



S.A.(MD).No.297 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.297 of 2021
and C.M.P.(MD).No.4076 of 2021

Ramachandran ... Appellant/Appellant/Plaintiff

Vs.

1.Maharajan
2.Amirthalakshmi ... Respondents/Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 29.10.2020 passed in A.S.No.46 of 2016 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree dated 22.04.2016 passed in O.S.No. 307 of 2007 on the file of the Principal District Munsif Court, Sankarankovil.

For Appellant : Mr.D.Nallathambi

For Respondents : Mr.F.X.Eugene for R1 & R2



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JUDGMENT

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This appeal has been filed against the Judgment and Decree dated 29.10.2020 passed in A.S.No.46 of 2016 on the file of the Sub Court, Sankarankovil, confirming the Judgment and Decree dated 22.04.2016 passed in O.S.No.307 of 2007 on the file of the Principal District Munsif Court, Sankarankovil.

2.The facts in brief:

A portion in the first item was purchased by the plaintiff on 30.08.1988. The southern 15 cents belongs to the plaintiff ancestrally. The northern portion and some other properties originally belongs to Soodamani @ Periyasamy ancestrally. The northern portion and some other properties were purchased by the plaintiff on 30.06.1998 from him. So the entire first item belongs to the plaintiff. Revenue records mutated in his name and in possession.

3.The second item originally belongs to one Eswarathevar. From Eswarathevar, the plaintiff purchased the second item on 09.02.1999. The second item also came into the possession of the plaintiff absolutely.



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The defendant has no right over the properties, on 07.10.2007, when the plaintiff was doing repairing work, the defendant came to the property and caused trouble. So the suit is laid for permanent injunction and for cost.

4.The averments of the Statement filed by the first defendant:

The first item and other properties originally belongs to one Karuppsamy thevar. From him, the defendant's father by name Sangappathevar purchased the first item and others on 19.04.1988. So also the second item originally belongs to Periyasamythevar. From him also Sangappathevar purchased the property on 13.12.1988. The defendant has 4/15th share in the Well situated in the S.No.465/2 in the Southern side. When trouble was made by the plaintiff, over them a suit in O.S.No.213 of 1994 was filed by his father against the plaintiff and others. It was decreed in favour of the defendant's father on 04.09.1998. Against which A.S.No.150 of 1998 was filed before the Sub Court, Tenkasi. That was dismissed confirming the judgment and decree of the suit. Against which, the second appeal in S.A.No.1746 of 2000 was filed and stated to be pending till date. Even after the dismissal of the appeal



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made by the plaintiff, they are making trouble.

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5.The first item was purchased by the plaintiff measuring about 15 cents from one Soodamani @ Periyasamythevar on 20.09.1988. Now suppressing the above said fact, he purchased the very same property from some other person. Having no right over the property, the plaintiff filed the suit to usurp the properties lies on the north of survey number 465/2. Patta also standing in the name of defendant and his father previously.

6.Additional statement was filed after the plaint was amended, wherein, it is stated that Soodamani @ Periyasamythevar was not the owner of the first item measured about 30 cents. That document is not correct and suit in O.S.No.213 of 1994 was pending to create some rights. The suit without prayer of declaration is not maintainable. Similarly in respect of second item also the vendor of plaintiff has no right or title. That document was created pending suit in O.S.No.213 of 1994. In respect of that property also patta is standing in the name of the defendant.



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7. Suppressing the earlier round of litigation and pendency of second appeal in S.A.(MD).No.1746 of 2000 in respect of the very same property in suit in O.S.No.213/1994, the plaintiff filed the present suit, which was dismissed after full trial. So the plaintiff has not approached the court with clean hands.

8. On the basis of the above said pleadings the trial court formulated three issues.

1. Whether the suit properties absolutely belonging to the plaintiff?
2. Whether the plaintiff is entitled to the permanent injunction?
3. What relief the plaintiff is entitled to?

9. At the conclusion of the trial process, suit was dismissed. Against which, A.S.No.42 of 2016 was filed before the Sub Court, Sankarankovil. That was dismissed confirming the judgment and decree passed by the trial Court. Against the concurrent findings, the appeal is preferred by the plaintiff.



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10. At the time of admission the following substantial question of law were framed.

1. Whether the Courts below are correct in dismissing the suit for permanent injunction by applying the principles in Anathula Sudhakar's case without giving any liberty to amend the plaint to include the prayer for declaration of title in order to save the limitation and in the interest of justice?
2. When the trial Court found that there is a serious title dispute and chose to dismiss the suit for not seeking the prayer for declaration of title, whether the first appellate Court was right in dismissing the petition to receive the additional documents at the threshold and the appeal, without giving any opportunity to the plaintiff to produce evidence in support of the additional documents?

