

S.A.(MD)No.228 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.07.2025

PRONOUNCED ON : 30.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.228 of 2019

and

C.M.P.(MD)No.4454 of 2019

Chandrika

... Appellant

VS

Paulmarisan

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 14.03.2019 made in A.S.No.113 of 2018 on the file of the Principal Subordinate Judge, Tirunelveli, reversing the judgment and decree, dated 12.01.2018 made in O.S.No.535 of 2015 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellant : Mr.M.Ajmal Khan
Senior Counsel
for Mr.M.Mohamed Ibram Saibu
For Respondent : Mr.B.Gurusankar
for Mr.T.Selvan



S.A.(MD)No.228 of 2019

JUDGMENT

WEB COPY The plaintiff is the appellant. The Second Appeal is filed challenging the judgment and decree, dated 14.03.2019, made in A.S.No.113 of 2018 on the file of the Principal Subordinate Court, Tirunelveli, reversing the judgment and decree, dated 12.01.2018, made in O.S.No.535 of 2015 on the file of the Principal District Munsif Court, Tirunelveli.

2.For the sake of convenience, the parties are referred to, as per the litigative status before the trial Court.

3.It is the case of the plaintiff that the suit property originally belonged to one Devadasan son of Kovil Pillai. Devadasan was in possession and enjoyment of the suit property, as his ancestral property through the patta granted in Patta No.419. The said Devadasan executed a registered power of attorney in favour of one S.Kumarasamy on 09.09.1991. Thereafter, Devadasan, represented by Power Agent, S.Kumarasamy, had executed a sale deed, dated 19.09.1991, in favour of one Chellammal. Pursuant to the purchase, Chellammal was in possession and enjoyment of the suit property, based on which, patta was also issued in her favour. By a



S.A.(MD)No.228 of 2019

sale deed, dated 10.06.1993, Chellammal sold the suit property in favour of one S.Mathishankar and based on the said sale deed, revenue documents were mutated and patta was issued in favour of S.Mathishankar in Patta No.2021. S.Manishankar had mortgaged the suit property to one Dhayalan on 09.06.1994, through a registered mortgage deed and the loan was repaid and the mortgage was cancelled and the receipt was also registered on 21.09.2015 and thereafter, S.Mathishankar had paid stamp duty in the Melapalayam, Sub Registrar Office on 04.10.2021 in respect of the sale deed got by him on 10.06.1993 and obtained the receipt. In the meantime, S.Mathishankar had also constructed a compound wall around the suit property through one Udhaya Building Construction and the expenses were paid through receipt on 13.11.1995.

4.Since S.Mathishankar became the absolute owner of the suit property, he had executed a settlement deed, dated 07.05.2015, in favour of his sons, Manishankar and Madhavshankar. The 2 sons of Mathishankar, who got the suit property through the settlement deed executed by their father, had subsequently, settled the suit property in favour of their mother, the plaintiff through a settlement deed, dated 05.10.2015. Pursuant to the settlement, patta was issued in favour of the plaintiff and the plaintiff is in

3/31



S.A.(MD)No.228 of 2019

possession and enjoyment of the suit property. The plaintiff is also paying property taxes to the Corporation. Since the plaintiff was residing in other State, taking advantage of the same, with an illegal motive to usurp the suit property, the defendant created false and fabricated documents and by using those documents, attempted to encroach upon the suit property on 05.12.2015, as such the plaintiff had come up with the suit for permanent injunction.

5.The defendant resisted the suit disputing the claim made by the plaintiff. The defendant categorically disputed the title and possession of the plaintiff over the suit property. The plaintiff or her vendor were never in possession of the suit property. Since the defendant is disputing the title of the plaintiff, the suit for mere injunction, without seeking the relief of declaration is not maintainable and no notice was issued prior to the filing of the suit. From the plaint, it reveals that the plaintiff had been residing in Maharashtra. The suit property never belonged to one Devadasan son of Kovil Pillai ancestrally. The plaintiff cannot claim that Devadasan was entitled to the suit property based on Patta No.419, as patta is not a document of title. The sale deed, dated 10.06.1993, has been registered in an office without jurisdiction and therefore, the document is void. The sale

4/31



S.A.(MD)No.228 of 2019

deed and the settlement deed relied on by the plaintiff are disputed by the defendant, as they are fabricated and created.

