



S.A(MD)No.435 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2024

Pronounced on : 17.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.435 of 2021

A.Silambu Selvi

... Appellant/Appellant/
Plaintiff

Vs.

N.P.Muthu

... Respondent/Respondent/
Defendant

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree in A.S.No.16 of 2018 on the file of the Sub Court, Pattukkottai, dated 07.12.2020, confirming the judgment and decree in O.S.No.205 of 2012 on the file of the District Munsif Court, Pattukkottai, dated 21.02.2018.

For Appellant : Mr.M.Ramu

For Respondent : Mr.D.R.Murugesan



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JUDGMENT

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This Second Appeal is preferred against the judgment and decree, dated 07.12.2020 passed in A.S.No.16 of 2018 on the file of the Subordinate Court, Pattukkottai, confirming the judgment and decree, dated 21.02.2018 passed in O.S.No.205 of 2012 on the file of the District Munsif Court, Pattukkottai.

2. The appellant is the plaintiff in O.S.No.205 of 2012 on the file of the District Munsif Court, Pattukkottai. The respondent is the defendant in that suit.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.205 of 2012 on the file of the District Munsif Court, Pattukkottai.

4. It is the case of the plaintiff that the suit property is measuring about 5 cents with a tiled house comprised in S.No.116/19, Periyar Street, Thiruchitrambalam Village, Peravurani Taluk, Thanjavur District. Originally, the suit property belonged to one Thothan, who is the father of the plaintiff's



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father-in-law. After the demise of Thothan, the plaintiff's father-in-law, Chinnathambi became the owner of the suit property and he demolished the old building and constructed a tiled house in 1960. The plaintiff's father-in-law had been in possession and enjoyment by paying kist and electricity consumption charges from 1988. The plaintiff got married with the said Chinnathambi's son Anbanandam in 1988. She has been living with her husband and in-laws in the suit property and out of wedlock, she gave birth to two children. All their voter list and family cards were given in the suit property address. Since the plaintiff's husband did not take care of the plaintiff and children and led to wayward life, the plaintiff's father-in-law gave the suit property to the plaintiff in the year 1993. Thereafter, the plaintiff is in possession of the suit property. In the year 1994, one Vaithiyanatha Gurukkal claimed some right over the suit property on the basis of wrong patta, however, he executed a disclaimer deed on 15.04.1994 in favour of the plaintiff. The plaintiff's father-in-law died on 09.03.2004. Thereafter, the plaintiff along with her children and mother-in-law Vaduvambal have been continuing to live in the suit property. Meanwhile, the plaintiff's husband arranged a separate house, where the plaintiff and her children & mother-in-law used to live some time. Taking advantage of the



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plaintiff's absence, the defendant tried to trespass into the suit property on 11.11.2012. Hence, the present suit is laid for permanent injunction.

5. It is the case of the defendant that the suit property belonged to one Vaithiyanatha Gurukkal. He permitted one Thothan to reside in the suit property by erecting a shed. After his death, his son Chinnathambi continue to live with permission. He is not the owner of the suit property. The said Chinnathambi also died and his wife Vaduvambal was residing with her family. Thereafter, the defendant purchased the suit property from one T.V.Ganesan, S/o. Vaithiyanatha Gurukkal as his power agent on 27.03.2006. In the sale deed, Vaduvambal and her son Anbanandan signed as witnesses. The said Vaduvambal and her family members executed a Muchalikka on 03.04.2006 and handed over the possession of the suit property to the defendant. For which, Vaduvambal received Rs.40,000/- and her son Anbanandhan received Rs.39,250/- from the defendant. When the facts being so, the plaintiff alleged that the said Vaithiyanatha Gurukkal executed a disclaimer, dated 15.04.1994 in favour of the plaintiff is absolutely false. He has no necessity to execute such a disclaimer deed. It would be a created one. The suit is bad for non-joinder of necessary parties. After purchase in



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2006, the defendant has constructed a house and has been living in the suit property. The plaintiff has no title or right over the suit property and hence, she is not entitled to any decree as sought in the suit.

6. The Trial Court has framed the following issues:-

"(1) Whether the plaintiff is entitled to permanent injunction as prayed for?

(2) Whether the suit is bad for non-joinder of necessary parties?

(3) What other relief the plaintiff is entitled to?"

7. During trial, the plaintiff was examined as P.W.1 and one Rengasamy was examined as P.W.2 and Ex.A.1 to Ex.A.14 were marked. On the defendant's side, the defendant was examined as D.W.1 and marked Ex.B.1 and Ex.B.10.