11. Before we enter into the discussion regarding the right, relief and title, the point which was raised by the counsel for the appellant must be cleared first.

12. The reason is that the trial court as well as the appellate court



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concurrs with finding that when serious doubt or issue is raised with regard to the title of the plaintiff namely the appellant herein unless declaration relief is sought, suit for permanent injunction simpliciter will not lie.

13.The Substantial question of law is also framed based upon the judgment of the Honourable Supreme Court in the case of ***Anathula Sudhakar Vs. P.Buchi Reddy (Dead) By LRs & Ors.*** reported in ***2009-2-L.W. 546***, wherein, our Honourable Supreme Court has laid down certain principles which must be taken into account by the courts at the time of encountering such an issue. Now we can be straight away on that point.

14.Similar one which is before us. The facts in ***Anathula Sudhakar's*** case is also that both the parties claim rival title over the disputed property. The plaintiff in the suit traces title through sale deed. So also defendant through a sale deed, of course through some other person. Suit was filed for bare injunction. The trial court decreed the suit based upon the sale deeds and possession. Appeal was filed. The



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appellate court accepted title and possession of the defendant and non suited the plaintiff. Second appeal was preferred before the High court by the plaintiffs. Second appeal was allowed. It restored the Judgment and decree of the trial court. Against which Special Leave Petition was preferred. By special leave, it was taken up for hearing. For settling the legal issue, the following questions were taken up for consideration by the honourable supreme court.

- “(i) What is the scope of a suit for prohibitory injunction relating to immovable property?*
- (ii) Whether on the facts, plaintiffs ought to have filed a suit for declaration of title and injunction?*
- (iii) Whether the High Court, in a second appeal under Section 100 CPC, examine the factual question of title which was not the subject matter of any issue and based on a finding thereon, reverse the decision of the first appellate Court?*
- (iv) What is the appropriate decision?”*

15. So the basic principles with regard to the suit for injunction are mentioned as follows:

- “11.1) 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.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.



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16. With regard to the above said basic principles, the honourable Supreme Court further clarified the position that the defendant must set out a *prima facie* case to doubt the title of the plaintiff.

17. With regard to the principle that title can be collaterally taken up in a suit for injunction is clarified in para 15.

“15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple vs. Rajanga Asari # AIR 1965 Mad. 355, the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question



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necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand, in Sulochana Amma vs. Narayanan Nair # 1994 (2) SCC 14, this Court observed that a finding as to title given in an earlier injunction suit, can operate as res judicata in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as res judicata. This Court observed :

"Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited



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pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata."

This was reiterated in Annaimuthu Thevar v. Alagammal - 2005 (6) SCC."

18.The conflict by way of judgments in the above said two cases was taken into consideration by the Honourable Supreme Court in the case of ***Sajjadanashin Sayed Md. Vs. Musa Dadabhai Ummer*** reported in ***2000 (3) SCC 350*** and after analyzing the above said cases, the following principles have been laid down.

"7. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration



and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not



investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction.

But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”



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19. In this context of the principles laid down by the honourable supreme court it is also laid the further clarification by the co-ordinate bench of this court reported in *Arulmigu Velukkai Sri azhagiya Singaperumal Devasthanam Rep. by its Trustees Vs. G.K.Kannan (Deceased) and others* reported in *2020-2-L.W.317*, wherein, it has been held that mere raising of plea by the defendant that that the plaintiff has no title over the property is not sufficient enough to hold that the suit for permanent injunction will not lie in the absence of declaratory relief. So according to the Co-ordinate bench of this court denial of title must be bonafide. So this is clarificatory judgment, which can also be taken into account.

20. Now in the light of the above said settled preposition of law, we will go further as to whether denial of title by the defendant is bonafide one or sufficient or sheer pleadings adverse in nature.

21. Now come on to the present facts. There are two items. The second item lies on the east of the first item. There is a wall on the south in survey no.465/2, for which, separate suit was filed by Ramachandran



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against the deceased Sangappathevar, who is the father of the first defendant Maharaja and second defendant Amirthakani. According to the defendant to prevent them from enjoying the right in the wall the plaintiff is laying claim in the suit properties. We need not concentrate much upon the dispute regarding the wall in the south in S.No.465/2. Now it has been settled by the Court in S.A(MD).No.1746 of 2000, dated 18.04.2021.

22.Now we will go to the trace of title. The plaintiff says that the first item belongs to him by way of purchase of two sale deeds dated 30.08.1988 and 30.06.1998 purchased from Soodamani @ Periasamy. The second item belongs to one Eswarathevar. He purchased the same on 09.02.1999 from him. So both items were purchased by him from their original owners.

23.Now the case of the defendant is that does not so. Suit property originally belongs to one Karuppasamythevar S/o. Sangappathevar namely the first item from Karuppasamythevar. Their father namely Sangappathevar purchased the same on 19.04.1988. In respect of the



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second item they say that it belongs to one Periyasamythevar ancestrally.