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6.It is the specific case of the defendant that the property measuring 2.19 acres in S.No.540 of Keela Veeraragavapuram Village was originally belonged to Abdul Kadhar Shahib of Melapalayam and his son Gulam Mohideen @ Chinnakannu. They got the property through a registered partition deed, dated 17.07.1946 in Doc.No.2781/1946. They have sold 2.19 acres in S.No.540 to one Innasi Muthu Pillai through a sale deed, dated 23.03.1963. Innasi Muthu Pillai had been in possession and enjoyment of the property purchased by him. He executed a settlement deed, dated 31.10.1964, in favour of K.Devadasan son of Kulanthaisamy Pillai. K.Devadasan, who became the absolute owner of the suit property, had sold the same to the defendant through a sale deed, dated 30.06.1982. From the date of purchase, the defendant had been in possession and enjoyment of the suit property.

7.It is the further case of the defendant that a notice, dated 02.09.1982 was issued by the Special Tahsildar, Urban Land Ceiling to the defendant. The defendant on 17.05.1983 took steps to drill borewell. An application

5/31



S.A.(MD)No.228 of 2019

was submitted on 08.04.1983 to the Commissioner, Melapalayam for survey and another application was submitted on 07.04.1992 seeking separate patta to the Tahsildar, Palayamkottai. Based on the purchase, taxes were paid on 04.04.1991 for Fasli 1396 to 1401, on 20.04.1993, for Fasli 1402, on 08.03.2000 for Fasli 1406 to 1409 and on 06.04.1996 for Fasli 1403 to 1405. An application was submitted on 25.10.1996 in respect of a transformer in the main road to the Tahsildar, Tirunelveli. The defendant obtained planning permission for construction from Tirunelveli Local Planning Authority on 21.01.1993 and based on which, approval was granted. On 19.04.1996, the Commissioner of Tirunelveli Corporation has extended the time. Further, the period was extended on 09.06.1998, 24.08.2000 and 24.04.2001. The defendant had constructed a compound wall on 12.12.1992, through one Alpha Constructions and a receipt was issued to the defendant on 09.05.1997. Since the grill gate in the suit property put up by the defendant was damaged on 31.08.2004, a complaint was lodged to the Melapalayam Police Station. Further, Patta No.419 had been issued to the vendor of the defendant, K.Devadasan and for the period from 01.01.1980 to 31.12.1986, there is no encumbrance reflected in the encumbrance certificate obtained on 04.08.2015. As such the plaintiff has no right or title over the suit property and sought for dismissal of the suit.

6/31



8.The trial Court framed the following issues for consideration:

- “1.வாதி பிராதிஸ் கோரியவாறு நிலை உறுத்துக்
கட்டளை பரிகாரம் பெற உரிமை உடைவரா?
2.வாதிக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?”

9.During trial, the husband of the plaintiff, S.Mathishankar was examined as PW-1 and Ex-A1 to Ex-A20 were marked. On the side of the defendant, he examined himself as DW-1 and marked Ex-B1 to Ex-B30.

10.The trial Court, after analysing the oral and documentary evidences, came to the conclusion that the plaintiff is having a valid title to the suit property and has also established her possession, but, whereas, the sale deed relied on by the defendant in Ex-B1 pertains to S.No.540/1C, when the suit property is for S.No.540/2C. Further, trial Court on coming to the conclusion that Ex-B2, Ex-B3 and Ex-B4 pertain to S.No.540 and S.No. 540/1C and the plaintiff having title and also by filing documents for S.No. 540/2C, has established the possession, decreed the suit.

