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S.A.No.2 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.2 of 2020
and C.M.P.No.72 of 2020

N.Saminathan

... Appellant

vs.

M.Govindasamy Gounder

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 18.09.2019 made in A.S.No.6 of 2019, on the file of Subordinate Court, Tiruppur confirming the Judgment and Decree dated 22.03.2019 made in O.S.No.481 of 2005 on the file of District Munsif Court, Tiruppur.

For Appellant : Mr.C.R.Prasanan

For Respondent :Mr.K.Myilsamy

J U D G M E N T

The unsuccessful plaintiff in the suit is the appellant.

2. The plaintiff filed a suit for bare injunction and the said suit was dismissed by the trial Court. The appeal filed by the plaintiff was also



dismissed by First Appellate Court by confirming the findings of the trial Court. Hence, challenging the concurrent finding, the appellant/plaintiff has come before this Court.

3. According to the appellant, the suit property originally belonged to Subbanna Gounder, husband of the plaintiff's sister. He died leaving behind his wife Nachathal as his only legal heir. Subbanna Gounder was indebted to several persons and hence Nachathal sold the suit property in favour of plaintiff's father Nachimuthu Gounder by sale deed dated 16.06.1966. In the said sale deed, the plaintiff's father agreed to settle the debts incurred by Subbanna Gounder and the said undertaking was treated as portion of the consideration for the same. It is the further case of the appellant that the suit property was purchased by plaintiff's father out of income from ancestral property and therefore, the same shall be treated as ancestral joint family property. It was also his case that all of his five sisters were married prior to 1989 and hence, there was no interest in the suit property.

4. It is the further case of the appellant that in the year 1994, there was misunderstanding between the appellant and his father and hence there



was a family arrangement during the Tamil month of Vaikasi -1994 (May and June) and the family properties were orally divided, the appellant was allotted western half share in S.F.No.130/1 and the entire extent in S.F.No.172/1A2 and 172/1C2. The eastern half share in S.F.No.130/1 was allotted to father of the plaintiff for his life with vested remainder to the plaintiff. Subsequently, the oral family arrangement was reduced into writing on 09.10.1994 confirming the earlier partition. The above mentioned property allotted to the appellant was described in 'B' schedule to the said document and the property allotted to the appellant's father was described in 'A' schedule to the said document.

5. It is further pleaded by the appellant that even though there was a family arrangement between the appellant and his father, since there was a sale deed relating to the suit properties standing in the name of appellant's father, in order to avoid future complications, the appellant's father executed two settlement deeds dated 16.06.2004 and 12.08.2004 settling the suit properties in favour of the appellant.

6. It is the further case of the plaintiff that the revenue documents stand in his name and he has been in possession and enjoyment of the suit



property. The defendant, who is not having any manner of right over the suit property, attempted to interfere with his possession over the suit property. Hence, he was constrained to file a suit for bare injunction.

7. The respondent/defendant filed a written statement and denied the right and possession of the appellant over the suit property. According to the respondent, the suit property was self acquired property of Nachimuthu Gounder, the appellant's father and 1994 partition arrangement was brought out by the plaintiff and his father just for the purpose of the present case. It was the specific case of the respondent that eastern half in S.F.No.130/1 was sold to the defendant by plaintiff's father under registered document dated 13.09.1995 and from that date onwards, the defendant has been in possession and enjoyment of the same. Regarding the easementary right attached to the said property conveyed to the defendant, subsequently, plaintiff's father executed one confirmation deed on 03.05.1996. Therefore, according to the respondent, the plaintiff's father had only right over western half of S.No.130/1. The defendant also challenged 2004 settlement deed executed by appellant's father in favour of the appellant as a fraudulent document. It was further pleaded that in the settlement deed dated 16.06.2004, while describing the subject matter of the settlement, the eastern



half of the property in S.F.No.130/1 had been described as property of defendant Govindasamy. Therefore, according to the defendant, the possession of the defendant was accepted by the appellant and his father. It was also stated that in respect of the property in the eastern half of S.F.No.130/1, the defendant instituted a suit for declaration and injunction in O.S.No.281 of 2005 on the file of Subordinate Court, Tiruppur and the same is pending. On these pleadings, the respondent/defendant sought for dismissal of the suit.

