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SA No. 580 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 580 of 2015

Mohana Kumari, W/o Selvakumar

..Appellant(s)

Vs

1. Manjula

W/o Wilson

2. Duraisamy

S/o Pakkirisamy

..Respondent(s)

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 09.01.2015 made in A.S.No.20 of 2013 on the file of Sub-Court, Tiruvarur, confirming the judgment and decree dated 27.03.2015 made in O.S.No.27 of 2012 on the file of the District Munsif Court, Tiruvarur.

For Appellant(s):

M/s. J. Nandagopal

For Respondent(s):

Notice served - No appearance for R-1

M/s. P. Thiagarajan

K. Dhanalakshmi for R2



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JUDGMENT

This Second Appeal has been preferred by the second defendant, against the judgment and decree of dismissal passed by the Subordinate Court, Thiruvavarur in A.S.No.20 of 2013, dated 09.01.2015, wherein the appellant and the second respondent herein have filed the said First Appeal (A.S.No.20 of 2013) as against the judgment and decree passed by the trial Court (District Munsif Court), Thiruvavarur in O.S.No.27 of 2012, in partly decreeing the suit and the first appellate Court had dismissed the First Appeal (Appeal Suit No.20 of 2013) filed by the defendants, against which, the present Second Appeal has been preferred by the second defendant.

2. For the sake of convenience and brevity, the parties referred to in this appeal, will be referred as per their rank in the trial Court.

3. The appellant herein is the second defendant in the main suit in O.S.No.27 of 2012. The first respondent herein, being the plaintiff, had filed the said suit for declaration to declare that the sale deed, dated 28.03.2011 under Document No.1226 of 2011 as null and void and to injunct the defendants from



interfering with the plaintiff's possession and enjoyment over the suit property.

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4. The trial Court decreed the suit in respect of the relief of declaration and dismissed the suit for permanent injunction. As against the grant of declaration, the First Appeal has been preferred by the defendants and the same was dismissed, against which, the present Second Appeal has been filed by the second defendant.

5. The brief averments of the plaint filed by the plaintiff before the trial Court, are as follows:

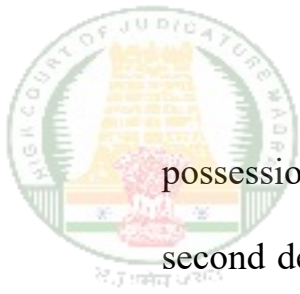
Originally, the suit property belonged to one Chellammal and the plaintiff purchased the suit property through sale deed, dated 21.07.2011. The said Chellammal leased out the property to one Pappayyan, son of Chinnayyan. The first defendant is the adjacent land owner of the suit property. The first defendant illegally obtained Patta in his name in respect of the suit property. Based on the said Patta, he executed the sale deed, dated 28.03.2011 in favour of the second defendant and the second defendant who got the sale deed from the first defendant, had attempted to interfere with the peaceful possession of the suit property of the plaintiff and the first defendant has no right, title or interests over the suit property. However, he sold the property to the second defendant without any title, based on the above said sale deed, the second defendant was attempting to make interference over the suit property.



Therefore, the suit is filed by the plaintiff for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment over the suit property and to declare the sale deed, dated 28.03.2011 as null and void.

6. The brief averments of the written statement filed by the defendants are as follows:

The mother of the first defendant, i.e. Shenbagavalli purchased the property in the year 1979 in S.F.No.73/3, which is adjacent to the suit property. At that time, the said property was not sub-divided. From the date of purchase till the sale of the property to the second defendant, the first defendant was in possession and enjoyment of the suit property. From the year 1979, the property has been under the possession and enjoyment of the first defendant and the Patta was also transferred in the name of the first defendant and he has been paying the Kist to the property. In the year 1990, the first defendant obtained loan from the Bank and in the year 1975, Chellammal purchased the property from one Chellaiyan Velar. Even after purchase of the property by Chellammal, the possession was not with her. The first defendant sold the property to the second defendant, through sale deed, dated 28.03.2011. As the second defendant has already filed the suit against Chellammal in O.S.No.51 of 2011 and the Chellammal has not contested the said suit and the said suit was decreed in favour of the second defendant on 09.01.2012. The plaintiff had never been in



possession and enjoyment of the suit property. The sale deed in the name of the second defendant, was acted upon and therefore, the present suit is liable to be dismissed.

7. Based on the above said pleadings and after hearing both sides, the trial Court framed the following issues:

(i) Whether the sale deed in Document No.1226 of 2011, dated 28.03.2011 executed by the first defendant in favour of the second defendant, is sham and nominal ?

(ii) Whether the suit sale deed binds the plaintiff ?