11.On appeal, the lower appellate Court, on coming to the conclusion



S.A.(MD)No.228 of 2019

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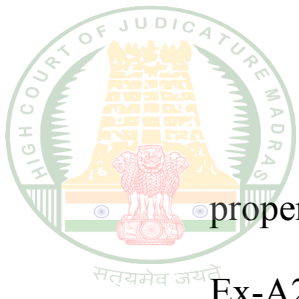
that even though the sale deed relied on by the defendant in Ex-B1 was in respect of S.No.540/1C, but however, the title traced on by the defendant pertains to the suit property, wherein, the title of K.Devadasan, has been traced and therefore, the defendant by filing documents in Ex-B2 to Ex-B4, had raised a cloud on the title and in such circumstances, the suit filed by the plaintiff for mere injunction without seeking for declaration is not maintainable, in view of the decision of the Hon'ble Supreme Court in ***Anathula Sudhakar vs P.Buchi Reddy (Ded) by LRs and others***, reported in ***(2008) 4 SCC 594*** and had allowed the appeal and reversed the judgment and decree of the trial Court. Assailing the judgment and decree of the lower appellate Court, the plaintiff is before this Court on appeal.

12.This Court by order, dated 14.02.2022 admitted the Second Appeal on the following substantial question of law:

“Whether the first appellate Court was right in holding that the suit for bare injunction is not maintainable without a prayer for declaration of title, when the defendant has not produced any rival document or has created any cloud over the title of the plaintiff in respect of the suit property?”

13.Mr.M.Ajmal Khan, learned Senior Counsel appearing for the appellant argued that when the issue in the suit is in respect of the suit

8/31



S.A.(MD)No.228 of 2019

property having S.No.540/2C, the plaintiff had filed documents in Ex-A1, Ex-A2, Ex-A3, Ex-A9 and Ex-A12 coupled with patta in Ex-B26 and thereby, the plaintiff had established her title to the suit property. He further contended that the plaintiff had also filed patta issued in favour of the plaintiff's vendor and also in her favour and the documents in respect of the mortgage created, the compound wall constructed and the taxes paid for the suit property to evidence the possession. The learned Senior Counsel by pointing out the evidence of DW-1, particularly, the cross examination, contended that the DW-1 had admitted that the plaintiff is in possession of the suit property and when the possession is admitted, naturally, the suit seeking permanent injunction ought to be granted.

14.It is the vehement contention of the learned Senior Counsel that the document relied on by the defendant claiming right over the suit property in Ex-B1, does not pertain to the suit property. When the sale deed in Ex-B1 pertains to S.No.540/1C, the defendant had altered the document as S.No.540/2C and had filed it in Court and to prove that the document has been altered, the plaintiff had filed the certified copy of Ex-B1, as Ex-A19, which would establish the fact that the sale deed pertains to only S.No. 540/1C. Based on the same, the learned Senior Counsel contended that

9/31



S.A.(MD)No.228 of 2019

when admittedly, the defendant does not have any documents pertaining to the suit property, he has no locus to dispute the right or title of the plaintiff and therefore, mere denial of title by the defendant in the written statement would not amount to raising a valid cloud. Only when a genuine cloud is raised by asserting a right through some documents, the plaintiff has to seek for a declaration and not in cases, where, a mere denial is made without any right. In this regard, the learned Senior Counsel relied on a decision of the Hon'ble Supreme Court in ***Jharkhand State Housing Board vs Didar Singh and another***, reported in ***(2019) 17 SCC 692***.

15. In respect of RTI information filed by the defendant in Ex-B30, the learned Senior Counsel submitted that the communication received under the RTI Act is only an information and the same cannot be construed as an evidence. He further contended that the defendant had not pleaded that there was an error in the sale deed and the same was created prior to the registration as S.No.540/2C. He further submitted that the sale deeds in Ex-A2 and Ex-A3 were registered in other State, when it was permissible, in view of the concession in stamp duty, however, after the Rules were amended, the plaintiff had paid the necessary stamp duty and got it registered in the jurisdictional Sub Registrar Office and therefore, that

10/31



S.A.(MD)No.228 of 2019

would not create any impediment in the right and title of the plaintiff over the suit property.

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16.It is his further contention that when the trial Court had rightly analysed the documents and decreed the suit, the lower appellate Court by merely relying on Ex-B2 to Ex-B4, which admittedly, are in respect of S.No. 540, had concluded that the these documents would amount to raising a cloud, had thereby reversed the decree, which is erroneous and perverse and sought for interference of this Court. In support of his contentions, the learned Senior Counsel also relied on the decision of the Hon'ble Supreme Court in *Anathula Sudhakar's* case referred supra.

