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S.A. No.60



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P. DHANABAL

S.A. No. 601 of 2015

Umapathy

... Appellant

Vs.

Kantha

... Respondent

Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 05.01.2015 made in A.S. No.51 of 2012 on the file of the Subordinate Judge, Ranipet Vellore District reversing the Judgment and Decree dated 03.08.2011 made in O.S. No.78 of 2007 on the file of the District Munsiff Cum Judicial Magistrate No.I, Walajah.

For Appellant : Ms. M. Nuzhath Khanam

For Respondent : Mr. K. Mohanamurali

JUDGMENT

This second appeal has been filed challenging the Judgment and Decree dated 05.01.2015 passed by the learned Subordinate Judge, Ranipet, Vellore, in A.S. No.51 of 2012 reversing the judgment and Decree dated 03.08.2011 passed



by the District Munsiff Cum Judicial Magistrate No.I, Walajah, in O.S. No.78 of 2007.

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2. For the sake of convenient, the parties are referred to as per the rank of Trial Court.

3.The case of the plaintiff is that, she is the owner of the suit schedule property and she has purchased the same through a Registered Sale Deed, dated 02.06.1997. She is in possession and enjoyment of the suit schedule property ever since the date of purchase by changing the Revenue Records in her name. While being so, the defendant without any right, title or interest over the plaint schedule property has unlawfully trespassed into the subject property and cut and carried away the Mulveli Trees and dumped sand load and gravels over there. Hence, the plaintiff has issued a legal notice to the defendant on 26.05.2007. However, no reply was sent by the defendant. Therefore, the plaintiff filed the suit seeking for permanent injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the suit property.

4. The defendant filed a written statement, denying the allegations made in the plaint. According to the defendant, the suit property was purchased by the Joint Family in the name of his Mother one Poongavanammal and the suit

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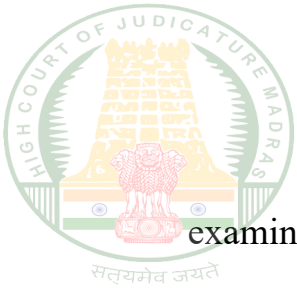
schedule property is in the possession and enjoyment of the Joint Family. The defendant's mother had no separate income to purchase the suit property and she never enjoyed it as her absolute property and therefore, the sale deed executed by her in favour of the plaintiff is not valid and binding on the defendant and Joint Family members. The father and mother of the defendant jointly mortgaged the suit property on 22.09.1988 and the said mortgage was discharged by the defendant only on 10.07.1997. Therefore, the suit property is the Joint family property and the defendant is in possession and enjoyment of the same as a joint family property for all these years. Hence, the plaintiff has no right or title to file the suit. Hence, the suit is liable to be dismissed.

5. Based on the pleadings and submissions of both side counsel, the Trial Court framed the following issues:

(I) Whether the plaintiff is entitled for the relief of permanent injunction as prayed?

(ii) Whether it is true that the plaintiff is not entitled for the relief sought for by her as the suit property has been purchased from and out of Joint Family Income derived by the Joint Coparcenary family as stated by the defendant?

(iii) To what other relief the plaintiff is entitled?



6. During the Trial, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.5 were marked. On the side of the defendant, D.W.1 to D.W.4 were examined and Ex.B1 to Ex.B3 were marked. After considering the submissions and the evidences adduced on both sides, the Trial Court has held that the suit schedule property belongs to the mother of the defendant and not the Joint Family property. However, the Trial Court dismissed the suit on the ground that since the plaintiff herself has admitted the trespass of the defendant and there is no documents to prove possession of the plaintiff over the suit property and hence she is not entitled for a relief of permanent injunction.

7. Aggrieved over the same, the plaintiff had filed an appeal before the First appellate Court in A.S. No.51 of 2012. During pendency of the appeal, the appellant has filed a petition in I.A. No.158 of 2011 to receive additional documents as additional evidence. After hearing both sides and perusing the records, the First appellate Court has framed the following points for determination.

1. Whether the petition filed in I.A. No.158 of 2011 to receive additional documents as evidence to be allowed?

2. Whether the Judgment and Decree dated 03.08.2011 passed in O.S. No.78 of 2007 on the file of the District Munsif cum Judicial Magistrate Court No.1 Walajah are liable to be set aside?



3. To what other relief the appellant is entitled?

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8. After hearing both sides and perusing the records, the First appellate Court reversed the Judgment of the Trial Court and decreed the suit by granting permanent Injunction against the defendant by allowing the first appeal since the appellant has proved her title, possession and enjoyment over the suit property.