8. After hearing both sides, the learned District Munsif, Pattukkottai, dismissed the suit on 21.02.2018 by passing judgment and decree on the ground that when a rival claim over title was made by the defendant by way of title deeds, without declaration of the title, permanent injunction cannot be



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granted and also on the ground that the possession of the plaintiff over suit property was not proved.

9. Aggrieved by the judgment and decree, the plaintiff preferred the Civil Appeal in A.S.No.16 of 2018 before the Sub Court, Pattukottai. The first Appellate Court has framed the following points for consideration:-

"(a) Does the trial court misconceived about the nature of suit and also offered an unwarranted findings on title, in the present suit for permanent injunction?

(b) Whether the trial court failed to consider the documentary evidence produced from the side of plaintiff, pursuant to her possession over the suit property?

(c) Whether the trial court erroneously arrived at a conclusion by dismissing the suit, for want of relief of declaration of title?

(d) Whether the findings of the trial court on the unregistered document are non-est in law?

(e) Whether the judgment and decree of the trial court liable to be set aside through this appeal."

After hearing both sides and after perusing the records, the first Appellate Court passed judgment, dated 07.12.2020, dismissing the appeal by confirming the judgment and decree of the Trial Court.



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10. Challenging the concurring finding of the Courts below, the plaintiff has preferred this Second Appeal and the same has been admitted for file on 12.07.2024 on the following substantial questions of law:-

"(1) Whether the plaintiff shall file the declaration and bare injunction suit for mere denial of the title by the defendant?

(2) Whether the defendant can claim title by way of Ex.B.1 executed by power of attorney when the principle of power of attorney was died before five years back?"

11. The learned counsel for the appellant/plaintiff has argued that the suit property has been enjoyed by the plaintiff's father-in-law's father and now the plaintiff is in possession of the suit property on the basis of Ex.A.6 and Ex.A.11 - Settlement Deeds said to have been executed by the father-in-law and the said Vaithiyanatha Gurukkal. The defendant simply denied the title of the plaintiff upon the invalid sale deed, which was executed by the Power of Attorney after the death of the principal. So, the Courts below erred in holding that the plaintiff ought to have sought declaration. The defendant has admitted the possession of the plaintiff's father-in-law's father Thothan, who was admitted to be in possession by the Vaithiyanatha Gurukkal and



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after his demise the family of the plaintiff. While the defendant has denied the title and possession of the plaintiff, he shall prove the same as per Section 110 of the Evidence Act. So, the plaintiff need not prove her title, in a suit for injunction the proof of possession of the plaintiff is sufficient. The plaintiff has produced the voter list, electricity consumption bills, property tax demand notice, property tax receipt and family card, which stood at the suit property address. Hence, the Second Appeal may be allowed.

12. Per contra, the learned counsel for the respondent/defendant argued that both the Courts below gave concurrent findings and hence, facts of the case need not go into again. Of course, in a suit for bare injunction, proof of possession on the date of plaint is sufficient. At the same time, when the defendant denied the title and claimed rival title over the suit property by producing valid title deeds from parent documents, the plaintiff ought to have sought declaratory relief and thereby, she ought to have amended the plaint. Therefore, in the absence of declaration of title, the suit for injunction is not maintainable. The suit property originally belonged to Vaithiyanatha Gurukkal. It is not disputed by the plaintiff. Whiles, how the plaintiff's father-in-law could execute the gift deed in favour of the plaintiff.



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For the same property, two persons cannot execute the gift deed. Moreover, the plaintiff has mother-in-law and there are other siblings along with her husband, in such circumstances, what necessitated the father-in-law to execute the gift deed in favour of the plaintiff only on the ground that her husband is a drunkard? The plaintiff failed to prove her possession of the suit property on the date of the plaint. The plaintiff admits that she is residing at the address given in the long cause title. Prior to the suit, the mother-in-law and husband of the plaintiff executed Muchalikka and handed over the possession on obtaining sufficient money. The plaintiff has not examined them. It is a settled law that in a suit for bare injunction when the plaintiff's title is under a cloud or in dispute, the plaintiff has to sue for declaration of his title. The defendant's title can be questioned only by the legal heirs of the said Vaithiyanatha Gurukkal, the plaintiff being the stranger cannot questioned the same. Moreover, it is settled law that by taking advantage of weakness of the defendant's case, the plaintiff's case could not be accepted, the plaintiff must prove her case. The plaintiff failed to prove her case. The Courts below correctly dismissed the relief of the plaintiff and there is no need to interfere. Therefore, this Second Appeal may be dismissed.



