



S.A(MD)No.97 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.97 of 2023

and

C.M.P(MD)No.2335 of 2023

A.Wiselin Jayakumar

... Appellant/Plaintiff

Vs.

1.Udamootudharmam Vagai,
Parvathipuram,
Arulmighu Sri Subramanyaswamy Devasthanan,
Tiruchendur Post & Village,
VOC District,
Rep.by its Executive Officer.

2.The Assistant Commissioner,
HR & CE,
Suchindram Village & Post,
Agastheeswaram Taluk,
Kanyakumari District.

3.The Joint Commissioner,
HR & CR,
Tirunelveli Post,
Tirunelveli District.

4.The Commissioner,
HR & CE,
Nungambakkam,
Chennai.

...Respondents/Defendants



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PRAYER :-

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This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 05.08.2022 in A.S.No.23 of 2019 on the file of the I Additional Subordinate Judge, Nagercoil, confirming the judgment and decree dated 30.07.2019 made in O.S.No.299 of 2014 on the file of the Principal District Munsif, Nagercoil.

For Appellant : Mr.K.Prabhakar
For R1 : Mr.M.Muthugeethayan
For R2 – R4 : Mr.A.Baskarn
Additional Government Pleader

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 05.08.2022 passed in A.S.No.23 of 2019 on the file of the First Additional Subordinate Court, Nagercoil, confirming the judgment and decree dated 30.07.2019 passed in O.S.No.299 of 2014 on the file of the Principal District Munsif Court, Nagercoil.

2. The appellant is the plaintiff in O.S.No.299 of 2014 on the file of the Principal District Munsif Court, Nagercoil. The respondents 1 to 4 are the defendants 1 to 4 in that suit.



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3. For the sake of convenience, the parties are referred as plaintiff and defendants as arrayed in O.S.No.299 of 2014 on the file of the Principal District Munsif Court, Nagercoil.

4. It is the case of the plaintiff that the suit property is measuring 1.5 cent comprised in old S.No.3147 and present R.S.No.G1/95 and G1/96 of Vadasery village. The plaintiff purchased the suit property from one K.Vijayakumar through registered Sale Deed, dated 18.08.2011. Originally, the suit property belonged to late P.Subramonia Panicker, who was granted separate Patta as per order, dated 05.07.1977 of the Director of Settlement, Madurai since he had been in uninterrupted possession and enjoyment of the suit property from 1949. No revision was preferred against that order particularly by the defendants and hence, the order of the Director of Settlement, Madurai, dated 05.07.1977 became final. Thereafter, the said P.Subramonia Panicker executed a settlement deed dated 21.10.1122 M.E in favour of one Chenagam Ammal, who in turn executed settlement deed dated 29.07.1124 M.E in favour of Kumaraswamy Panicker. The plaintiff's vendor K.Vijayakumar is the son of the said Kumarasamy Panicker. The plaintiff's vendor got title and possession over the suit property as per the Will dated



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29.06.1998 executed by his mother late.Velammal. The plaintiff has been in possession and enjoyment of the suit property from the date of purchase by paying kist to revenue and corporation authorities. Whiles, on 24.09.2014, the 2nd defendant and his men, who has no right, attempted to demolish the building existed in the suit property by using JCB, which was prevented by the plaintiff. Again on 10.10.2014 on the instigation of the defendants 3 and 4, the 2nd defendant again attempted to demolish the building in the suit property. Hence, the plaintiff filed the suit for permanent injunction against the defendants.

5. It is the case of the defendants that the suit property belonged to the 1st defendant/Udamootu Dharmam Vagai, Parvathipuram. The Director of Settlement, Madurai has no right to declare any title or possession of any to the suit property. The plaintiff's vendors predecessor had no right over the suit property. The 1st defendant got every right to evict the plaintiff from the suit property under due process of law under Section 78 of the TN Hindu Religious and Charitable Endowments Act or by filing a suit. The alleged Kumaraswamy Panicker's predecessor had obtained lease of 2.10.420 Ares of



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land in Re.Survey No.G1/95 and 3.18.843 Ares of land in Re.Survey No.G1/96 from the 1st defendant on the basis of lease arrangement. On the basis of possession, Patta was granted and Patta will not confer any title to the Kumaraswamy Panicker. A lessee or his successor have no right to dispute the title of the lessor over the leasehold property. As per Section 109 of Tamilnadu Hindu Religious and Charitable Endowment Act, the Limitation Act has no application in respect of immovable property of the religious institution. The averments of the plaintiff regarding event on 24.09.2014 and 10.10.2014 are denied. The plaintiff has no title or right over the suit property and hence, he is not entitled to any decree as sought in the suit.