9. Being Aggrieved over the Judgment and Decree passed by the 1st Appellate Court, this second appeal has been filed by the defendant and it was admitted on the following substantial questions of law:

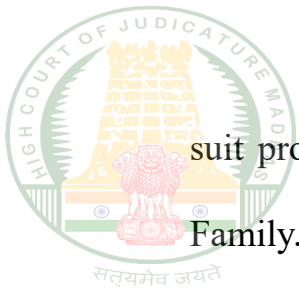
a. Whether the Courts below not erred in decreeing the suit for permanent injunction inspite of the respondent plaintiff in the plaint claim that the appellant trespassed into the suit property and filed the suit for permanent injunction as if she is in possession?

b. Whether the Lower Appellate Courts not erred in decreeing the suit for permanent injunction without a prayer for declaration of title to the suit property inspite of the fact that the defendant appellant denied the title of the plaintiff to the suit property and claim possession with him?

c. Whether the Courts below not erred in decreeing the suit for permanent injunction without proof of possession of the suit property by the plaintiff on the date of the suit?



10. The learned counsel appearing for the appellant/defendant submits that the plaintiff filed the suit for permanent injunction without a prayer for declaration of title to the suit schedule property, while the defendant denied the title of the plaintiff over the suit schedule property. In fact, the suit schedule property was purchased from the income of Joint Family. Therefore, the suit schedule property is the Joint Family property of the defendant/appellant herein. Further, the mother of the defendant/appellant sold the property without the knowledge of the defendant and his family members. The mother and father of the defendant already jointly mortgaged the suit property since the suit schedule property is a joint family property and the defendant has discharged the suit property from the mortgage. Hence, the mother of the defendant has no right to sell the suit property. Moreover when the defendant denied the title of the plaintiff over the suit schedule property, the plaintiff filed the suit without seeking prayer for declaration. While the defendant has no objection to file the suit in respect of the title over the property, the plaintiff has not filed any suit for declaration of the title of the suit property. Further, while the suit has not been filed seeking for declaration of tile of the suit schedule property, without considering the fact that the suit schedule property is joint family property, the Trial Court and the First Appellate Court has gone into the title of the property and wrongly held that the plaintiff is owner of the suit property without considering the mother of the defendant has no source of income to purchase the



suit property and the suit property was purchased from the income of the Joint Family. Further, the First Appellate court without considering the evidence in respect of possession of the property, decreed the suit, by setting aside the decree and Judgment of the Trial Court.

10.1. It has been further submitted that though the Trial Court erroneously decided that the suit property belongs to the plaintiff, correctly dismissed the suit holding that as per the plaint averments, the defendant has trespassed the suit property, thereby the plaintiff herself has accepted that she is not in possession of the property. Hence, the plaintiff is not entitled to the prayer of permanent injunction. During the 1st appeal, the First appellate Court ought not to have decreed the suit by setting aside the Judgment and decree of the Trial Court, while the suit property is under dispute over the title of the property. The 1st appellate Court has decided the case merely relying upon the Ex.A1-Sale Deed executed in favour of the plaintiff and Ex.A2-Patta stands in the name of the plaintiff, without considering that the suit schedule property is a joint family property and the mother of the defendant has no income to purchase the suit schedule property, decreed the Suit. In support of his arguments, she relied upon the Judgments in **(i) M.Ramamoorthy Vs, R.Thirunavukkarasu**, reported in **2015(39)RC (Civil) 606** and **(ii) R.Renuka and Ors. Vs. N. Krishnakumar and Anr.** Thus, he prays this Court to set aside the Judgment and decree of the 1st appellate Court.



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11. Per contra, the learned counsel appearing for the respondent/plaintiff submits that the plaintiff has purchased the suit schedule property by way of Sale deed dated 02.06.1997 which is vacant land. Thereafter, Patta has also been transferred in her name based on the Title Deeds. Whereas, the defendant trespassed into the subject property and cut and carried away the Mulveli Trees and dumped sand load and gravels over there. Hence, the plaintiff has issued a legal notice to the defendant on 26.05.2007 calling upon him to refrain from interfering with her peaceful possession and enjoyment of the suit schedule property. However, no reply was sent by the defendant. Therefore, the plaintiff filed the suit seeking for permanent injunction against the defendant.

11.1. It has been further submitted by the learned counsel for the respondent/appellant that as the plaint averments states that the defendant trespassing the suit property, cut and carried away the Mulveli Trees and dumped sand load and gravels over there, the Trial Court has misunderstood the same as if the defendant has trespassed the suit property and he is in possession of the same. The plaintiff has not stated elsewhere in the plaint that the defendant has trespassed the suit schedule property and he is in possession of the same. However, the 1st appellate Court after considering the oral and documentary evidence, correctly held that the plaintiff has proved the title of the property by way of Ex.A1-Sale Deed dated 02.06.1997 executed by mother of the defendant



and Ex.A2-Patta stands in her name and set aside the Judgment and decree of the Trial Court and allowed the first appeal filed by the plaintiff. Further, even though the plaintiff has proved the title of the property by way of Ex.A1-Sale Deed dated 02.06.1997 executed by mother of the defendant, the defendant has not filed any appeal or cross objection as against the findings of Trial Court in respect of the title of the suit property. Further, the defendant/appellant herein did not deny the title of the plaintiff over the suit schedule property. Therefore, the 1st appellate Court correctly decreed the suit granting permanent injunction against the defendant.