17.Contending contra, Mr.B.Gurusankar, learned Counsel appearing for the respondent argued that when the defendant had categorically denied the title of the plaintiff even in the written statement, the plaintiff ought to have amended the relief seeking for declaration and the suit for mere injunction is not maintainable, as held by the Hon'ble Supreme Court. He further submitted that when the plaintiff claims right from one Devadasan son of Kovil Pillai, she has not traced the title of the said Devadasan and



S.A.(MD)No.228 of 2019

therefore, she has not proved her title. It is his further contention that when the plaintiff relied on Patta No.419 in the name of Devadasan, the actual patta stands in the name of Devasan son of Kulanthaisamy Pillai.

18.The learned Counsel for the respondent also submitted that the defendant had traced the title of Devadasan from Abdul Kadhar Shahib of Melapalayam and his son Gulam Mohideen @ Chinnakannu, who sold the property to Innasi Muthu Pillai, which was settled in favour of Devadasan and out of which, the defendant had purchased 10 cents of the suit property through Ex-B1, sale deed. He further submitted that it is only an error in the sale deed, which was originally prepared as S.No.540/1C, but however, the same was corrected to S.No.540/2C prior to the registration. He further submitted that S.No.540 was sub divided as S.No.540/1 and 540/2. Survey No.540/1 was not at all further sub divided at least till the year 2017 and only S.No.540/2 was further sub divided as S.Nos.540/2A, 2B and 2C. In fact, a portion of the property was acquired from Devadasan in the year 1977 for the Highway, which was sub divided as S.No.540/2B and the land purchased by the defendant was sub divided S.No.540/2C.

19.The learned Counsel further contended that the defendant had filed
12/31



S.A.(MD)No.228 of 2019

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RTI communication in Ex-B30, which evidences that there had been no sub division of S.No.540/1 and there is no property with S.No.540/1C. It is his contention that Ex-A19 produced by the plaintiff is not a scanned document, but a written CD copy, where, it has not been correctly entered into. The learned Counsel further contended that Devadasan son of Kovilpillai is a fictitious person and the plaintiff had manipulated the documents by registering a power of attorney on 09.09.1991, a sale deed in favour of one Chellammal, which was registered within ten days and thereafter, the sale deed in favour of the plaintiff's husband was registered. All these documents were registered in Parasala of Kerala State and not within the jurisdiction of the suit property in Tirunelveli. Only in 2011, the stamp duty was paid and thereafter, the property was settled by the plaintiff's husband to her sons and again by her sons to the plaintiff, only to claim right over the suit property.

20.He further contended that the defendant by filing the tax receipts and plan approval and all other documents had established his title. Since the fabricated documents were created by the plaintiff, a complaint was lodged, based on which an FIR came to be registered, but however, in view of the pending civil suit, the same was quashed by this Court. It is the 13/31

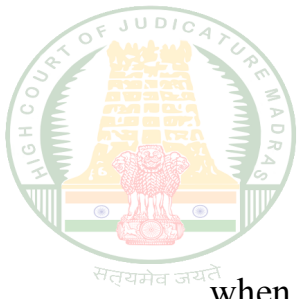


S.A.(MD)No.228 of 2019

vehement contention of the learned Counsel for the respondent that when there are contentious issues involved pertaining to the title of the suit property, the trial Court ought to have relegated the plaintiff to seek for a declaration and dismissed the suit for mere injunction. However, the appellate Court had rightly reversed the decree based on the settled principles as in the mere suit for injunction, the question of title involving complicated issues cannot be gone into and dismissed the suit, which needs no interference and sought for dismissal of the appeal.

21.Heard the rival submissions and perused the materials available on record.

22.The suit is filed seeking for permanent injunction. The plaintiff claims right through the documents in Ex-A1, Ex-A2, Ex-A3, Ex-A9 and Ex-A12. The plaintiff claims to be in the possession of the suit property. On the contrary, the defendant denies the title of the plaintiff. The defendant claims title and right to the suit property through Ex-B1 to Ex-B4. The defendant claims to be in the possession of the suit property and had also filed documents. Admittedly, the suit property is a vacant site.