8. Before the trial Court, the plaintiff was examined as PW.1, father of the plaintiff Nachimuthu Gounder was examined as PW.2 and two other independent witnesses were examined as PW.3 and PW.4. On behalf of the plaintiff, nineteen documents were marked as Exs.A1 to A19. The defendant was examined as DW.1 and one independent witness was examined as DW.2. The scribe of Ex.B1 sale deed in favour of defendant executed by Nachimuthu Gounder was examined as DW.3. On behalf of defendants, six documents were marked as Exs.B1 to B6.

9. The trial Court on consideration of evidence available on record came to the conclusion that in view of the pendency of comprehensive suit



for declaration of title and injunction filed by the respondent in O.S.No.281 of 2005, the plaintiff was not entitled to decree for injunction and dismissed the suit. Aggrieved by the same, the appellant/plaintiff preferred A.S.No.6 of 2019 on the file of the Additional Subordinate Court, Tiruppur. The First Appellate Court on appreciation of evidence available on record came to the conclusion that the plaintiff failed to prove his lawful possession over the suit property and consequently, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the said concurrent finding, the appellant/plaintiff preferred the second appeal.

10. At the time of admission, this Court formulated the following substantial question of law for consideration by order dated 06.10.2020:

Whether the Courts below were right in dismissing the suit in respect of the entire property when the defendant claims title only to an extent of 1 acre and 90 ½ cents under the sale deed dated 13.09.1995 said to have been executed by the plaintiff's father Nachimuthu Gounder?

11. The learned counsel appearing for the appellant submitted that the respondent in the written statement laid claim only over eastern half of



the property situated in S.No.130/1 and hence the dismissal of the suit in its entirety is untenable in law. The learned counsel also submitted that the suit properties are ancestral properties of Nachimuthu Gounder and hence, he has no right to execute a sale deed in favour of defendant under Ex.B1. Therefore, according to him, the trial Court ought to have decreed the suit filed by the appellant. It is also submitted that the appellant/plaintiff filed various documents like revenue records to establish his possession over the suit property and the same have been overlooked by the Courts below. The learned counsel also submitted that merely because suit for declaration of title and injunction filed by the respondent in respect of eastern portion of S.F.No.130/1 is pending, the Court below committed an error in dismissing the suit for bare injunction filed by the appellant when the possession of the appellant is established.

12. Per contra, the learned counsel appearing for the respondent would submit that the suit properties are self acquired properties of plaintiff's father Nachimuthu Gounder and he conveyed eastern half of property situated in S.F.No.130/1 in favour of the defendant under Ex.B1 on 13.09.1995 and hence he has no right to settle the said property in favour of the plaintiff under Ex.A5. The learned counsel further submitted that after



selling the eastern half in S.F.No.130/1 to the defendant, the settlement deed executed by plaintiff's father in favour of plaintiff was null and void. He also submitted that since the plaintiff laid a claim over the property purchased by defendant under Ex.B1, a comprehensive suit for declaration of title and injunction filed by the defendant in O.S.No.281 of 2005 on the file of Subordinate Court, Tiruppur and the said suit was pending when the present suit for injunction was filed by the plaintiff. He further submitted that when the comprehensive suit for declaration of title filed by the defendant is pending, the plaintiff is not entitled to maintain a suit for bare injunction. The learned counsel also brought to the notice of this Court that the suit for declaration and injunction filed by the defendant was decreed and the appellant is said to have filed an appeal, challenging the said judgment and decree and the same is pending.

13. A perusal of the pleadings of the respective parties and the documents filed in support of their case would indicate that the core dispute in the suit is only in respect of eastern half in S.F.No.130/1. As far as western half in S.F.No.130/1 and the property in S.F.Nos.172/1A2 and 172/1C2 are concerned, the defendant has not claimed any right over the same. When the right and possession of the plaintiff over the other properties are not disputed by the defendant, the trial Court ought not to have dismissed the suit in its entirety.



14. Based on the oral and documentary evidence produced by the plaintiff, in the absence of serious challenge by the defendant, there may not be any difficulty in granting permanent injunction in respect of western half in S.F.No.130/1 and property in S.F.Nos.172/1A2 and 172/1C2. The judgment and decree passed by the trial Court to that extent requires interference.

15. As far as eastern half in S.No.130/1 is concerned, it is the specific case of the plaintiff that the said property was allotted to plaintiff's father in a oral family partition and the same was subsequently reduced into writing under Ex.A3. It is the case of the plaintiff that eastern half was allotted to his father for life with vested remainder to him. It is the further case of the plaintiff that since the sale deed for all the suit properties including the eastern half in S.F.No.130/1 stood in the name of his father, he executed two settlement deeds Exs.A4 and A5 settling suit properties in favour of plaintiff. Under Ex.A5 eastern half in S.No.130/1 was settled in favour of plaintiff under Ex.A4, the western half in S.F.No.130/1 and other suit survey number are settled in favour of the plaintiff.