6. During trial, the plaintiff was examined as P.W.1 and marked Ex.A.1 to Ex.A.14. On the side of the defendants, the 1st defendant/ Superintendent was examined as D.W.1 and marked Ex.B.1 and Ex.B.2.

7. After hearing both, the learned Principal District Munsif, Nagercoil dismissed the suit in O.S.No.299 of 2014 by passing judgment and decree dated 30.07.2019. Aggrieved by the judgment and decree, the plaintiff



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preferred the Civil Appeal in A.S.No.23 of 2019 before the First Additional Sub Court, Nageroil. The First Appellate Court after hearing both passed judgment dated 05.08.2022 dismissed the appeal by confirming the judgment and decree of the Trial Court.

8. Challenging the concurrent finding of the Courts below, the plaintiff has preferred this Second Appeal and the same has been admitted for file on 27.02.2023 on the following substantial questions of law:-

i) Whether the pleadings in the written statement of the 1st defendant constitute a cloud over title sufficient to make a mere suit for injunction not maintainable?

ii) Whether the failure of the 1st defendant to challenge the finding of the trial Court that Ex.A.3 is binding on it is fatal to the 1st defendant's case?

iii) Whether the judgment of the lower appellate court impugning the validity of Ex.A.3 is correct when the same has not been challenged in a manner known to law?

9. The learned counsel for the appellant/plaintiff has argued that the Ex.A.3 - Settlement Order and Patta were granted in the year 1977 in favour



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of the plaintiff's predecessor as per Act 30/1964, in which the 1st defendant participated. This was not denied by the 1st defendant. Moreover, the Ex.A.

3 - Settlement Order was not challenged by the 1st defendant. Though the 1st defendant claims title over the suit property, no document was produced by them, except legal notice and reply notice under Ex.B.1 and Ex.B.2. The 1st defendant's witness D.W.1 has admitted that Ex.A.3 was not challenged in a manner known to law. Eventhough the 1st defendant's title is mentioned in Ex.A.3, the 1st defendant lost title to the property. Because, as per provisions of Section 109 of HR & CE Act, Ex.A.3 was issued considering the possession of the predecessor over suit property prior to 30.09.1951. Hence, Ex.A.3 is order of statutory authority. All revenue records are stood in the name of the plaintiff and his predecessors. So, the order of settlement officer would bind the 1st defendant.

10. The learned counsel for the appellant further submitted that the Trial Court has correctly held that in the absence of challenge against the Ex.A.3 - Settlement Order, merely alleging that the settlement officer would



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not decide the title and the 1st defendant's approach by saying so are not acceptable and answered the issue No.1 against the 1st defendant. But the Trial Court failed to grant injunction in favour of the plaintiff. Section 78 of HR & CE Act can be invoked when there is encroachment on charitable land. The defendants admitted the right of possession of the plaintiff and his predecessors over suit property and so, Section 78 of the HR & CE Act could not be invoked. The plaintiff's possession could not be disturbed, because as per Section 109 of HR & CE Act prior to 2003 amendment, the person in occupation of temple property prior to 30.09.1951 became entitled to it by adverse possession. Section 3 of Act 30/1964 exempted certain lands and the said provision/section applies to the lands only belonged to Padmanabhasamy Temple, Trivandrum and Trivandrum Palace, it did not speak about other temples. The approach of the Trial Court in examining title in a suit for bare injunction is incorrect as the property is not vacant site in large, but it is house site with building. Hence, the de jure possession based on title would not play an important role in determining possession. In suit for bare injunction, it is enough to prove the legal possession on the date of plaint. So, the plaintiff's possession was proved by the plaintiff as rightly held by the Trial Court, but failed to grant decree. The Trial Court's finding that the plaintiff



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failed to seek declaration of title, which is not correct. In a suit for injunction the title over property need not be proved, the proof of possession is sufficient. The First Appellate Court also failed to consider the above facts. Even for the sake of argument, the title of the suit property vest with 1st defendant, the possession of the plaintiff is not illegal, but it is legal as per statutory order of Ex.A.3, which is not challenged by the 1st defendant. So, the plaintiff cannot be evicted except due process of law. The defendants have not taken steps for recovery of possession as per law. The defendants attempted to evict the plaintiff by illegal manner. So, he is entitled to decree for injunction. Therefore, the Second Appeal may be allowed.