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23. When the suit is filed seeking for mere permanent injunction and when the title of the plaintiff is disputed and a cloud is raised, the course to be adopted by the plaintiff has been considered by the Hon'ble Supreme Court in the case of **Anathula Sudhakar vs P.Buchi Reddy (Ded) by LRs and others**, reported in **(2008) 4 SCC 594**, wherein, the Hon'ble Supreme Court held as follows:

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the 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 the 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 [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). 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



WEB COPY



S.A.(MD)No.228 of 2019

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 straightforward, 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 the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

24.Further, the Hon'ble Supreme Court in the case of ***Jharkhand State Housing Board*** referred supra, held that it is not necessary in every case, where, the defendant disputes title, it is necessary for the plaintiff to seek for declaration, but only where, a genuine dispute is raised and there is a cloud on the title of the plaintiff, then, the suit for bare injunction cannot be maintained. Paragraph Nos.10 and 11 of the said judgment read as under for ease reference:

“10.The issue that fall for our consideration is: “Whether the suit for permanent injunction is maintainable when the defendant disputes the title of the plaintiff?”

11.It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the



WEB COPY



S.A.(MD)No.228 of 2019

plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.”

25.From the aforesaid principles, it is clear that when a suit for bare injunction is filed and the defendant denied the title of the plaintiff by raising a cloud on title, then, the plaintiff cannot maintain the suit for mere injunction without seeking for a declaration. A mere denial does not amount to raising a cloud, but the denial of title by the defendant must be true and germane, by establishing his right through some material and only when such a valid cloud is raised, it is incumbent on the part of the plaintiff to seek for a declaration.

26.Further, in a suit for mere injunction, where, the suit property is a vacant land, the Court can incidentally go into the issue of title, as without rendering a finding on title, the de jure possession cannot be ascertained. It is not that in all cases, the Court can incidentally go into the issue of title, but only in cases, where, there are necessary pleadings and appropriate issues either specific or implied, the Court can incidentally go into the issue

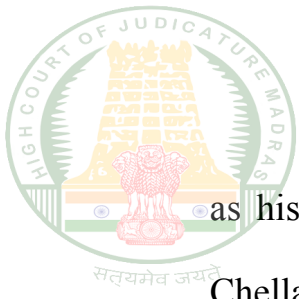


S.A.(MD)No.228 of 2019

of title and render a finding. Even where there are necessary pleadings and issues, but, however, 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. Only where, there are necessary pleadings and issues and the parties had led evidences and the issue is simple and straightforward, the Court can incidentally render a finding on title. However such a case would only be an exception to the normal rule that question of title will not be decided in a suit for mere injunction. The same was followed and reiterated by the Hon'ble Supreme Court in the case of *Kayalulla Parambath Moidu Hah vs Namboodiyil Vinodan*, reported in *(2022) 20 SCC 310*.

27.Now, in view of the aforesaid principles, we will proceed to analyze the facts of the present case.

28.The plaintiff had filed the suit for mere injunction claiming right through a sale deed, dated 19.09.1991 in Ex-A2 in favour of one Chellammal. The suit property being the ancestral property of Devadasan son of Kovil Pillai, who had Patta No.419, he had executed a power of attorney deed, dated 09.09.1991 in Ex-A1 nominating one S.Kumarasamy, 18/31



S.A.(MD)No.228 of 2019

as his Power Agent, based on which, the sale deed came to be executed.

Chellammal, the purchaser in Ex-A2, subsequently, sold the suit property to the plaintiff's husband, S.Mathishankar on 10.06.1993 in Ex-A3. Patta was mutated in his favour in Patta No.2021 in Ex-A4. S.Mathishankar had, thereafter, by a settlement deed, dated 07.05.2015, settled the suit property in favour of his two sons, by name, Manishankar and Madhavshankar, in Ex-A9 and in turn, the two sons had again settled the suit property in favour of their mother, the plaintiff, through settlement deed, dated 05.10.2015, in Ex-A12. Patta was transferred in favour of the plaintiff in Ex-A13.