16. On the other hand, it is the case of the defendant, the suit properties are self acquired properties of plaintiff's father Nachimuthu Gounder as seen from Ex.A1 sale deed dated 16.06.1966 and he sold eastern half in S.F.No.130/1 in favour of defendant under sale deed dated 13.09.1995 marked as Ex.B1. After selling eastern half in S.F.No.130/1, the plaintiff's father was not justified in settling the very same property in favour of plaintiff under Ex.A5. Therefore, according to the defendant, he purchased eastern half in S.F.No.130/1 from plaintiff's father and hence the plaintiff is not entitled to maintain a suit for bare injunction against the original owner.

17. A perusal of Ex.A1 would establish that the suit properties were purchased by plaintiff's father. A perusal of Ex.B1 would establish that eastern half in S.F.No.130/1 was sold to defendant by plaintiff's father Nachimuthu Gounder.

18. The learned counsel for the appellant by taking this Court to the description of property found in Ex.B1 would submit that there is no clarity in the description of the property with regard to the subject matter conveyed under the said document. Therefore, the same will not confer any title to the plaintiff.



19. A close scrutiny of the boundary description found in Ex.B1 would indicate that the eastern half in S.F.No.130/1 was conveyed to defendant under Ex.B1. In the description of the property found in Ex.B1, after mentioning the four boundaries for entire extent of 3.82 acres in S.F.No.130/1, the eastern half has been described with following boundaries.

“West of land belongs to Nachimuthu Gounder,

East of property belongs to seller (Nachimuthu Gounder, father of the plaintiff)

South of property in S.F.No.117/2 and 131/2. The North of S.F.No.123. The total extent conveyed was mentioned as 1.90 ½ cents which is roughly half of total extent of 3.82 cents.”

Therefore, it is clear, the eastern half in S.No.130/1 was conveyed to defendant by plaintiff's father Nachimuthu Gounder under Ex.B1. As rightly pointed out by the learned counsel appearing for the respondent, after conveying eastern half of the property situate in S.F.No.130/1, the plaintiff's father is not entitled to settle the very same property to the plaintiff under Ex.A5.



20. It is very interesting to note while describing the western half in S.F.No.130/1, which was settled in favour of plaintiff under Ex.A4, the property was described as the one situate on the western side of property belongs to one Govindasamy Gounder. The boundary description in Ex.A4 settlement deed executed by plaintiff's father in favour of the plaintiff would reinforce the case of the defendant that eastern half was conveyed to defendant Govindasamy Gounder as early as 1995. In the light of the boundary description found in Ex.A4 and also registered sale deed in favour of defendant Ex.B1, a serious cloud is created over the title of the plaintiff over the property situated in eastern half in S.F.No.130/1. When Ex.B1 and Ex.A4 creates cloud over the title of the plaintiff, a suit for injunction simplicitor filed by plaintiff is not maintainable without prayer for declaration of title.

21. The learned counsel for the appellant would vehemently contend that the suit properties are ancestral properties. Even assuming plaintiff's father Nachimuthu Gounder conveyed eastern half in S.F.No.130/1 in favour of defendant under Ex.B1 and the property is ancestral one, it is valid to the extent of his share. Whether the suit property is ancestral property or self acquired property is a question to be considered in a comprehensive suit



for declaration of title. In the absence of prayer for declaration, the plaintiff is not entitled to canvass the character of the suit property in a suit for bare injunction. Alternatively, I would like to emphasise, even assuming the case of the plaintiff is accepted that the suit properties are ancestral properties, Ex.B1-sale deed executed by plaintiff's father shall be treated as valid at least to the extent of his share in the ancestral property. Therefore, on execution of Ex.B1, the defendant would become a co-owner of the plaintiff and in such circumstances, the suit for bare injunction against co-owner is not at all maintainable.