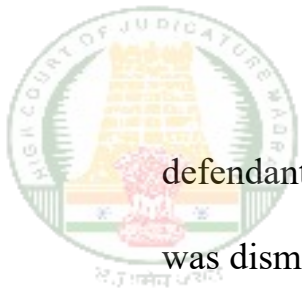
(iii) Whether the plaintiff is in possession and enjoyment over the suit property ?

(iv) Whether the plaintiff is entitled to the relief of permanent injunction against the defendants ? and

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

8. Before the trial Court, on the side of the plaintiff, P.W.1 was examined and Exs.A-1 to A.4 were filed. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.D-1 to D.4 were filed.

9. After hearing both sides, the trial Court decreed the suit in respect of the relief of declaration declaring that the sale deed executed by the first



defendant in favour of the second defendant, is sham and nominal and the suit was dismissed in respect of the relief of permanent injunction on the ground that the plaintiff is not in possession of the suit property.

10. Aggrieved by the judgment and decree of the trial Court, the defendants have preferred First Appeal in Appeal Suit No.20 of 2013 on the file of the Subordinate Court, Thiruvarur, on various grounds. The first appellate Court framed the following point for determination:

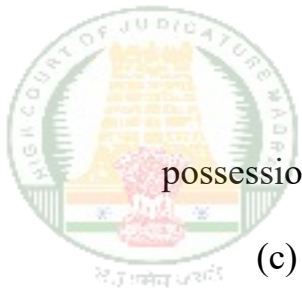
"Whether the appeal deserves any admittance".

11. Thereafter, the first appellate Court dismissed the First Appeal by confirming the judgment and decree of the trial Court. Aggrieved by the judgment and decree of the first appellate Court, the present Second Appeal is preferred by the second defendant.

12. This Court, at the time of admitting the Second Appeal on 23.07.2015, framed the following substantial questions of law:

(a) Whether Courts below are right in decreeing the suit, when the defendants have established their uninterrupted possession and enjoyment over the suit property and perfected title by adverse possession ?

(b) Whether the Courts below are right in decreeing the suit for declaration, when the suit is not maintainable without a prayer for recovery of



possession ?

(c) Whether the Courts below are right in rejecting the plea of adverse possession of the defendant, when the plaintiff failed to establish her possession over the suit property ?

13. Learned counsel for the appellant/second defendant submitted that the first respondent/plaintiff has filed the suit for declaration declaring that the sale deed executed by the first defendant in favour of the second defendant is sham and nominal and for grant of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. According to the plaintiff, she purchased the property through sale deed, dated 21.07.2011 and she is in possession and enjoyment of the suit property. In fact, the second defendant purchased the property from the first defendant through sale deed, dated 28.03.2011, which is prior to the sale deed of the plaintiff, but the plaintiff, without verifying the records, had purchased the property, when the same was already sold to the second defendant by the first defendant. The plaintiff has not sought for any relief of declaration in respect of the property purchased through sale deed and only sought for the relief in respect of the sale deed. The plaintiff was not in possession and enjoyment of the suit property and the Courts below have also rendered concurrent findings that the plaintiff was not in possession of the suit property and thereby, she is not entitled to the relief of permanent injunction and



therefore, the plaintiff ought to have sought the relief of declaration and the consequential relief of recovery of possession and without seeking the relief of recovery of possession, the suit for declaration, is not maintainable, when the plaintiff is out of possession. However, the Courts below have decreed the suit. There are no grounds made out to set aside the sale deed executed by the first defendant in favour of the second defendant, without seeking the relief of declaration in respect of the suit property, the prayer in respect of the sale deed as sham and nominal, is not maintainable. When once the defendants denied the title of the plaintiff, the plaintiff ought to have filed the suit for declaration of her title over the suit property, but he has not claimed the declaratory relief in respect of the title of the property and therefore, the Courts below have committed error. Even after the finding of the Courts below that the defendants are in possession and enjoyment of the suit property and the defendants have perfected title by adverse possession, and the plaintiff failed to establish her possession, the Courts below have erroneously decreed the suit. Therefore, the judgment and decree of the Courts below are liable to be set aside.

14. Learned counsel for the second respondent/first defendant submitted that originally, the suit property belonged to Shenbagavalli Ammal and she purchased the property in the year 1979 and she had been in possession and enjoyment of the suit property and the Patta was also granted in the name of the first defendant and already, the first defendant obtained loan by mortgaging the



suit property with the Co-operative Society Bank and thereafter, she sold the property to the second defendant for valuable consideration through sale deed, dated 28.03.2011. Therefore, the second defendant is in possession and enjoyment of the suit property. Already, the second defendant had filed a suit against Chellammal in O.S.No.51 of 2011, which was decreed on 09.01.2012. The sale deed in favour of the second defendant, has been acted upon and the plaintiff has never been in possession and enjoyment of the suit property. Already, the Courts below have rendered a categorical finding that the plaintiff is not in possession of the suit property, and thereby, refused to grant the relief of permanent injunction, but however, the Courts below decreed the suit in respect of the relief of the declaratory relief in respect of sale deed as sham and nominal and without even the prayer for declaration of title and recovery of possession, the trial Court has granted the decree in respect of the relief of declaring the sale deed as sham and nominal.