29.The defendant had filed a written statement on 20.04.2016 disputing the title of the plaintiff over the suit property. It is the categorical case of the defendant that the plaintiff had fabricated and created documents, which will not give any right to the plaintiff. The defendant had disputed that neither the plaintiff nor her vendor had ever been in possession of the suit property. It is also specifically disputed that the suit property is the ancestral property of Devadasan son of Kovil Pillai.

30.According to the defendant, the property measuring 2.19 acres in S.No.540 of Keela Veeraragavapuram Village was originally belonged to Abdul Kadhar Shahib and his son Gulam Mohideen @ Chinnakannu. They

19/31



S.A.(MD)No.228 of 2019

got the property through a registered partition deed, dated 17.07.1946 in Ex-B2. They have sold the property to one Innasi Muthu Pillai through a sale deed, dated 23.03.1963, in Ex-B3 and in turn, Innasi Muthu Pillai had executed a settlement deed, dated 31.10.1964, in favour of K.Devadasan son of Kulanthaisamy Pillai, in Ex-B4. K.Devadasan, who became the absolute owner of the suit property, had sold the suit property to the defendant on 30.06.1982 in Ex-B1. The defendant had also filed the patta issued in his favour in Ex-B26. The defendant by filing these documents in Ex-B1 to Ex-B4, claims exclusive title to the suit property and had denied the title of the plaintiff. In view of the documents in Ex-B1 to Ex-B4, it is not a mere denial, but, claiming exclusive title based on the registered documents. The defendant had raised a valid cloud on the title of the plaintiff.

31.The trial Court decreed the suit by giving a finding that the plaintiff is having title over the suit property and the sale deed in Ex-B1 relied on by the defendant does not pertain to the suit property and therefore, it does not amount to raising a valid cloud on the tile of the plaintiff. The lower appellate Court, however, had reversed the decree by holding that even though there is a discrepancy and error in respect of survey number in Ex-B1, still the documents in Ex-B2 to Ex-B4 are

20/31



S.A.(MD)No.228 of 2019

sufficient to raise a cloud on title and thereby, the suit for mere injunction is not maintainable.

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32.It is the vehement contention of the learned Senior Counsel for the appellant that since Ex-B1, sale deed, does not pertain to the suit property, the denial made by the defendant is a mere denial and would not amount to raising a valid cloud, as he does not have any locus. In this regard, admittedly, both the parties trace title to the suit property from one Devadasan and the patta in Ex-B26 stands in the name of Devadasan. When according to the plaintiff, the suit property is an ancestral property of Devadasan son of Kovil Pillai, it is the case of the defendant that the suit property was purchased by K.Devadasan, son of Kulanthaisamy Pillai in Ex-B4.

33.Now, from the documents filed by the plaintiff, it is clear that except a claim is made that the suit property is the ancestral property of Devadasan, the title of Devadasan is not traced. It has not been established by any documents, that as to how Devadasan son of Kovil Pillai became entitled to the suit property. On the contrary, from the documents filed by the defendant, it is evident that by a partition, deed, dated 17.07.1946, in



S.A.(MD)No.228 of 2019

Ex-B2, the suit property was allotted to Abdul Kadhar Shahib and his son Gulam Mohideen @ Chinnakannu. They have, in turn, sold the suit property in Ex-B3 to Innasi Muthu Pillai on 23.03.1963, who had again conveyed the suit property in favour of one K.Devadasan son of Kulanthaisamy Pillai on 31.10.1964 in Ex-B4. The defendant had traced title of K.Devadasan son of Kulanthaisamy right from the year 1946. It is established by documents that Patta No.416 in Ex-B26 refers to K.Devadasan son of kulanthaisamy Pillai, who is the purchaser of the suit property on 31.10.1964 in Ex-B4 from his vendor, Innasi Muthu Pillai. Having traced the title of K.Devadasan, the defendant had purchased the suit property in Ex-B1.

