

IN THE COURT OF THE DISTRICT MUNSIF, ARNI, T.V.MALAI DISTRICT.

PRESENT: Thiru.P.T.SATHEESHKUMAR,L.L.M., PG. Diploma (Cyber Law)

District Munsif, Arani

Thursday the 20th day of April 2023

Original Suit No.138/2019.

V. Sathya

..Plaintiff.

/Vs/

S.P. Syad Askar

..Defendant.

This suit came up on 12.04.2023 for final hearing before me in the presence of Thiru. T. Saravanan, Counsel for the plaintiff and defendant being set exparte, upon hearing the plaintiff and upon perusing the records, as well as oral testimony, stood over for consideration till this day, this court delivered the following.

J U D G M E N T

This is a suit for Permanent Injunction restraining the defendant and their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for costs.

1. BRIEF AVERMENTS IN THE PLAINT:

According to the plaintiff, the suit property and other property were owned by one Vellai gounder, Sekar and Subramaniam. The defendant purchased the entire properties from said Vellai gounder, Sekar and Subramaniam on 11.02.1998 through registered sale deed. The defendant had been possession and enjoyment of the said properties. The defendant unable to maintain the suit properties, so he executed general power of attorney deed in favour of one V.G.Pithambaram on 18.02.2002 and

on the same day he delivered of the suit property to said V.G.Pithambaram.

2. The said V.G.Pithambaram had been possession and enjoyment of the suit properties and other properties and submitted the accounts in respect of the properties to the defendant. The said V.G.Pithambaram sold the suit property to one Kirubanandam on 28.02.2002 by way of registered sale deed, then the said Kirubanandam had been possession and enjoyment of the suit property till his death.

3. After the death of the said Kirubanandam, his legal heirs namely Ganesan, Karpagam and Varalakshmi sold the suit property to the plaintiff on 23.02.2017 by way of registered sale deed. The patta also mutanties in the name of plaintiff. The patta number is 2683. The A register also stands in the name of plaintiff. The property tax was not imposed by panchayat union. The plaintiff filed the sale deed in the name of defendant, the General power of attorney deed in the name of V.G.Pithambaram, the sale deed in the name of said Kirubanandam, the sale deed in the name of plaintiff, patta and A register stands in the name of plaintiff in the suit.

4. The defendant without having right, title and possession of the suit property, he is trying to interfere with peaceful possession and enjoyment of the suit property by plaintiff. The defendant has intention to grab the suit property from plaintiff by any other way. Therefore, the plaintiff is constrained to file this suit for permanent injunction.

5. BRIEF AVERMENTS IN THE WRITTEN STATEMENT FILED BY THE DEFENDANT :

According to defendant, he denied all the facts in 1 to 7 para in the plaint. The case of the defendant is the suit property was owned by this defendant. The defendant borrowed money from one Dhanasekar, financier, Villapakkam village, Arcot Taluk, for the interest per month 36%. The defendant had paid interest for above said debt regularly. In the year 1999 the defendants wanted more money to start business. At the time the said Dhanasekar gave debt sum of Rs.10,00,000/- to the plaintiff voluntarily.

6. The defendant did not executed any document for above said debt. AT this situation in the year 2002, the defendant was in his home, the said Dhanasekar and his brother in law V.G.Pithambaram and Selvam came along with Sundaram and rowdy elements came to defendant's home, then they kidnaped the defendant, they gave life threat to execute the document regarding the property, the defendant executed the General power of attorney deed in favour of said V.G.Pithambaram.

7. For above occurrence, the defendant gave a police complaint before District Crime Branch, Vellore on 12.02.2018. Based on complaint the First Information Report was registered in Crime No.3/2018 U/S. 120b, 420, 423, 427, 465, 467, 471, 294b, 506(2) I.P.C., In that case the accused released on bond. The defendant did not execute any General power of attorney deed in favour of said V.G.Pithamabaram. The said General power of attorney deed was executed by the defendant by way of threatening. The sale deed executed by V.G.Pithambaram in favour of Kirubanandam was also stated in Crime No.3/2018 by defendant. To intention to grab the property from this defendant, the said V.G.Pithamabaram and plaintiff jointly executed the sale deed dated 20.02.2002 and 23.02.2017.

8. The plaintiff has no right, title over the suit property. The suit of the plaintiff is barred without seeking the relief of declaration. There is no cause of action for the suit. Therefore the defendant prays to dismiss the suit.

9) **On the basis of assertions and denials of parties made in their respective pleading this Court framed following considerable Issues:-**

- (I) Whether the plaintiff is possession and enjoyment of the suit property ?
- (ii) Whether the plaintiff is entitled the relief of permanent injunction as prayd for ?
- (iii) Whether the suit of plaintiff is not maintainable without seeking the relief of declaration ?
- (iv) Whether the plaintiff is entitled to get any other relief ?

10. To prove the case of the plaintiff, the plaintiff was examined as PW1, and one Balamurugan was examined as PW2, through PW1, Ex. A1 to Ex A8 were marked. The defendant was not appear before this court for cross examination of PW1. Hence, the defendant was set exparte.

11. Issue No.1.

The admitted facts in this case is the suit property was purchased by defendant from one Vellai gounder, Sekar and Subramaniam through registered sale deed dated 11.02.1998 which is marked as Ex.A1. The admitted fact need not be prove as per Section 58 of India Evidence Act 1872. Hence Ex.A1 sale deed dated 11.02.1998 is need not be prove.

12. The defendant executed the General power of attorney deed dated 18.02.2002 in favour of one V.G.Pithambaram. The General power of attorney deed was marked as Ex.A2. On perusal it is seen that the defendant executed the General

power of attorney deed in favour of V.G.Pithambaram. The Ex.A2 General power of attorney deed is registered document. Therefore, the plaintiff proved that the defendant executed Ex.A2 General power of attorney deed in favour of V.G.Pithambaram in respect of suit property.

