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S.A(MD)No.6 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.09.2025

Pronounced on : 01.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.6 of 2018

and

C.M.P(MD)Nos.223 of 2018 and 4468 of 2019

V.Manickavasagam
S/o.Late.Viswanatha Mudaliyar,
rep. by his Power Agent,
P.Nagarajan,
S/o.Periyasamy Muppan,
Pallar Street, Palaiyur,
Nerur North Village,
Karur Taluk,
Karur District.

...Appellant/Respondent/
Plaintiff

Vs.

Kanniyammal (Died)
Subramani (Died)
1.Sarasu (Died)
2.Veerammal
3.Maniyammal (Died)
4.Jeyamma
5.Kalaiselvi
6.Ramji
7.Ragunath

... Respondents/Respondents/
Defendants

(Memo dated 03.11.2023 filed on 09.11.2023 in USR.No. 38979 is recorded to the effect that the 1st respondent died and 5th respondent, who is already on record is recorded



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as LR of the deceased 1st Respondent and the 3rd Respondent also died and 7th Respondent, who is already on record, is recorded as LR of the deceased 3rd Respondent vide Court order dated 03.06.2024 made in S.A(MD)No.6 of 2018 by KMSJ)

(6th and 7th respondents are declared as major and the guardianship of their mother R5/Kalaiselvi is discharged vide Court order dated 20.12.2023 made in CMP(MD)No.17340 of 2023 in S.A(MD)No.6 of 2018 by SSYJ)

PRAYER :- This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 02.03.2017 passed in A.S.No.39 of 2014 on the file of the Principal Sub Court, Karur, reversing the judgment and decree, dated 27.10.2014 passed in O.S.No.704 of 2002 on the file of the District Munsif Court, Karur.

For Appellant : Mr.T.S.R.Venkatramana
Senior Counsel
for Mr.S.Prithiviraj
R1 and R3 : Died
For R2, R4 to R7 : Mr.K.Suresh

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 02.03.2017 passed in A.S.No.39 of 2014 on the file of the Principal Sub Court, Karur, reversing the judgment and decree, dated 27.10.2014 passed in O.S.No.704 of 2002 on the file of the Additional District Munsif Court, Karur.



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2. The appellant is the plaintiff in O.S.No.704 of 2002 on the file of the Additional District Munsif Court, Karur. The respondents are the defendants in that suit. The appellant/plaintiff has filed the suit for bare injunction.

3. For the sake of convenience, the parties are referred to as per their rank in O.S.No.704 of 2002 on the file of the Additional District Munsif Court, Karur.

4. It is the case of the plaintiff that one R.Ramasamy Mudaliar was the absolute owner of the suit property by virtue of registered partition deed dated 15.06.1943. The said Ramasamy Mudaliar is the grandfather of the principal/plaintiff Manickavasagam. He executed a registered general power of attorney dated 06.11.2002 in favour of his power agent, P.Nagrajan, to deal with the suit property on his behalf. The defendants approached the plaintiff to purchase the suit property for a meager price. The plaintiff refused. So, the defendants attempted to obstruct the enjoyment of the plaintiff on 12.11.2002. The acts of the defendants are illegal as they have no manner of right over the suit property. Hence, the plaintiff has filed the suit seeking a relief of permanent injunction.



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5. It is the case of the defendants that the alleged power deed came into existence just a week prior to filing of the suit. The defendants are having land adjacent to the suit property. The description of the suit property is not correct. The suit property is situated northern side of the defendants' property and they were draining the excess water from their property for long time. The suit property originally belonged to one Janaki, who is the wife of one Advocate Vedanthachari, both are now no more. There was a civil suit in O.S.No.302 of 1976 between the said Janakiammal and others, that suit was decreed in favour of Janakiammal. This fact was very well known to the plaintiff. The defendants purchased the suit property from the son of Janakiammal under a registered sale deed, dated 30.10.2002. The plaintiff is not aware of the history of land. The first defendant purchased 2024 sq.ft. which is situated immediately on the eastern side of the plaintiff's principal's land. The suit is filed for 90000 sq.ft. At the time of inspection by the commissioner, the first defendant's land alone was shown as suit property. The defendants alone were disturbed by the plaintiff and his principal. The plaintiff has no prima facie case. The suit is liable to be dismissed.



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6. The trial Court has framed the following issues:

(1) Whether the plaintiff is entitled for permanent injunction?

(2) To what other relief the plaintiff is entitled to?