11. In support of his argument, the learned counsel for the plaintiff has relied on the citation reported in **2020 3 CTC 69 (Arulmigu Velukkai Sri Azhagiya, Singaperual Devasthanam /v/ G.K.Kannan)**, wherein it is held in paragraph Nos. 17.1 and 26 as follows:

“17.1. Where the title of the plaintiff is made to appear weak or defective, at the instance of defendant, they fall under the phrase ‘cloud on title’. In a lis in personnem between two individuals, what should



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constitute this cloud on title, how to identify whether the alleged existence of the cloud on plaintiff's title is real or imaginary, and who ought to hold it thus? To state it differently, is it not necessary to ascertain before non-suiting a plaintiff (for not seeking declaratory relief), whether the denial of his title by the defendant is substantial, or if it is a mere colourable and pretentious defence. If it falls under the second category, there can be no justifiable reason to non-suit the plaintiff merely because the defendant has contended so.

26. This Court has tried multiple approaches to test if the plaintiff should have sought any declaratory relief, but each of them only produce the same result; That given the nature and character of the suit, there is no need for the plaintiff to seek any declaratory relief. Hence, the suit is maintainable without a declaratory relief. The substantial question raised has to be necessarily answered in favour of the plaintiff/appellant."

12. Per contra, the learned counsel for the defendants has argued that the suit property absolutely belonged to the 1st defendant. The plaintiff's predecessor obtained lease and their possession is only as lessee. A lessee or his successor cannot dispute the title of the lessor. The plaintiff claims right



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over the suit property only based on Ex.A.3 - settlement order. A settlement order or revenue records will not adjudicate the title of party. It is a settled law that in a suit for bare injunction when the plaintiff is under a cloud or in dispute, the plaintiff has to sue for declaration of his title. While proceeding under Ex.A.3 was going on, the same was not given notice on the 1st defendant's trustees. This was admitted by the plaintiff as P.W.1 in his evidence. The suit for injunction against 1st defendant whose title is admitted is not maintainable. In Ex.B.2 - Reply Notice, the plaintiff admitted the 1st defendant's title over the suit property. Section 78 of the HR & CE Act can be invoked against the lessee, licensees and encroacher. The Trial Court has held that since the plaintiff has not sought relief of injunction for his possession except due process of law, the plaintiff ought to have sought relief of declaration of title over the suit property and so, the suit is not maintainable. Act 30/1964 is not applicable to the facts of this case. Because, the possessory right cannot be transferred by way of sale or otherwise. Though the trial Court has held that Ex.A.3 is binding on the 1st defendant, but the First Appellate Court has discussed the case of the defendant and passed order in favour of the 1st defendant. Therefore, the question of law is



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no longer res integra. So, the non-challenge against the Ex.A.3 is not fatal to the case of the 1st defendant. The plaintiff has filed only revenue records including Ex.A.3 and the same have been appreciated by the competent Civil Court/I Appellate Court and negated the claim of the plaintiff. The revenue records would not decide the title or right over the property. The plaintiff cannot raise question that the First Appellate Court failed to appreciate the Ex.A.3 issued under Inam Abolition Act on different footing. The same is not legally maintainable in the absence of any pleading before the trial Court. When the defendants dispute the title of the plaintiff and when the plaintiff admitted the 1st defendant's title over the suit property, the plaintiff is not entitled to injunction. The Courts below correctly dismissed the relief of the plaintiff and there is no need to interference. Therefore, this Second Appeal may be dismissed.

13. In support of his argument, the learned counsel for the defendants has relied on the following citation.

1. Judgement, dated 12.11.2019 made in S.A.No.477 of 2007 (Sivasankaran vs. S.B.Raman) passed by this Court, wherein it is held in



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paragraph No.20 as follows:

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“20. It is now settled position of law that when there is a bonafide dispute raised by the defendant, a bare injunction suit is not maintainable and a suit for declaration of title will have to be filed” .

2. (2008) 4 Supreme Court Cases 594 (Anathula Sudhakar vs. P.Buchi Reddy and Ors.), wherein it is held in paragraph No.13.1 as follows:

“13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.”

