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SA(MD)No.193 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.193 of 2021

K.Nallamuthu : Appellant/Plaintiff

Vs.

1.M.Chandran
2.J.Senthilkumar : Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, challenging the judgment and decree passed by the Subordinate Judge, Palani, in AS No.6 of 2018, dated 03/10/2019 by confirming the judgment and decree passed by the District Munsif Court, Palani, in OS No.232 of 2013, dated 11/10/2017.

For Appellant : Mr.G.Ganai Amaram

For 1st Respondent : Mr.K.C.Maniyarasu

For 2nd Respondent : Mr.Anand Chandrasekar
for M/s.Sarvabhauman
Associates

JUDGMENT

This second appeal is filed against the judgment and decree passed by the Subordinate Judge, Palani, in AS No.6 of 2018 dated 03/10/2019 by confirming the judgment and decree passed by the District Munsif Court, Palani, in OS No.232 of 2013, dated 11/10/2017.



SA(MD)No.193 of 2021

2. The plaint averments:- The property originally belongs to one Chellammal, who is the predecessor in title of the plaintiff by way of long possession. She was paying taxes, water connection charges, etc. One Ponnusamy, who is the paternal junior Uncle of the defendants filed a suit in O.S.No.234 of 1985 against Chellammal stating that the property belongs to him. The suit was dismissed confirming the right of Chellammal, on 21/04/1993. There was no further appeal by the legal heirs of the defendants in that suit.

3. Chellammal executed a Will on 06/05/2006 in favour of her son namely Girija Vellaban. Girija Vallaban executed a power of attorney in favour of one Suryakumar on 05/04/2007. The plaintiff purchased the property from Suryakumar on 13/04/2007 and in possession of the property. Since there is damage and dilapidated building in the property, the plaintiff wanted to remove the same and put up new construction. That was opposed by the defendants. So the suit is laid for permanent injunction and for costs.

4. The defendants filed written statement stating that the properties are Trust properties belongs to one Ambathurai Madam. One Sri Balaiah Swamigal was the



SA(MD)No.193 of 2021

WEB COPY

Trustee, who is the predecessor-in-title to the defendants. They constructed Ambathurai Madam for conducting Thanneer Pandal Dharmam and the lands were donated by Keezhakottai Zamindar as Manibam. It is denied that Chellammal became owner of property by virtue of long possession. In the suit in O.S.No.234 of 1985, Chellammal admitted in the written statement that the property belongs to the Ambathurai Madam. Chellammal belongs to Kerala. She came down to Palani for her livelihood some 70 years back and running a tea shop in Ambathurai Madam. So she never became the owner of the property by virtue of long possession. Since Chellammal have no right over the property, the Will executed by her is not valid under law.

5. On the basis of the pleadings, the trial Court has formulated the following issues.

1. Whether the suit property belongs to Chellammal?
2. Whether the Will dated 07.05.1997 executed by Chellammal in favour of her son is valid?
3. Whether the suit property belongs to the Trust or not?
4. Whether the plaintiff is entitled for permanent injunction as prayed for or not?
5. To what other reliefs the plaintiff is entitled to?



SA(MD)No.193 of 2021

6.To substantiate the contention on the part of the plaintiff, he himself was examined as PW1 and marked 11 documents on his side. On the side of the defendants, two witnesses were examined and 9 documents were marked.

7.At the end of the trial process, the trial court dismissed the suit with costs.

8.Against which, A.S.No.6 of 2018 was preferred by the plaintiff before the Sub Court, Palani. That was also dismissed, concurring with the judgment and decree by the trial Court.

9.Against the concurrent findings of the Courts below, this second appeal has been preferred by the plaintiff.

10.At the time of admission, the following substantial questions of law were framed:-

(i)Whether the Courts below were right in dismissing the suit on the ground that the plaintiff has not prayed for declaration of title, more so when the defendants do not set up title themselves?



SA(MD)No.193 of 2021

(ii) Whether the Courts below

overlooked the principles of law that possession is nine points in law and a person in possession can protect his possession against the whole world except the true owner?

11. Let us straightway go to the statement filed by Chellammal, who is the predecessor-in-title as per the case of the plaintiff in OS No.234 of 1985. That suit was filed by one Ponnusamy, as mentioned above, who is the paternal junior Uncle of the defendants against Chellammal for recovery of possession, permanent injunction and specific performance. It is not the suit for inter parties, but the suit between the predecessor-in-title of the plaintiff and the defendants herein. The operative portion was extracted by the trial court, which is also relevant for discussion now.