7. During the trial, on the plaintiff's side, two witnesses were examined as P.W.1 & P.W.2 and Ex.A.1 to Ex.A.3 were marked. On the defendants' side, two witnesses were examined and Ex.B.1 to Ex.B.5 were marked. In addition, Ex.C.1 and Ex.C.2 were also marked.

8. After hearing both sides, the learned Additional District Munsif, Karur, decreed the suit in O.S.No.704 of 2002 by passing judgment and decree, dated 27.10.2024. Aggrieved by the judgment and decree, the defendants preferred the first civil appeal in A.S.No.39 of 2014 before the Principal Sub Court, Karur. The first Appellate Court, after hearing both sides, passed judgment, dated 02.03.2017, allowed the appeal by reversing the judgment & decree of the Trial Court and dismissed the suit in O.S.No.704 of 2002.



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9. Challenging the Appellate Court findings the plaintiff has preferred this Second Appeal and the same has been admitted on 11.01.2018 on the following substantial questions of law:-

i) When the plaintiff claiming over an extent of 90,000 sq.ft. land and the defendant producing a title deed in respect of smaller extent of 3000 sq.ft. is not the lower Court wrongly dismissed the suit in entirety?

ii) Whether the finding of the first appellate Court in respect of earlier judgment and decree passed in O.S.No.302 of 1976 by holding that the same is binding on the appellant/plaintiff is valid in law?

iii) Whether the first appellate Court judgment and decree is legally right in mainly relying on the commission report that is with reference to physical features since the same cannot give any right or interest to the parties to the suit?

10. Both side arguments were heard and they have also filed notes of arguments.



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11. The learned counsel for the appellant/plaintiff has argued that the plaintiff traces title from the registered partition deed Ex.A.3 dated 17.02.1926, which is 100 years old document. So, as per Section 90 of the Indian Evidence Act, it is an authenticated document. By virtue of Ex.A.3, the suit property was conveyed in favour of the plaintiff's grandfather Ramasamy Mudaliar through Ex.A.2, dated 09.07.1943. Ex.A.1 is the power deed. Ex.A.1 and Ex.A.2 are showing the same boundary for the suit property. The defendants are having land on the northern side of the suit property. The defendants claim that they were passing drained water through the suit property, if so, they cannot be the owners of the property, because the right of easement can be claimed only through property of another. The defendants have not produced any document to show that the suit property is a poramboke land. Even for the sake of argument, to substantiate claim by way of easementary right the defendants have to prove continuous usage for 20 years as per Section 47 of the Indian Easements Act, but the defendants purchased property only on 30.10.2002 under Ex.B.3, the suit is filed on 18.11.2002 within 18 days, hence, the defendants cannot claim easement right also.



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12. The learned counsel for the appellant/plaintiff further argued that the defendants mainly claim right from the lawyer's family by way of Ex.B.4 stood in the name of Janakiammal, who traced the title from Ex.B.5 sale deed stands in the name of one Sesha Iyengar. The defendants have not pleaded these facts in their written statement. In the absence of pleading, their stand cannot be considered. The defendants mainly relied on Ex.B.1 judgment passed in O.S.No.302 of 1976, which was also wholly relied on by the first Appellate Court. That suit was between the defendants' vendor and an alleged 3rd party tenant. In fact, the plaintiff or his predecessor in title is not a party to that case. So, the judgment in O.S.No.302 of 1976 will not bind on the plaintiff. Hence, Ex.B.1 and Ex.B.2 will not help the defendants. The first Appellate Court erred in holding that the judgment would bind against the plaintiff. The plaintiff claims rights over 300 x 300 feet ie. 90,000 sq.ft, whereas the defendants agitate 3024 sq.ft. Ex.B.2 and Ex.B.3 relate to the same property. Ex.B.2 property is the southwest property and not the eastern property of the suit property. The plaintiff proves possession of the entire suit property, which is sufficient for granting a bare injunction. The commissioner's report also shows the coconut trees found in the suit property, which is the case of the plaintiff.



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13.The learned counsel for the appellant/plaintiff further argued that the trial Court has correctly appreciated the evidences and correctly decreed the suit, whereas the first Appellate Court erred in reversing the finding of the trial Court. So, the Second Appeal may be allowed. In support of his argument, the learned counsel relied on the following citations:

(1) 2020 (5) CTC 161 in the case of Dr.N.Mohamed Farook /v/ R.Muruga Boobathy decision of High Court of Madras

(2) (2020) 7 MLJ 1 in the case of Janaki /v/ Raja Muthaiah and Another, decision of Madurai Bench of Madras High Court.