34.It is to be noted that originally, the property was situated in S.No. 540. Admittedly, the suit property, now, has been sub divided as S.No. 540/2C. In the sale deed executed by K.Devadasan in favour of the defendant in Ex-B1, the schedule to the deed is shown as S.No.540/2C. A correction has been made by altering S.No.540/1C as S.No.540/2C. The plaintiff, by filing a certified copy of the document in Ex-B1, as Ex-A19, had contended that the document registered carries only S.No.540/1C and subsequent to the registration, in the document, the defendant had merely altered it as S.No.540/2C. Both the Courts have found that in view of the

22/31



S.A.(MD)No.228 of 2019

certified copy in Ex-A19, the sale deed in Ex-B1 pertains to only S.No. 540/1C. Now, it is the contention of the appellant that when Ex-B1 pertains to S.No.540/1C and the suit property pertains to S.No.540/2C, with the document in Ex-B1, the defendant cannot dispute the title of the plaintiff.

35.The defendant had obtained information under the RTI Act and marked the communication as Ex-B30. From Ex-B30, it reveals that Survey No.540 was sub divided as S.No.540/1 and 540/2. The property in S.No. 540/1 was never further sub divided at least till the year 2017. However, S.No.540/2 alone was further sub divided as S.Nos.540/2A, 2B and 2C. It is the contention of the defendant that a portion of the property was acquired from Devadasan in the year 1977 for the Highway and that portion of the Highway was sub divided as S.No.540/2B and the suit property available with Devadasan was sub divided as S.No.540/2C, which the defendant had purchased through Ex-B1. From Ex-B30, it has been established that there is no property with S.No.540/1C. Therefore, the plaintiff cannot merely rely on this error in Ex.B1and justify her documents in claiming title.

36.It is also to be noted that when, admittedly, the plaintiff traces the

23/31



S.A.(MD)No.228 of 2019

title to one Devadasan, it has not been established as to how Devadasan son of Kovil Pillai, got the suit property. Further, only in the year 1991, a power of attorney was registered in favour of one S.Kumarasamy and within ten days, a sale deed came to be executed in favour of one Chellammal, who is the vendor of the plaintiff's husband. Chellammal had sold the property to the plaintiff's husband in the year 1993. When the suit property is situated in Tirunelveli, the documents in Ex-A2 and Ex-A3 executed in favour of the vendor of the plaintiff's husband and the plaintiff's husband were registered in Parasala in the State of Kerala. It is the only contention of the plaintiff that since there was a concession in the stamp duty, it has been registered in the other State. But, however, they have, later, paid the necessary stamp duty and got it registered in the jurisdictional office only in the year 2011. Further, the two other documents had been executed one by the plaintiff's husband to her sons in the year 2015 and again by her sons in favour of the plaintiff in the year 2015.

37.As such, the only document executed conveying the suit property, is in favour of Chellammal in Ex.A2 in the year 1991 from Devadasan son of Kovilpillai, which is registered in Kerala, from whom, the plaintiff's family had purchased. The non tracing of the title of the suit property to

24/31



S.A.(MD)No.228 of 2019

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Devadasan son of Kovilpillai and a power of attorney, all of a sudden, executed in 1991 and a sale deed that came to be registered within ten days in another state and thereafter, the property having been conveyed to the plaintiff's family and that also registered in another state Kerala, two subsequent settlements created within the family, would all go to show that the plaintiff had not clearly and validly established the title.

38. When the defendant had filed the documents in Ex-B2 to Ex-B4, which, admittedly, trace the title of K.Devadasan, who is the patta holder in Ex-B26 right from the year 1946, a mere error in the sale deed in Ex-B1, as S.No.540/1C instead of S.No.540/2C, particularly when there is no property with S.No.540/1C, as reflected from the communication in Ex-B30, it cannot be held that denial by the defendant over the plaintiff's title to the suit property does not amount to raising a valid cloud. When the defendant had traced the title of the suit property from the year 1946 and filed the documents in Ex-B1 to Ex-B4 and had claimed exclusive title, then as per the decision in *Anathula Sudhakar's* case referred supra, the plaintiff ought to have amended the relief and sought for declaration and the suit for mere injunction is not maintainable.