15. There is no representation on the side of the first respondent/plaintiff, despite ample opportunities having been given to them to argue the matter. Therefore, this Court heard the learned counsel for the appellants and the second respondent and perused the materials available on record.

16. The plaintiff has filed the suit for the relief of declaration that the sale deed, dated 28.03.2011 is sham and nominal. According to the plaintiff,



originally, the suit property belonged to one Chellammal and she purchased the suit property from Chellaiyan Vellalar and thereafter, she has sold the property to the plaintiff through sale deed, dated 21.07.2011 and the plaintiff is in possession and enjoyment of the suit property. While so, the first defendant, without any valid title or interest over the suit property, sold the property to the second defendant, and thereby, the said sale deed is not binding on the plaintiff and it is sham and nominal. According to the defendants, originally, the suit property belonged to Shenbagavalli Ammal and she had been in possession and enjoyment of the suit property and she has also obtained Patta in her name and thereafter, her son is entitled to the property and thereafter, he sold the property to the second defendant through sale deed, dated 28.03.2011. The trial Court decreed the suit in respect of the declaratory relief and dismissed the relief in respect of the prayer for permanent injunction on the ground that the plaintiff is not in possession and enjoyment of the suit property.

17. It is admitted fact that the first defendant sold the property to the second defendant on 28.03.2011 and thereafter, the plaintiff purchased the property from one Sellammal through sale deed, dated 21.07.2011 and the same is subsequent to the sale deed in favour of the second defendant. The plaintiff who is the subsequent purchaser, ought to have purchased the property after verifying the encumbrance over the suit property, but he purchased the property on 21.07.2011. On that date, sale was made in favour of the plaintiff. The suit



property was sold to the second defendant. Therefore, the previous sale deed was executed in favour of the second defendant. It is the duty of the purchaser to purchase the property after verifying the title and encumbrance over the property and the plaintiff is bound by the principle of caveat-emptor.

18. The plaintiff has not sought for the relief in respect of the title of the property and only filed the suit for declaration that the sale deed, dated 28.03.2011 is null and void. When the defendants denied the title of the property in favour of the plaintiff, it is the duty of the plaintiff to seek the relief of declaration of title over the suit property, but the plaintiff has not sought for any relief and only sought the relief of declaration in respect of the document in the name of the second defendant.

19. Moreover, the plaintiff pleaded in the plaint that she is in possession and enjoyment of the property, and thereby, sought the relief of permanent injunction, the Courts below have rendered a finding that the plaintiff is not in possession of the property and declined to grant permanent injunction. However, there is no appeal filed as against the Court declining to grant the relief of permanent injunction and no any cross-appeal filed, even after the First Appeal is filed by the defendants. Therefore, the mere suit for declaration in respect of the document without seeking any relief in respect of the title of the property, is not maintainable.



20. The plaintiff has not produced any document to show her possession over the property, whereas, the defendants have produced the document for the possession of the suit property, and the Courts below have also admitting the possession of the defendants, however, the Courts below decreed the suit and therefore, the Courts below have failed to appreciate the case of the parties in proper perspective and erroneously decreed the suit in respect of the relief of declaration of the sale deed as null and void.

21. Merely because the plaintiff purchased the property, it is not sufficient to set aside the sale deed in favour of the defendants 1 and 2 and if the suit is filed for declaration of title of the property in favour of the plaintiff, then the Court can grant the relief and without seeking the relief in respect of the property, the mere relief of declaration in respect of the sale deed alone is not sufficient. Therefore, the Courts below have committed error in granting the relief of declaration in respect of the sale deed, and hence, the judgment and decree of the Courts below are liable to be set aside.

22. As far as the first substantial questions of law that whether the Courts below are right in decreeing the suit, when the defendants have established their uninterrupted possession and enjoyment over the suit property and perfected title by adverse possession, is concerned, the defendants have not pleaded about



the adverse possession. However, they have pleaded that they are the owners of the property based on the sale deed, dated 28.03.2011. The Courts below rendered concurrent finding that the plaintiff is not in possession and enjoyment of the suit property and the second defendant is in possession and enjoyment of the suit property, and thereby, the Courts below declined to grant the relief of injunction. The plaintiff's sale deed is dated 21.07.2011, whereas the second defendant's sale deed is dated 28.03.2011. Therefore, the plaintiff ought to have purchased the property after verifying the encumbrance over the property and he is bound by the principle of Caveat Emptor. When once the property was already sold to the second defendant and he is claiming title over the suit property, the plaintiff ought to have sought for the relief of declaration in respect of the title of the property and also for the consequential relief for recovery of possession, as the plaintiff is in out of possession of the property. Without seeking the relief of declaration of title in respect of the property, mere declaration of relief in respect of sale deed alone is not maintainable. Therefore, the Courts below are not right in decreeing the suit without any declaration and recovery of possession in respect of the title to the property. The first substantial question is answered accordingly.