14. Per contra, the learned counsel for the defendants has argued that the suit property is 90,000 sq.ft. (100 x 100 yard = 300 x 300 sq.feet) in S.No.818, the defendants claim 3024 sq.ft i.e., 18 x 168 feet. When the advocate/commissioner inspected the property, the plaintiff showed the property of the defendants as suit property, the suit property was not shown to him. This was specifically mentioned in the written statement. Both parties title deeds did not contain any survey number. The defendants purchased property measuring 3024 sq.ft. from the son of Janakiammal, who traced title from Ex.B.5 sale deed, dated 31.10.1917, much earlier than the plaintiff's



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document Ex.A.3, dated 17.02.1926. Moreover, the defendants' vendor's title was upheld by the Court of law in O.S.No.302 of 1976, though the plaintiff is not a party, the defendants' vendor is a party to that suit, so it will bind on the plaintiff while he made a rival claim. In a bare injunction suit, the defendant pleaded title over the suit property from 1971, the plaintiff ought to have amended the plaint by seeking a relief for declaration. It is settled position that where a cloud is raised over the title of plaintiff's property, a suit for declaration and possession is the remedy, bare injunction is not a solution.

15. The learned counsel for defendants further put forth argument that plaintiff/principal executed power deed in favour of P.W.1 on 06.11.2002 and filed suit on 18.11.2002 by making averment that the defendants attempted to interfere his possession on 12.11.2002 and that when P.W.2 principal/plaintiff admitted in his evidence that he sold the suit property to P.W.1 then P.W.2 lost his personal interest in the property and also disentitled for relief of injunction. It is vehemently contended on the defendants' side that P.W.2/ principal of the suit property, specifically admitted in his evidence that there is no interference from the defendants. So, the evidence of P.W.1 cannot be taken into consideration as he has not deposed on behalf of his principal. Therefore, there



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is no cause of action for the relief of an injunction. The first Appellate Court has correctly declined the relief of bare injunction to the plaintiff by accepting the case of the defendants, there is no need to interfere to that finding, hence, the second appeal may be dismissed.

16. In support of his arguments, the learned counsel for the defendants has relied on the following rulings:

(1) Judgment in S.A.(MD) No.217 of 2015 (Chithammal and 3 Ors. /v/ Gangadharan and Anr.) passed by the Madurai Bench of Madras High Court on 11.02.2020.

(2) (2008) 4 Supreme Court Cases 594 (Anathula Sudharkar /v/ P.Buchi Reddy (died) by LR.s.)

(3) (2019) 17 Supreme Court Cases 692 (Jharkhand State Housing Board /v/ Didar Singh and Anr.)

(4) (1994) 5 Supreme Court Cases 547 (Premji Ratansey Shah and Others /v/ Union of India and Others.)

(5) (2005) 2 Supreme Court Cases 217 (Janki Vashdeo Bhojwani /v/ Indusind Bank Ltd., and Ors.)

(6) 2003 (1) CTC 478 (Tuticorin Diocesan Trust Association /v/ Thavamanai and Others.)



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17. Now coming to the facts, the admitted position is that the suit property is 90,000 sq.ft. (100 yard x 100 yard) with coconut trees in S.F.No.818/A, Nerur South village, Karur Taluk, Karur. The suit has been filed by one power of attorney P.Nagarajan, on behalf of his principal/plaintiff Manickavasagam, seeking for bare permanent injunction. The plaintiff pleaded that principal/plaintiff Manickavasagam is the owner of the suit property, which was originally allotted to his grandfather R.Ramasamy Mudaliar under Ex.A.2 partition deed, dated 09.07.1943. The plaintiff has also claimed title from 1926 through Ex.A.3, the partition deed. It is the specific argument that the plaintiff filed 100 years old registered document, Ex.A.3 and placed reliance on the provision of Section 90 of the Indian Evidence Act.

18. It is the definite case of the defendants that they purchased 3024 sq.ft., in the suit survey number from the legal heir of its original owner Janakiammal by virtue of Ex.B.3, dated 30.10.2002 and traced title from Ex.B.5, dated 31.10.1917. Ex.B.5 is an earlier document to Ex.A.3. Both documents are more than 100 years old. According to provision of Section 90 of the Indian Evidence Act, the signature, handwriting, execution and attestation treated to be genuine when direct proof of documents is not



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possible. But the presumption applies only to the document's genuineness, not the truth of its contents. It should be decided based on evidence of each and every case.