That property was purchased by her father Sangappathevar on 13.12.1988. So both the parties claim rival title over the properties tracing their title document through two different persons. So in the light of the above said pleadings at no stretch of imagination, it can be called as the title dispute raised by the defendant not bonafidely, but, only for the sake of defence.

24.In the light of the above said, now we will go to the finding of the trial court with regard to the title. With regard to the first item, the trial court has held that the defendant's father has title in the first item. Regarding the possession of the first item no document was produced by the plaintiff. But, whereas, the payment of kist, and patta shows that the plaintiff is out of possession. Regarding the second item also the title of the plaintiff was found to be not proved and so also the possession. So according to the trial court bonafide rival title has been made by the defendant. So it is the duty of the plaintiff to seek declaratory relief. So in that absence the plaintiff is liable to be non suited.



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25.Opportunity was available to the plaintiff to amend the plaint for declaration, having suffered such a finding by the trial court. No such step was taken. Now we will go to the finding of the appellate court. Regarding the first item the appellate court it has found that from the very same persons the plaintiff has purchased the properties through Ex.A1 and Ex.A6. The vendor has stated in Ex.A6 that he is selling the undivided interest. So the title of the vendor for the entire extend is not established and there is every probability that the defendant's mother is also having interest in the first item. So it also concerned with the trial court judgment, since the defendant claims right and title through Ex.B5. It was sale deed executed by the father of the plaintiff's vendor. With regard to the absence of declaratory relief a specific finding has been recorded by the appellate court. Apparently by following the judgment of the Honourable Supreme Court in *Anathula Sudhahar's* case.

26.Regarding the second item also it has held that the defendant's father purchased the property even before the purchase made by the plaintiff. So the sale deed relied upon by the plaintiff is itself stated that it is not valid under law. So the finding of the trial court as well as the



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appellate court itself indicate that it was not the simple denial of title for sake of denial, but on the basis of the valid registered title documents.

This cannot be construed as that the mere denial only, which, need not be given any importance driving the plaintiff to amend the suit for declaration.

27.Now even before this court it was submitted that the parties must be referred to a thorough litigation on the basis of the title. So opportunity may be granted to the appellant in this regard.

28.But I am afraid whether such a course is available. The suit is of the year 2007. Now we are in 2024. 17 years lapsed. As mentioned above the first opportunity was before the trial court after the written statement. But, the plaintiff chose to remain silent, not taken any action to amend the plaint. He suffered an adverse finding that the order sought for declaratory relief. He went to appeal. Even before the appellate court, he failed to file proper steps for amendment. That opportunity was not also utilized by him. Now he chose to file the second appeal, even at the time of second appeal till the hearing was made, no attempt was made to



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amend the plaint. Now having failed to utilize all those opportunities, at the time of argument this plea is raised. Now we can take guidelines from the Honourable Supreme Court reported in Anathula Sudhahar's case. Para 28 of the judgment reads as under.

“28. We are conscious of the fact that the suit was filed in the year 1978 and driving the plaintiffs to a fresh round of litigation after three decades would cause hardship to them. But the scope of civil cases are circumscribed by the limitations placed by the rules of pleadings, nature of relief claimed and the court fee paid. The predicament of plaintiffs, was brought upon themselves, by failing to convert the suit to one for declaration even when the written statement was filed, and by not seeking amendment of issues to include an issue on the question of title. In the absence of a prayer of declaration of title and an issue regarding title, let alone the pleadings required for a declaration of title, the parties cannot be said to have an opportunity to have a full-fledged adjudication regarding title.”

Para 29 is also relied upon by the appellant herein.

“29. We, therefore, allow this appeal, set aside the judgment of the High Court and dismiss the suit.



Nothing stated herein or by the courts below shall be construed as expression of any opinion regarding title, in any future suit for declaration and consequential reliefs that may be filed by the Appellants, in accordance with law. Parties to bear their respective costs.”

29.No doubt that such an opportunity was extended by the Honourable Supreme Court to the people like the plaintiff. It is for the plaintiff to workout their remedy. But, no liberty is granted by this court in the light of the above said discussion.

30.The first substantial question of law is answered that no such plea was raised by the plaintiff either to amend the plaint after seek liberty to file fresh suit on the very same cause of action for declaration. In the absence of any such plea it is not the duty of the court to grant such liberty. So the first substantial question of law does not arise at all.

31.The first appellate court dismissed the petition filed under order 41 rule 27 of CPC for producing additional evidence. But it is a clear finding by the appellant court that the documents that has been produced



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To

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- 1.The Subordinate Judge, Sankarankovil.
- 2.The Principal District Munsif, Sankarankovil.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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14.10.2024