. Per contra, the learned counsel for the respondents would take me through the issues framed before the trial Court and also the discussion of the trial Court and the findings arrived thereon, which came to be confirmed by the First Appellate Court as well. The learned counsel for the respondents would therefore, contend that the concurrent findings were well merited and do not require any interference under Section 100 of the Code of Civil Procedure.

14. I have heard the learned counsel on either side and also perused the typed set as well as additional typed set of papers made available by the learned counsel for the appellants and also keep in mind, the ratio laid down by the Hon'ble Supreme Court in *Padhiyar Prahladi Chenaji's* case, referred herein supra.



15. I find that the trial Court framed a specific issue as to whether the suit property is in the possession of the defendants, which according to the learned counsel for the respondents who would invite my attention to the findings of the First Appellate Court, with regard to Ex.B1, the sale deed which is said to have been executed on 27.07.1994. However, admittedly, the document was registered before the Sub Registrar concerned only on 07.11.1994, after filing of the suit. The First Appellate Court found that the delay has not been explained by the defendants. The First Appellate Court found that no follow up action was initiated by the appellants as purchasers, pursuant to Ex.A3 and also found that the description of property under Ex.B1 to be ambiguous. On the contrary, having noticed that the plaintiff has exhibited several documents to establish his possession of the suit property, the First Appellate Court did not find any warrant to interfere with the trial Court's findings.

16. In a suit for permanent injunction, cause of action is always recurring. The specific cause of action on which the plaintiff approached the Court earlier was alleging of attempt to kidnap the plaintiff in order to have the earlier suit dismissed as not pressed. Therefore, it cannot be said



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that the plaintiff was not entitled to file another suit in the wake of pendency of the earlier suit for declaration and permanent injunction. The cause of action for the second suit has been pleaded to be entirely different and the Courts have also concurrently found that the plaintiff has established his possession over the suit property. In fact, even in the earlier suit, the plaintiff was found to be in possession and interim injunction was also granted. Irrespective of whether the earlier suit was subsequently withdrawn or not, the cause of action in the present suit subsists independently. I am also in agreement with the findings of the First Appellate Court that Ex.B1 sale deed appears to have been ante-dated to give an impression that it was executed prior to the filing of the suit. However, the said sale deed has been registered admittedly only after filing of the suit and therefore, the defendants have not come to Court with clean hands and they cannot claim to be bonafide purchasers.

17. Both the Courts below have appreciated the oral and documentary evidence available on record in a judicious manner and arrived at concurrent findings of fact that the plaintiff was in possession of the suit properties as on date of filing of the suit. Such concurrent findings, neither being illegal



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nor perverse, do not warrant interference under Section 100 of the Code of Civil Procedure.

18. The ratio laid down by the Hon'ble Supreme Court would not apply to the facts of the present case as in the case before the Hon'ble Supreme Court, the injunction was sought as a consequential relief based on the substantive relief in the earlier suit. Here, as already seen and discussed, the cause of action for the second suit was entirely different and therefore, the ratio laid down by the Hon'ble Supreme Court cannot be applied to the facts of the present case. The substantial question of law is answered against the Appellants.

19. In fine, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

01.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
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To

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1. The Subordinate Judge, Arani
2. The District Munsif, Polur.

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P.B.BALAJI, J.

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