13. The said V.G.Pithambaram sold the suit property to one Kirubanandam by registered sale deed dated 28.02.2022 which is marked as Ex.A3. On perusal it is seen that Ex.A3 sale deed dated 28.02.2002 is registered sale deed. Therefore, the plaintiff proved that the said V.G.Pithambaram executed the sale deed in favour of Kirubanandam.

14. The said Kirubanandam was died on 19.06.2003. The xerox copy of the death certificate of Kirubanandam was marked as Ex.A8. The plaintiff purchased the suit property from the Legal heirs of Kirubanandam, one K.Ganesh, Karpagam and Varalakshmi by registered sale deed dated 23.02.2017 which is marked as Ex.A4. Ex.A4 sale deed is registered document. Hence the plaintiff proved that he purchased the suit property from legal heirs of Kirubanandam.

15. The defendant stated that, he borrowed money from Dhanasekar sum of Rs.10,00,000/-. The defendant did not executed any document for above said debt. On in the year of 2002 the said Dhanasekar, and his brother in law V.G.Pithambaram and Selvam came along with Sundram, all of them came to defendant's house and kidnaped him. The defendant was threatened by them for execution of document. So, the defendant executed the General power of attorney deed in favour of V.G.Pithambaram. The said Ex.A2 General power of attorney deed was obtained by V.G.Pithambaram from defendant by way of giving life threat. The defendant given

complaint against them on 12.02.2018 in Cime No.3/2018 U/s. 120b, 420, 423, 427, 465, 467, 471, 294, 506(2) I.P.C., and all of them released on bond.

16. To prove above fact the defendant did not filed any document. Further according to defendant, he was kidnaped by Dhanasekar, V.G.Pithambaram, Selvam and Sundaram in the year of 2002, but he gave a police complaint on 12.02.2018. A common prudent man cannot keep mum when he was kidnaped by others, further if really the defendant was kidnaped by them, obviously he immediately rushed to the police station, but in this case the defendant given complaint on 12.12.2018 for the offence occurrence in the year of 2002. The contention of the defendant could not believable.

17. The plaintiff filed patta Ex.A5 in respect of suit property and Ex.A6 A registered are stands in the name of plaintiff. Further the plaintiff filed Ex.A7 Blue print which was approved by the Chairman of Sangeethavadi panchayat.

18. From the above document the plaintiff proved his side case. The defendants did not choose to contest his suit and was set exparte. Therefore, this Court took adverse inference as against the defendants. Further, in the absence of any specific pleadings and evidence to rebut the claim of the plaintiff, there is no proper reason to discard the pleading and evidence put forth by the plaintiff. Therefore, this Court comes to the conclusion that the defendants are liable to pay the suit claim amount as started supra.

19. Therefore, from above reason and fact and circumstances of this case, this court concluded that the plaintiff is in possession and enjoyment of the suit property. Hence this issue is answered accordingly.

20. Issue No.II.

In issue No.1, this court concluded that the plaintiff is in possession and enjoyment of the suit property. Therefore, the plaintiff is entitled the relief of permanent injunction.

21. Issue No.III.

The defendant stated that, the suit of the plaintiff is not maintainable without seeking the relief of declaration.

The Hon'ble Supreme Court of India 2008(6) CTC 237.

11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defedant, a suit for an injunction simpliciter will lie. A person has a right to protec his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a could, or where the defednant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to

establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the Court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

22. Eventhough the defendant disputed of the title of the plaintiff, but there is no cloud over the suit property regarding the title of the plaintiff. In issue No.1 the plaintiff already proved his title through Ex.A1 to Ex.A4 documents. Therefore, from above reported judgment it is not necessary to seek a relief of declaration. Merely the suit for prohibitory injunction alone maintainable. Hence this issue is answered accordingly.

23. Issue No.IV.

After having determined the issues No.I to III this Court is of the considered view that the plaintiffs have proved their case on the basis of cardinal Principal of Preponderance of Probabilities Accordingly Issue No.I to III is answered in favour of the plaintiffs. This Court considers that the plaintiffs are except the suit relief, they are not entitled to get any other relief in this suit. This issue is answered accordingly.

24. In the result, the suit is decreed as follows,

(i) That Granting permanent injunction restraining the defendant their men, servants, agents etc., from interfering with the plaintiff peaceful possession and enjoyment of the suit property.

(ii) That the defendant to pay the cost of the suit to the plaintiff.

Dictated by me directly to Typist, corrected and pronounced by me in the open

court on this the 20th day of April 2023.

**(Sd)/-P.T.Satheeshkumar,
District Munsif,
Arni.**

Plaintiff's side witness:

PW1 Tmt. Sathya (Plaintiff)

PW2 Tr. Balamurugan.

Plaintiff's side Exhibits:

Ex.A1	11.02.1998	Sale deed in the name of defendant	Original
Ex.A2	18.02.2002	General Power of Attorney deed in the name of Pithambaram	Certified copy
Ex.A3	28.02.2002	Sale deed in the name of Kirubanandam	Original
Ex.A4	23.02.2017	Sale deed in the name of plaintiff	Original
Ex.A5	--	Computer Chitta in the name of plaintiff	Computer copy
Ex.A6	--	A Register computer copy in the name of plaintiff.	Computer copy
Ex.A7	--	Blue print sketch regarding the suit property	Original
Ex.A8	--	Death certificate of Kirubanandam	Xerox copy.

Defendant's side exhibits and witnesses : Nil.

**(Sd)/-P.T.Satheeshkumar,
District Munsif,
Arni.**