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1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)NO.104 OF 2013
and
C.M.P(MD)No.2012 of 2019

P.Amaran

:Appellant/Respondent/Defendant

.VS.

1.Chandanam(died)

2.Rajeshwari

3.Kaliammal

4.Veerapathiran

5.Nagarajan

6.Loganathan

(Respondents 3 to 6 are brought on record as legal representatives of the deceased first respondent as per order of this Court made in M.P.No.2 of 2013 in S.A(MD)No.104 of 2013, dated 26.08.2015)

:Respondents/Appellants/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.13 of 2010, dated 31.3.2011, on the file of Sub-Court, Theni, reversing the judgment and decree made in O.S.No.155 of 2007, dated 18.09.2009, on the file of District Munsif Court, Theni.



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2

For Appellant	:Mr.A.Arumugam for M/s.Ajmal Associates
For Respondent-1	: Died
For Respondents 2 to 6	: Mr.Babu Rajendran

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.13 of 2010, dated 31.03.2011, on the file of Sub-Court, Theni reversing the judgment and decree made in O.S.No.155 of 2007, dated 18.09.2009, on the file of District Munsif Court, Theni.

2.The defendant in the suit is the appellant. The respondents/Plaintiffs filed a suit for bare injunction. The suit was dismissed by the trial Court. The appeal filed by the respondents was allowed and the Ist Appellate Court granted a decree for permanent injunction as prayed for. Aggrieved by the same, the appellant/defendant is before this Court.

3.According to the respondents, the suit property was sold by Pouse Veerachamy, father of the appellant in favour of one Thayammal on 16.06.1978. The said Thayammal died in the year 1989 and her husband Subramani sold a portion of the property



purchased by Thayammal in favour of respondents vendor Manoharan on 20.09.1996. The respondents purchased the property from the said Manoharan under sale deed, dated 18.08.2004. It was asserted by the respondents that they have been in possession and enjoyment of the suit property which is a vacant site from the date of their purchase and the appellant/defendant attempted to interfere with the possession. Therefore they were constrained to file a suit for bare injunction.

4.The appellant/defendant filed a written statement denying the alleged sale by his father Pouse Veerachamy in favour of Thayammal. It was also claimed by the appellant that the suit property has been in his possession and enjoyment along with other properties in the adjacent survey number. Therefore,the appellant denied the title as well as the possession of the respondents/Plaintiffs.

5.Before the trial Court, the first respondent was examined as P.W.1 and six documents were marked on behalf of the respondents side as Ex.A1 to Ex.A6. On behalf of the appellant, he was examined as D.W.1 and the Deputy Tahsildar of Theni Region was examined as D.W.2. On behalf of the appellant, four documents were marked as Ex.B1 to Ex.B4.



6.The trial Court, on appreciation of evidence available on record, came to the conclusion that the suit for bare injunction without the prayer for declaration, was not maintainable. The trial Court also gave a finding that the respondents failed to prove their possession over the suit property and hence dismissed the suit. Aggrieved by the same, the respondents preferred an appeal in A.S.No.13 of 2010, on the file of Sub-Court, Theni. The Ist Appellate Court based on Ex.A1-Sale Deed in favour of the respondents/Plaintiffs came to the conclusion that the respondents proved their title over the suit property and the suit property being a vacant site, the possession of the respondents/plaintiffs can be inferred in the light of kist receipt produced by them as Ex.A3 and allowed the appeal. Aggrieved by the said judgment and decree, the appellant is before this Court.

7.At the time of admission, this Court formulated the following substantial questions of law by order, dated 18.2.2013:

(a)Whether the First Appellate Court is legally wrong in relying on Ex.A1, when Ex.A1 and its contents are not at all proved as per the provision contained in Indian Evidence Act, 1872?

(b)Whether the suit for injunction is maintainable when the plaintiff's title to the suit property is disputed by the defendant?



(c) Whether the First Appellate Court is legally wrong in allowing the application filed under Order 41 Rule 27 of C.P.C, 1908 without considering the necessary legal requisites contained therein?