S.A.(MD)No.228 of 2019

39.Also from the issue framed by the trial Court, it could be seen that

the only issue that is framed is as to whether the plaintiff is entitled for injunction. In view of the principles laid in *Anathula Sudhakar's* case, when there are no pleadings and no issue has been framed in respect of title, then the Court cannot incidentally go into the question of title and render a finding on title in the suit for injunction. Admittedly, in the instant case, when there had been no issue in respect of title, the trial Court could not have ventured into in considering the title and render a finding thereon.

40.Further, even when there are pleadings and issues either specifically or impliedly available, still if there are contentious issues, where, complicated questions of fact and law are involved, then the Court shall relegate the parties to file a comprehensive suit and a finding on title could be rendered only as an exception, where, all the ingredients are available and the matter is simple and straightforward. When the parties are claiming rival title to the suit property based on documents and also claiming exclusive possession of the suit property and had filed documents, definitely, there are contentious issues involving complicated facts, which could be agitated only in a comprehensive suit, where, declaration is sought for. When the title of Devadasan son of Kovil Pillai has not been traced or

26/31



S.A.(MD)No.228 of 2019

proved by the plaintiff and the defendant had filed documents tracing title of

Devadasan son of Kulandaisamy Pillai from the year 1946, there are contentious issues and it involves complicated questions of law and fact. It does not come under the exception, where, the Court could incidentally render a finding on title. Therefore, the decree of the trial Court in granting injunction by incidentally rendering a finding on title in favour of the plaintiff cannot be sustained and the lower appellate Court had rightly set aside the decree of the trial Court.

41. When the plaintiff had filed tax receipts to show that she is in the possession of the suit property, the defendant had filed the building permission obtained by him in Ex-B6, the extension of permission availed by the defendant in Ex-B9 to Ex-B12 and Ex-B15 and had filed the copy of the tax receipts in Ex-B18 to Ex-B24, 27 and 28, to establish his possession over the suit property.

42. Even though the learned Senior Counsel contended that the defendant had admitted the possession of the plaintiff's vendor in his evidence, the plaintiff is not entitled to seek injunction as against the true owner. When the defendant claims exclusive title, unless the plaintiff seek

27/31



S.A.(MD)No.228 of 2019

for the relief of declaration and prove her title to the suit property, the decree for permanent injunction granted by the trial Court is not sustainable, which has been rightly reversed by the lower appellate Court.

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43.As regards the contention of the learned Senior Counsel for the appellant that since stamp duty had been paid and the document has been registered in the jurisdictional office and further, the document in Ex-B30 is only a communication and cannot be a valid evidence, the same cannot be accepted when a doubt is created in respect of the registration done in other State, without tracing the title of the person who had conveyed the suit property. Further, the communication in Ex-B30 only makes it clear that there is no property with S.No.540/1C. At least to the extent that there are complicated issues involved, which requires the contentious issues to be gone into, these documents cannot be brushed aside.

44. It is submitted that based on the complaint, a criminal case came to be registered as against the plaintiff and it was only quashed by this Court in view of the civil suit pending. Further, when the plaintiff even in the plaint had averred that the defendant had created fabricated documents in respect of the suit property and is claiming right, ought to have come up

28/31



S.A.(MD)No.228 of 2019

with a suit seeking for declaration and at least when the title was denied categorically in the written statement, the plaintiff ought to have amended the relief of declaration and the suit for mere injunction by the plaintiff is not maintainable in view of *Anathula Sudhakar's* case referred supra.

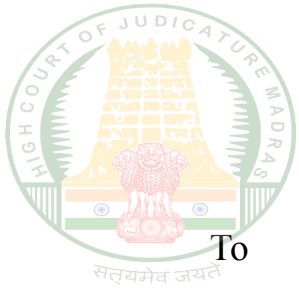
45.In view of the above deliberations, the substantial question of law is answered against the appellant and in favour of the respondent. This Court does not find any illegality or perversity in the findings rendered by the lower appellate Court, as the findings are based on the evidences available and the dictum laid down by the Hon'ble Supreme Court.

46.In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

30.07.2025

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

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S.A.(MD)No.228 of 2019

To

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1.The Principal Subordinate Judge, Tirunelveli.

2.The Principal District Munsif, Tirunelveli.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.228 of 2019

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.228 of 2019

30.07.2025