



S.A.(MD) No.333 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.(MD) No.333 of 2007

R.Murugesan

... Appellant

-VS-

Balakrishnan (died)

2.B.Rajeshwari

3.Nirmala

4.Ramesh Kumar

... Respondents

(Respondents 2 to 4 are brought on record
as L.Rs. of the deceased sole respondent)

PRAYER: Appeal against the judgment and decree, dated 07.03.2006, passed in A.S.No.86 of 2003 on the file of Additional Sub-Court, Kumbakonam, confirming the judgment and decree, dated 03.03.2003, passed in O.S.No.275 of 2002 on the file of Principal District Munsif Court, Valangaiman at Kumbakonam.



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For Appellant : Mr.R.Devaraj

For Respondent 1 : Died

For Respondents 2 to 4 : Mr.G.Gomathi Shankar

JUDGMENT

The defendant, in a suit for bare injunction, is the appellant. The respondent's suit for bare injunction was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendant is before this Court.

2. According to the respondent/ plaintiff, the suit property originally belonged to one Swaminathan Padayachi and he had three sons, namely, Packiri, Natesan and Amirthalingam. The plaintiff is the son of Amirthalingam. The defendant is the grandson of Pakkiri. It was the case of the plaintiff that after the death of Swaminatha Padayachi, there was a partition among his three sons. The suit property was divided into three equal portions, measuring 11 feet east-west and 15 feet north-south. The portion extreme east-west was allotted to the share of the defendant's grandfather –



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Pakkiri. The middle portion was allotted to the share of Natesan and the extreme western portion was allotted to the share of plaintiff's father – Amirthalingam. After the death of Natesan, the middle portion was inherited by his only daughter – Saraswathi and she sold the middle portion to plaintiff's father by a registered sale deed, dated 25.08.1968, marked as Ex.A-1. Thus, after the death of plaintiff's father, he has been in possession and enjoyment of the eastern and middle portion and the suit property is shown as ABCD in the Plaint Plan. The defendant inherited the eastern portion, allotted to the share of Pakkiri, and he attempted to interfere with the possession of the plaintiff over ABCD portion and, therefore, the suit was laid for bare injunction.

3. The defendant filed a written statement, denying the title as well as possession of the plaintiff over the suit property. The defendant specifically denied the oral partition pleaded by the plaintiff and allotment of shares to the sons of Swaminathan Padayachi in the fashion alleged in the plaint. He also denied the sale deed executed by Saraswathi in favour of plaintiff's father. On these pleadings, the defendant sought for dismissal of the suit.



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4. Before the trial Court, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. On behalf of the defendant, the defendant was examined as D.W.1 and yet another witness was examined as D.W.2. On the side of plaintiff, the sale deed, executed by Saraswathi in favour of plaintiff's father, was marked as Ex.A-1. On the side of defendant, no document was marked.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff proved his possession over the suit property and granted decree for injunction. Aggrieved by the same, the defendant preferred an appeal in A.S.No.86 of 2003 on the file of Additional Sub-Court, Kumbakonam. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the defendant has come by way of this Second Appeal.

6. At the time of admission, this Court formulated the following substantial question of law, by an order, dated 27.02.2008 :



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Whether the judgment and decree of the Court below is perverse on account of its finding that title follows possession when admittedly there is no document produced on the side of the respondent to show that he is in possession of the property continuously ?

7. The learned counsel appearing for the appellant/defendant submitted that absolutely there is no evidence available on record to prove the oral partition among the sons of Swaminathan Padayachi and, therefore, Ex.A-1, sale deed, executed by Saraswathi in favour of plaintiff's father, will not convey any right to the plaintiff over the middle portion, covered under the sale deed. The learned counsel further submitted that the plaintiff failed to produce any documentary evidence to prove his possession over the suit property and, therefore, the findings reached by the Courts below, regarding the possession of the plaintiff, are not correct. The learned counsel also submitted that the observation made by the trial Court as if title would follow possession is perverse, in the absence of any evidence to prove possession of the plaintiff over the suit property.



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8. The learned counsel for the respondent, by relying on the recital in Ex.A-1, submitted that the oral partition pleaded by the plaintiff was proved by the recital in Ex.A-1, which is more than a 30 year old document. The learned counsel, also by taking this Court to the evidence of P.W.1, submitted that the oral partition pleaded by the plaintiff and referred to in Ex.A-1, was not at all denied by the defendant in his evidence and, therefore, the Courts below, by properly appreciating the recital in Ex.A-1, came to the conclusion that the plaintiff had proved his prima facie right over the suit property and the suit property, being a vacant site, the plaintiff's possession could be presumed.

9. I have heard the learned counsel for the parties and also gone through the records.

10. The suit was filed by the plaintiff on a specific pleading that after the death of Swaminathan Padayachi, the property was orally divided among his sons and his father was allotted the property on the western side. The plaintiff also claimed title over the middle portion, allotted to Natesan by virtue of a sale deed, marked as Ex.A-1. A perusal of Ex.A-1 would suggest that the oral partition among the sons of Swaminathan Padayachi was referred to in that document and the middle portion, allotted to the share of Natesan, was



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sold by his only daughter – Saraswathi in favour of plaintiff's father under the document. When the defendant was examined as D.W.1 and confronted with the recitals in Ex.A-1, he pleaded ignorance. He also admitted that there was no misunderstanding between him and his paternal aunt - Saraswathi, who sold the property to the plaintiff's father under Ex.A-1. He further deposed that the sale of middle portion to plaintiff's father by his aunt – Saraswathi was made known to him only after filing of the suit and even, thereafter, he has not enquired with her about the same. The defendant, even though raised a plea denying the oral partition relied on by the plaintiff, in his evidence, he failed to assert the said denial. When he was confronted with the recitals in Ex.A-1 regarding the oral partition among the sons of Swaminathan Padayachi, he only pleaded ignorance. Ex.A-1 was dated 25.08.1968 and the suit was filed only in the year 2002. Therefore, Ex.A-1 was 33 year old document and the presumption available to the old document would be applicable to the same. Taking into consideration the recital in Ex.A-1, the admission of D.W.1, and the evidence of P.W.1, both the Courts below came to the conclusion that the plaintiff established his right over the ABCD portion, which consists of western portion, allotted to plaintiff's father – Amirthalingam and middle portion, allotted to Natesan. The suit property is a vacant site. In such circumstances, when the right of the plaintiff over the suit property is



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proved by virtue of earlier partition and sale deed under Ex.A-1, the possession automatically follows title of the plaintiff. Therefore, both the Courts below are justified in coming to the conclusion that the plaintiff was entitled to bare injunction, as he proved his title as well as possession. Though the trial Court, as a passing reference, observed that title follows possession, in the case on hand, as discussed earlier, prima facie title of the plaintiff is proved under Ex.A-1 and the other evidence available on record and in such cases, as per the principle "possession follows title" in respect of a vacant site, the plaintiff is entitled to a decree for bare injunction. The finding, in this regard, is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity. Therefore, the question of law, framed at the time of admission, is answered against the appellant and in favour of the respondents.

11. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected M.P.(MD) No.1 of 2007 is closed.

21.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To:

- 1.Additional Sub Judge,
Kumbakonam.
- 2.Principal District Munsif,
Valangaiman at Kumbakonam.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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S.SOUNTHAR, J.

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