(d) Whether the finding of the First Appellate Court that the plaintiffs are owner of the suit property, is as a result of admission of immaterial, irrelevant evidence and rejection of material admissible evidence and whether such a perverse finding is liable to be set aside under Section 100 of C.P., 1908?

8. The learned counsel for the appellant submitted that even as per the admitted case of the respondents, the suit property originally belongs to the father of the appellant Pouse Veerachamy and he allegedly sold the property in favour of Thayammal and the said sale in favour of Thayammal was not proved by the respondents by producing the document in favour of Thayammal. The learned counsel further submitted that the title document of respondents' vendor Manoharan was also not produced. In such circumstances, the Ist Appellate Court ought not to have upheld the title of the respondents over the suit property, merely based on the sale deed in favour of the respondents marked as Ex.A1. The learned counsel further submitted that in view of the failure of the respondents to produce the parent title documents, serious cloud is created over the case of the respondents and in such circumstances, the suit for bare injunction is not maintainable.



9. In response to the arguments of the learned counsel for the appellant, the learned counsel for the respondents 2 to 6 submitted that the title of the respondents was proved by producing the sale deed executed by respondents vendor Manoharan, dated 18.08.2004 and therefore, the Ist Appellate Court was justified in upholding the title of the respondents. The learned counsel further submitted that the trial in the present suit was taken up simultaneously with 11 other suits and in fact, D.W.2 was examined jointly in all the other suits. The parent documents of the respondents were produced in the connected suits and the same was not marked in the present suit.

10. The suit property was described as a vacant site in the plaint schedule. Therefore, if the respondents prove the title over the suit property, then the Court can safely infer possession. Even as per the admitted case of the respondents, the property originally belonged to Pouse Veerachamy, the father of appellant. He allegedly sold the property in favour of Thayammal in the year 1978 and after the death of the said Thayammal, her husband Subramani sold the property to the plaintiffs vendor Manoharan. The sale deed executed by Manoharan was marked as Ex.A1. Further, the sale deeds allegedly executed by the father of the appellant/defendant in favour of Thayammal and alleged sale



deed executed by Thayammal's husband in favour of Manoharan were not produced before the Court.

11. In the written statement filed by the appellant/defendant, he specifically denied the alleged sale deed executed by his father in favour of Thayammal. Therefore a serious dispute is created regarding the title of the respondents. Unless the parent documents of the respondents namely, sale deeds executed by Pouse Veerachamy in favour of Thayammal and the sale deed executed by Thayammal's husband Subramani in favour of Manoharan are produced, this Court cannot come to a definite conclusion that the property was validly transferred by the appellant's father in favour of the respondents predecessor-in-title. Since there is a serious dispute regarding the title of the respondents, mere suit for bare injunction without the prayer for declaration, is not maintainable and the substantial question of law No(b) is answered accordingly in favour of the appellant and as against the respondents.

12. As per the property description found in the plaint schedule, the suit property is described as vacant site. The appellant produced Ex.A3-Kist receipt just prior to the filing of the suit. He has not filed any other document to prove his alleged



possession over the suit property. In view of serious dispute raised by the appellant regarding the title of the respondents, this Court already came to the conclusion that mere a suit for bare injunction is not maintainable. Therefore, the judgment and decree passed by the Ist Appellate Court are required to be set aside. In view of answer to substantial question of law(b), substantial questions of law (a), (c) and (d) are also answered in favour of the appellant.

13. In nut-shell:

(a) the Second Appeal stands allowed by setting aside the judgment and decree passed by the Ist Appellate Court;

(b) the judgment and decree passed by the trial Court is restored. The suit is dismissed, with liberty to the appellant to file a fresh suit seeking the relief of declaration of title and appropriate consequential reliefs.

(c) there is no order as to costs.

(d) Consequently, connected Miscellaneous Petition is closed.

04.04.2024



Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

- 1.The Sub-Judge,
Theni.
- 2.The District Munsif,
Theni.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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10

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)NO.104 OF 2013
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C.M.P(MD)No.2012 of 2019

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