23. As far as the second substantial question of law, namely, whether the Courts below are right in decreeing the suit for declaration, when the suit is not maintainable without a prayer for recovery of possession, is concerned, the



plaintiff has filed the suit for declaration that the sale deed executed is sham and nominal and not sought the relief in respect of the property purchased through the sale deed, and without seeking the declaration in respect of the title of the property, mere declaration of sale deed is not sufficient to grant such relief.

24. It is well settled law that when the plaintiff is not in possession of the suit property and the second defendant had already purchased the property prior to the sale deed executed in favour of the plaintiff and denied the title, the plaintiff ought to have filed the suit for declaration of title and the consequential relief of recovery of possession and mere declaration of the sale deed in the name of the second defendant and permanent injunction without possession, is not maintainable.

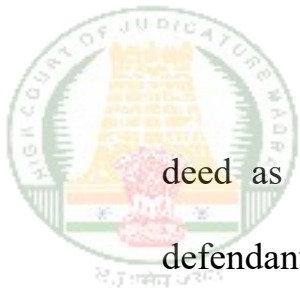
25. This Court, in the decision reported in 1982 (2) MLJ 348 = MANU/TN/0430/1981 (Cheventhipaul Nadar Vs. Srinivasa Nadar and others), held that, "8. ... Though the plaintiff has proceeded on the basis that he is in possession of the suit properties and claimed the relief of injunction, the evidence in the case completely establishes that the disputed items of the suit properties, i.e. items 6 to 8 are in the possession of the 6th defendant. Since the plaintiff who is found to be out of possession has not sought for recovery of possession, as a consequential relief for the main relief of declaration of title, the suit cannot be maintained. "



26. In the case on hand also, the plaintiff filed the suit based on the sale deed in his favour and has not sought the relief of declaration of title. Per contra, the plaintiff only sought the relief of declaration of the sale deed in favour of the second defendant as sham and nominal and also the permanent injunction and the Courts below have rendered a finding that the plaintiff is not in possession and enjoyment of the suit property. However, without any relief of declaration in respect of the suit property and the consequential relief of recovery of possession, thereby decreeing the suit in respect of the declaration of the sale deed, is null and void.

27. When the plaintiff is not in possession of the suit property, she ought to have sought the relief of declaration and recovery of possession in respect of the suit property, but no relief of such kind is sought for. Therefore, mere relief of declaration of sale deed as null and void without seeking the declaratory relief of title and recovery of possession, the suit is not maintainable. The second substantial question of law is answered accordingly.

28. As far as the third substantial question of law, namely, whether the Courts below are right in rejecting the plea of adverse possession of the defendants, when the plaintiff failed to establish her possession over the suit property, is concerned, the plaintiff has filed the suit for declaration of the sale



deed as null and void and sought for permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property, the plaintiff has not filed any document to show the possession and the Courts below have rendered a finding that the plaintiff is not in enjoyment of the suit property, whereas, the second defendant is in possession of the suit property. The defendants have not raised any plea with regard to the adverse possession and they have pleaded that they are in possession of the suit property based on the title deed, i.e. sale deed. Merely because the plaintiff failed to establish her possession, it does not mean that the defendants have perfected title through adverse possession. There should be pleadings and evidence to prove the adverse possession. Therefore, the defendants cannot claim any adverse possession and the Courts below have not touched upon the point of adverse possession. Further, there are no pleadings and no issues were framed in respect of the adverse possession and hence, the substantial questions of law and rejection of the plea of adverse possession, does not arise at all in this case. Thus, the third substantial question of law is answered accordingly.

29. In the light of the above discussion and answers being given for the three substantial questions of law, the judgment and decree passed by both the Courts below are unsustainable and the same are liable to be set aside.

30. Accordingly, the Second Appeal is allowed. The judgment and decree



passed by both the Courts below are set aside. The suit in O.S.No.27 of 2012 shall stand dismissed. There shall be no order as to costs in this Second Appeal.

Consequently, the Miscellaneous Petition is closed.

05-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
cs

To

1. The District Munsif, Thiruvarur.
2. The Subordinate Judge, Thiruvarur.
3. The Record Keeper, V.R.Section, High Court, Madras



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P.DHANABAL, J

CS

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