12. Para 13 of the judgment of the trial court reads as under:-

"13. மேலும் அம்பாத்துரை மடம்
சம்மந்தப்பட்ட நபர்கள் தான் செல்லம்மாளை



SA(MD)No.193 of 2021

தாவா சொத்திலிருந்து வெளியேற்ற
வேண்டுமென்றும், வாதிக்கு இவ்வழக்கு தாக்கல்
செய்வதற்கு உரிமை இல்லை என்றும்
கூறியுள்ளார். பி.வா.சா.1 ல் பத்தி 5-ல் As for
as the building portion and vacant space
in T.S.No.986 is concerned it exclusively
belongs to Amathurai Madam a trust
property and not to any individual
including the plaintiff. The property tax
is assessed in the name of Ambathurai
Madam and the same is paid by the
defendant in the name of the same Madam
which inducted her in possession of the
property about 16 years ago என்றும் பத்தி
6-ல் The defendant is a native of Kerala
state who had come down to palani for
eking out her livelihood about 44 years
back. When she was searching for a place
to conduct a tea shop 16 years ago they
came to know about the suit property
belonging to Ambathurai Madam. It was in a
bad shape at that time and the care taker
of the madam permitted the defendant to
repair the buildings, occupy it conduct
the tea shop and reside in the same by



SA(MD)No.193 of 2021

paying the municipal tax etc.என்றும் பத்தி

9-ல் The defendant if at all can be evicted, can be evicted only by the Ambathurai Madam people and the plaintiff's suit to unlawfully gain a trust property in the name of enforcing a contract is nothing but an exercise in futility என்றும் சொல்லியுள்ளார்.”

13.This is not denied and disputed by the plaintiff herein. During the course of evidence, PW1 himself has admitted that the suit property originally belongs to Ambathurai Madam. But in the next line, he has stated that the property originally belongs to Chellammal. A wrong description or recital is made by Chellammal in the Will executed by her in favour of Girija Vallabhan, which is marked as Ex.A2. In the Will, Challammal has described the property as if she got title by virtue of the decree and judgment in O.S No.234 of 1985. But actually as mentioned above, she has admitted that the property belongs to Ambathurai Madam. Simply because the suit that was filed by Ponnusamy was dismissed that will not confer any title upon Challammal. So, the plaintiff who purchased the property from Girija Vallabhan cannot take advantage on the wrong title. Challammal cannot bequeath



SA(MD)No.193 of 2021

WEB COPY

more than what she got. It is admitted by Chellammal that she belongs to Kerala State came down to Palani for livelihood 40 years ago. At that time, she came to know that the property belongs to Ambathurai Madam. The care taker of the Madam permitted her to repair the buildings, occupy it to conduct a tea shop and residing there. So, when there is a categorical admission by Chellammal, she cannot bequeath the property as if it absolutely belongs to her. So, the title of Challammal is now issue. This has been pointed out by the trial court to the effect that when the title is under dispute, the suit ought to have been filed for declaration of title.

14. But Challammal is no more. Girija Vallaban was not examined as party. The suit was filed only by the purchaser. On that account, the learned counsel appearing for the appellant, on the basis of the documents now produced before the trial court namely the tax receipts under Ex.B6, payment of electricity charges under Ex.B7, demand notice issued by the Municipal Corporation, Palani under Ex.B8, would submit that since he has proved the possession over the property, it must be protected.

15. At the time of hearing, the first respondent counsel required to clarify their stand and he has



WEB COPY



SA(MD)No.193 of 2021

submitted that the first respondent is the Madathipathy of the Madam. He would further submit that it is a public property. Taking advantage of the possession of the predecessor-in-title, the suit was filed seeking permanent injunction, for demolition and reconstruction. Permanent injunction is a equitable remedy and the plaintiff has to approach the court with clean hands. The attempt made by the plaintiff for getting permanent injunction is nothing, but fraud on the judicial process.

16.It is also submitted that the plaintiff is the bona-fide purchaser without notice. The learned counsel appearing for the appellant would submit that by virtue of Ex.B1, the title was conferred upon Challammal. When admittedly the property and superstructure belong to the Madam, naturally permanent injunction cannot be sought.

17.DW1 during the course of evidence has admitted that Ponnusamy is the junior paternal Uncle. But he has stated that whether he filed a suit in OS No.234 of 1985 was not known to him. Even in the above said judgment, the title of Challammal was not recognized. There is a clear finding to the effect that not only by the trial court, but also by the appellate court.



WEB COPY



SA(MD)No.193 of 2021

18.DW2 is the brother of Ponnusamy, who filed the suit in OS No.234 of 1985. During the course of cross examination, a complete new plea was raised by the plaintiff stating that Ambathurai Madam and Dhandapani Madam are separate and the suit property does not belongs to Ambathurai Madam. DW2 is noway connected with Ambathurai Madam. These pleas are totally new without any pleadings. So these new stands cannot be taken.

19.Another issue that was brought on record is that OS No.163 of 2007 was filed by DW2's father as a Trustee of the Madam. Still the suit is continued by him after the death of his father. Further particulars are not available with regard to the suit in OS No.163 of 2007. The plaint copy, statement copy and the court before which the matter is pending were not brought properly. So, no discussion can be made on this aspect now.

20.Now coming to the issue of possession, when the title issue is under serious dispute, mere possession will not confer any title upon either Challammal or Girija Vallaban by virtue of the Will or upon the plaintiff, who is the purchaser. On that basis, he cannot maintain the suit for permanent injunction. It was rightly concluded by the trial court and confirmed by the



SA(MD)No.193 of 2021

appellate court. Accordingly, both the substantial questions are answered that they did not support the appellant's case.

21.For all the reasons stated above, this court is of the considered view that the concurrent finding of facts recorded by the trial court, as confirmed by the appellate court requires no interference by this court.

22.In the result, this second appeal is **dismissed**.

No costs.

09/07/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif Court,
Palani.
- 2.The Sub Court,
Palani.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA(MD)No.193 of 2021

G.ILANGOVAN, J

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SA (MD) No.193 of 2021

09/07/2024