3. (2020) 15 SCC page 681 (State of Andhra Pradesh And Ors. vs. B.Ranga Reddy and Ors.), wherein it is held in paragraph No.37 as follows:

“37..... The findings on Issue 1 against the State could be challenged by way of cross-objections in terms of amended provisions of Order 41 Rule 22



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of the Code but such filing of cross-objections is not necessary to dispute the findings recorded on Issue 1 as the defendants have a right to support the ultimate decree passed by the trial court of dismissal of suit on grounds other than which weighed with the learned trial Court. Even in terms of Order 41 Rule 33 of the Code, the appellate court has the jurisdiction to pass any order which ought to have been passed or made in proceedings before it.”

14. Heard the arguments of both and perused the material records of the case. The suit property is 1.5 cent in Re.Survey No.G1/95 and G1/96 of Vadasery Village, Nagercoil. The plaintiff claims right over the property by virtue of Sale Deed, dated 18.08.2011 executed by the one K.Vijayakumar. The plaintiff traces right over the suit property through his vendor's predecessor, who was granted Ex.A.3 - Settlement Order passed by the Director of Settlement, Madurai. The defendants put forth the case that the suit property absolutely belonged to 1st defendant and raised a dispute that the settlement order or revenue records will not confer title over the property. The plaintiff also admits the title of the defendant as it was mentioned in Ex.A.3. But, the plaintiff states that the defendants have not challenged the Ex.A.3 - Settlement Order. The defendants contend that the then trustees of



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the 1st defendant were not given notice of Ex.A.3 proceedings, which is admitted in cross examination by P.W.1. It is settled law that the revenue order will not decide the title of a party. So, the non-challenge against Ex.A.3 is not fatal to the defendants.

15. However, on perusal of records, it is clear that the 1st defendant in its written statement categorically admitted that the suit property with its larger extent was leased out to Kumaraswamy Panicker, who came into possession of that property based on lease and that based on possession, Patta was granted to him. Of course, mere Patta will not confer any title to the said Kumaraswamy Panicker. But the possession of the said Kumaraswamy Panicker is not illegal possession. The plaintiff claims right of possession from the vendor's predecessor and thereby, his possession is not illegal one. It is a well settled principle of law that even if a person is in illegal possession, he should be evicted by taking due process of law. The plaintiff's case is that the defendants and henchmen unlawfully attempted to evict the plaintiff from the suit property. The defendants denied that same and the defendants took stand that the defendants are entitled to invoke Section 78 of



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the HR & CE Act. But, there is no material produced by the defendants whether they have taken steps or initiate proceedings to evict the plaintiff from the suit property, who is in possession from his vendor's predecessor who were on lease. The lease of plaintiff's vendor's predecessor is admitted by the defendants. It is not the case that they have took legal action against the lessee prior to the filing of this suit.

16. On perusal of both side material records, it is clear that the plaintiff is in possession, which is also admitted by the defendants. Therefore, in the absence of any proceeding initiated for recovery of possession by the defendants, the possession of the plaintiff should not disturbed except due process of law. The Courts below has not appreciated these facts while rendering conclusion and therefore, the same has to be interfered by way of this Second Appeal. Therefore, this Court holds that the plaintiff is entitled to an injunction for his possession over the suit property except he would be evicted by due process of law. The question of laws in the Second Appeal are answered as discussed above. Thus, this Second Appeal succeeds in part.



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17. In the result, the Second Appeal is allowed in part. The judgment and decree, dated 05.08.2022 passed in A.S.No.23 of 2019 on the file of the First Additional Subordinate Court, Nagercoil, confirming the judgment and decree, dated 30.07.2019 passed in O.S.No.299 of 2014 on the file of the Principal District Munsif Court, Nagercoil is modified. The plaintiff in O.S.No.299 of 2014 on the file of the Principal District Munsif Court, Nagercoil is entitled to permanent injunction from dispossession by the defendants except by due process of law. The defendants are entitled to invoke Section 78 of the HR & CE Act to dispossess from possession against the plaintiff. No costs. Consequently, connected Miscellaneous Petition is closed.

18.03.2024

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

- 1.The I Additional Subordinate Judge,
Nagercoil.
- 2.The Principal District Munsif,
Nagercoil.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)No.97 of 2023
and
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18.03.2024