19. In this case, both the plaintiff and the defendants made rival claims over the suit property. The suit is filed for bare injunction alone. If the defendant raises a genuine dispute about the enjoyment of the plaintiff over the suit property surrounded by boundaries therein, the plaintiff must seek or amend the plaint for declaration of his title. Once a person comes to the Court for discretionary relief of injunction, he must come to the Court with a definite title over the property. It is well settled dictum of the Hon'ble Supreme Court that when there is any cloud on the title of the property within the mentioned four boundaries, a suit for bare injunction is not maintainable and they ought to have sought for relief of declaration. The plaintiff makes claim on 90,000 sq.ft. whereas the defendant claims 3024 sq.ft. So, without establishing the title, it will not be possible to decide the possession. When both sides documents are contradicting each other, the plaintiff must prove his title and possession over the entire 90,000 sq.ft. A suit simplicitor for injunction will not be maintainable when the title of the property of the plaintiff was disputed by the



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defendants. Much less when the boundaries of the suit property are disputed, the suit filed by the plaintiff to protect his possession is not maintainable.

20. The Hon'ble Supreme has settled the legal position in **Anathula Sudhakar** case reported in **(2008) 4 Supreme Court Cases 594** and held in paragraph No.21(c) as follows:

“21.(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). 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.”

From perusing records, there are no averments regarding the title and there is no issue framed for title by the trial Court. Hence, the reliance placed



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by the defendants' side on the Anathula Sudhakar case is squarely applicable to the facts of this case. The citations relied on by the plaintiff are not applicable to the facts of this case.

21. It is pertinent to note here that the defendants pleaded that they have been draining water for long time. This was also impliedly admitted by the plaintiff's side during the course of argument on the issue of easementary right by relying on Section 47 of the Indian Easements Act. The plaintiff is claiming 90,000 sq.ft. while the defendants produced the document for smaller extent, which is abutting his property. The plaintiff must prove his title for entire 90,000 sq.ft., which could be decided only in the declaration suit. Therefore, the first Appellate Court has rightly declined to grant relief in the suit in its entirety.

22. The next argument of the plaintiff is that the judgment of the suit in O.S.No.302 of 1976 will not bind on him as he is not a party to that proceeding. It is admitted that the defendant purchased property from one Anand, son of one Janakiammal, who is the plaintiff in O.S.No.302 of 1976. The suit ended in favour of Janakiammal by the Court of law. This was not



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denied by the plaintiff. So, it will definitely bind the person who agitates her title over that suit property until it is reversed. Hence, the first Appellate Court was right in holding that the judgment and decree in O.S.No.302 of 1976 is binding on the plaintiff.

23. It is true that the advocate/commissioner inspected the property and noted down the physical features of the same. The defendants pleaded in their written statement that the plaintiff showed the property of the defendants measuring 3024 sq.ft. alone as suit property. This was not specifically denied by the plaintiff by filing any reply statement. No acceptable reasons submitted for this discrepancy. When a suit is filed for an extent of 90,000 sq.feet, why the plaintiff showed the small portion as suit property? When the suit property was not definite in nature and varied in extent, definitely, the plaintiff is not entitled to the bare injunction relief.

24. The trial Court has not considered all these aspects. The I Appellate Court has correctly appreciated the evidence and held that the plaintiff has not established his case for the relief of permanent injunction and hence, the first Appellate Court rightly reversed the decree of the trial Court. Therefore, this



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Court holds that the plaintiff is not entitled to an injunction for the suit property in entirety in the absence of any finding regarding his title over the property. The questions of law in the Second Appeal are answered against the appellant/plaintiff. Thus, this Second Appeal fails.

25. In the result, the Second Appeal is dismissed. The judgment and decree dated 02.03.2017 passed in A.S.No.39 of 2014 on the file of the Principal Sub Court, Karur, is confirmed. No costs. However, the plaintiff is at liberty to file a comprehensive suit for appropriate relief before appropriate forum, if so advised. Consequently, the connected Civil Miscellaneous Petitions are closed.

01.12.2025

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

To

- 1.The Principal Sub Court, Karur.
- 2.The Additional District Munsif Court,
Karur.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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VSD

**Pre-Delivery Judgment made in
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