22. Alternatively, the learned counsel appearing for the appellant would submit that under Ex.A3, partition arrangement, the plaintiff's father was given only life estate, therefore he is not entitled to convey good title to the defendant. This is not a suit for declaration of title filed by the respondent/defendant. In any event, when the suit was filed by the plaintiff seeking injunction, admittedly, the plaintiff's father Nachimuthu Gounderr was alive and he was examined as PW.2 before the trial Court. Even assuming the partition arrangement pleaded by the plaintiff is accepted and plaintiff's father was held to be limited owner, the sale deed executed by life estate holder is valid during his lifetime. Therefore, when the suit was filed



by the plaintiff seeking injunction, the Ex.B1 executed by his father was a valid document as he was alive on the date of filing of the suit. In such circumstances, a suit for bare injunction filed against the defendant was not at all maintainable at that point of time. Even on that ground also, the suit is deserved to be dismissed in respect of eastern half in S.F.No.130/1.

23. The learned counsel appearing for the appellant made faint attempt by saying that revenue documents have been produced by the plaintiff to prove his possession over the suit property and therefore, the Court can grant an injunction in favour of the plaintiff. As mentioned earlier, when there is a serious cloud over the title of the plaintiff as held by the Apex Court in *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and others* reported in **2008 4 SCC 594** a suit for bare injunction is not at all maintainable in the absence of prayer for declaration of title. Further Ex.A15-Adangal extract filed by the plaintiff is relevant to fasli year 1419 equivalent to year 2011. Therefore, the said revenue document is subsequent to the suit and it will not help the plaintiff to prove his possession on the date of plaint. Ex.A11 is the Adangal extract in the name of plaintiff's father Nachimuthu Gounder for the fasli year 1405 to 1410, relevant to the year 1997-2002. Though the said revenue document was prior to date of plaint



it stands only in the name of plaintiff's father and not in the name of plaintiff. Ex.B1 is the sale deed executed by plaintiff's father in favour of defendant. Merely because there was no mutation of revenue records in favour of plaintiff after sale under Ex.B1, we cannot jump to a conclusion that the plaintiff's father continue to possess subject matter of the property covered under Ex.B1. There is a clear recital in Ex.B1 that subject matter of the said document was delivered to purchaser namely the defendant. In the light of recitals in registered sale deed that property was delivered to the defendant, we cannot give any credence to the revenue documents in the name of vendor.

24. The learned counsel for the appellant also says Nachimuthu Gounder himself entered box and deposed that he did not execute Ex.B1. Therefore, the said document shall be ignored. It is settled law, the person challenging the validity of the registered document shall lead evidence to prove that the said document is invalid and not binding on him. Merely because vendor under the sale deed enter the box and denied execution, we cannot ignore the registered documents. The purchaser under Ex.B1 namely the defendant also entered box and deposed in favour of execution of sale deed by Nachimuthu Gounder in his favour. Therefore, it is oath against



oath. The defendant examined scribe of Ex.B1 as DW.3 and he deposed in favour of defendant. In such circumstances, in the absence of any clinching evidence to prove that registered sale deed relied on by the defendant was not really executed by plaintiff's father, we cannot simply ignore the same. Ex.B1 contains the thumb impression of Nachimuthu Gounder, which is also available in his deposition papers as he was examined as PW.2. The plaintiff has not taken any steps to seek comparison of admitted thumb impression of Nachimuthu Gounder available in the deposition papers of PW.2 and thumb impression of Nachimuthu Gounder available in Ex.B1. In such circumstances, the submission made by the learned counsel appearing for the appellant that registered document Ex.B1 shall be ignored based on the oral evidence of Nachimuthu Gounder cannot be accepted.

25. In the light of the discussion made earlier, the question of law framed at the time of admission is answered in favour of the appellant and the second Appeal is partly allowed by setting aside the judgment and decree passed by the Courts below insofar as western half of S.F.No.130/1, entire 2.15 acres in S.No.172/1A2 and 0.57 acres in S.No.172/1C2. As far as eastern half in S.No.130/1 is concerned, in view of the cloud created by Ex.B1 and the boundary description in Ex.B4, the suit for injunction simplicitor is not maintainable and accordingly the judgment and decree passed by the trial Court is confirmed.



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26. It is made clear, the dismissal of the second appeal insofar as eastern half of the property in S.No.130/1 will not come in the way of appellant working out his remedy in the manner known to law either by filing a comprehensive suit for declaration of title or otherwise.

27. **In Nutshell:-**

- (i) The Second Appeal is partly allowed as indicated above.
- (ii) In the facts and circumstances of the case, there will be no order as to costs.
- (iii) Consequently, the connected civil miscellaneous petition is closed.

11.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Subordinate Court, Tiruppur.
- 2.The District Munsif Court, Tiruppur.



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S.SOUNTHAR, J.

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