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13. Heard the arguments of both sides and perused the material records of the case. The plaintiff claims title and possession over the suit property by virtue of Ex.A.6 and Ex.A.11 - Gift Deeds. Both are unregistered. Moreover, the plaintiff is the third party to the executant of Ex.A.11, i.e., Vaithiyanatha Gurukkal. If so, as rightly held by the first Appellate Court those documents must be registered. On perusal of those documents, there is no mention of description of the suit property and door number. The plaintiff as P.W.1 has admitted that her husband, mother-in-law and brother-in-law Subramanian are in that native village and that she has not mentioned the door number of the house in the description of the suit property. P.W.2 has deposed inconsistent evidence as rightly observed by the first Appellate Court. He is not having thorough knowledge about the suit property.

14. The defendant produced Ex.B.1 - Sale Deed stands in his favour. Ex.B.1 is a registered one. By virtue of Ex.B.1 and by its parent deeds, the defendant stated that the suit property originally belonged to Vaithiyanatha Gurukkal, who permitted the plaintiff's father-in-law's father one Thothan to reside in the suit property by putting a shed and they continued to reside. The plaintiff's husband erected a building at a separate place where the plaintiff's



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family shifted as seen from the evidence of the plaintiff. At this juncture, it is contended by the defendant that he purchased the suit property from the son of the said Vaithiyanatha Gurukkal as Power of Attorney. Hence, there is a cloud of title over the suit property. This Court has already passed judgment, dated 12.11.2019 in **S.A.No.477 of 2007 (Sivasankaran vs. S.B.Raman)**, wherein it is held in paragraph No.20 as follows:

“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.”

Hence, the plaintiff shall file the suit for declaration or at least should have amended the plaint while there is a *bonafide* denial. As rightly argued by the defendant's counsel, the plaintiff shall not take advantage of the defendant's weakness and the plaintiff should have proved her case. The plaintiff filed only unregistered documents and there is no supporting evidence to establish the same. The allegation that the deed, which is registered by the Power of Attorney on the death of the principal, will not help the plaintiff, because it cannot be questioned by the plaintiff, but it can be questioned by the principal's legal heir as rightly submitted by the



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defendant's counsel. In this case, the Power of Attorney is none other than the son of the principal.

15. After purchase by the defendant, the plaintiff's mother-in-law executed Ex.B.2 -Muchalikka and her husband executed Ex.B.3 - Disclaimer Statement after receiving the money. As per Ex.B.2 and Ex.B.3, the plaintiff's mother-in-law and husband vacated the building and handed over the possession to the defendant. This was not challenged by the plaintiff or disproved by her by examining her mother-in-law and husband. If so, the plaintiff cannot claim that she along with her mother-in-law and husband are residing in the suit property. She admitted that she is residing in the address mentioned in the long cause title. On perusal of records, the plaintiff has not produced any material to establish her possession on the date of the suit as rightly held by the Courts below, but she admitted that she is residing at Santhai road of Thiruchitrambalam, which is mentioned by herself in long cause title of the suit, it is not the suit property. Hence, the plaintiff has not produced any material to show her possession over the suit property as on date of the plaint.



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16. The **Hon'ble Supreme Court** in the case of **Nazir Mohamed v.**

J.Kamala reported in **(2020) 19 SCC 57**, held as follows:

“33.4 The general is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognized exceptions are where: (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly case the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

But, in this case, the concurrent findings of the Courts below do not fall in the above criteria. Both the Courts below correctly appreciated the evidences adduced on both sides and correctly came to the conclusion that the plaintiff failed to establish her case for injunction.



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17. From the above facts and circumstances, the Courts below found concurrent findings based on the evidences adduced in the case. The questions of law could not be decided in favour of the appellant/plaintiff as the suit was factually decided by the Courts below. The said findings need not be interfered by this Court by way of the Second Appeal. Hence, the questions of law framed in this Second Appeal are answered against the appellant/plaintiff. Thus, this Second Appeal fails.

18. In the result, this Second Appeal is dismissed. The judgment and decree, dated 07.12.2020 passed in A.S.No.16 of 2018 on the file of the Subordinate Court, Pattukkottai, confirming the judgment and decree, dated 21.02.2018 passed in O.S.No.205 of 2012 on the file of the District Munsif Court, Pattukkottai is confirmed. No costs.

17.10.2024

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



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To

- 1.The Subordinate Court,
Pattukkottai.
- 2.The District Munsif Court,
Pattukkottai.
- 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.435 of 2021

17.10.2024