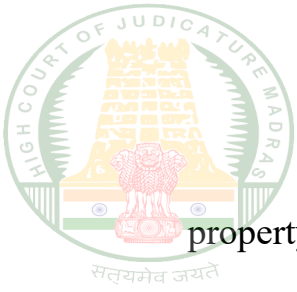
11.2. The learned counsel for the respondent/plaintiff further submits that the plaintiff never admitted the possession of the defendant and the prayer of the declaration is concerned, as the plaintiff has purchased the suit schedule property from the mother of the defendant by way of Sale Deed dated 02.06.1997, but no any documents produced by the defendant to prove his contention, thereby no any cloud over the title of the property, hence, the plaintiff need not seek prayer for declaration. Further, the First Appellate Court also in its Judgment has discussed about the conduct of the defendant stating that when the mother of the defendant sold other property to some third party, no claim was made by the defendant against those property, but the defendant has claimed the title over only this property sold to the plaintiff. Hence, the second appeal is liable to be dismissed.



12. This Court has considered the submissions made on both sides and perused the materials available on record.

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13. In this case, admittedly, there is no dispute that the plaintiff has purchased the suit schedule property from the mother of the defendant by way of sale deed dated 02.06.1997 vide Ex.A1 and thereafter, Patta has been transferred in the name of the plaintiff. Vide Ex.A2. It is also admitted fact that the suit property is a vacant site to the extent of 360 Sq.ft. Since the defendant trespassing the suit property, cut and carried away the Mulveli Trees and dumped sand load and gravels over there, the plaintiff filed the suit. Further, the defendant has also not denied the execution of the Ex.A1-Sale Deed dated 02.06.1997 in favour of the plaintiff by his mother and also other properties belong to the mother of the defendant were sold to other parties. However, he claims the title over only to the suit property which sold to the plaintiff and not other properties sold by the mother of the defendant. According to him, the suit schedule property belongs to Joint Family property and he is also a joint shareholder of the property. Therefore, the prayer in the suit for permanent injunction is not maintainable without seeking for declaration of title over the suit schedule property.



14. It is well settled law that if there is any cloud over the title of property, a suit for bare injunction cannot be maintained and legal possession has also to be considered. It is admitted fact that the plaintiff has purchased the suit schedule property for sale consideration by way of registered sale deed dated 02.06.1997 from the mother of the defendant vide Ex.A1 and Patta has been transferred in her name based on the title deed, vide Ex.A2. By way of these statutory documents, the plaintiff has proved her title over the suit schedule property and possession and enjoyment of the same. Hence, the suit has been filed seeking for the relief of permanent injunction against the defendant stating the reasons in Para No.4 of the pleadings that the defendant herein who has no right, title or interest over the plaintiffs property has unlawfully trespassed into the plaintiffs property and cut and carried away the mulveli trees and dumped sand load and gravels over there. The plaintiff has not stated in the pleadings that the suit property is in the possession of the defendant. While the suit property is a vacant site to the extent of 360 Sq.ft, the Trial Court has misunderstood the above pleadings that the plaintiff herself admitted that the defendant is in the possession of the suit schedule property. Further the trial Court after holding that the suit property is not a joint family property without taking into consideration of Sale Deed dated 02.06.1997, Ex.A1 and Patta, Ex.A.2., failed to grant permanent injunction. However, the 1st Appellate court after elaborate discussion correctly decreed the Suit.



15. As far as the substantial questions of law that a) *Whether the Courts below not erred in decreeing the suit for permanent injunction inspite of the respondent plaintiff in the plaint claim that the appellant trespassed into the suit property and filed the suit for permanent injunction as if she is in possession? and c. Whether the Courts below not erred in decreeing the suit for permanent injunction without proof of possession of the suit property by the plaintiff on the date of the suit?* are concerned, the Plaintiff has not stated that the defendant is in possession of the property by trespassing into the property, per contra in Para No.4 of the Plaint stated that the defendant unlawfully trespassed and cut and carried away the trees and dumped sand and gravels. This pleading shows that the defendant cut and removed the trees in the property. The said act of the defendant will not amounts to possession of the property. There is no evidence that the defendant is in possession, per contra, the evidence of PW1 and Ex.A1 and A2 clearly proved the possession of the Plaintiff. Since the Suit property is vacant land, possession follows the title. The Plaintiff has proved her case through original Sale Deed and patta in her name and the defendant also admitted the Sale Deed stood in the name of his mother and his mother sold the property to the Plaintiff, but the defendant's case is that the sale was registered in the name of his mother for the joint family. However, the said theory has not been proved through sufficient evidence. Once the sale deed registered in the name of the mother of the defendant, it is the presumption that the said property was



purchased by her, unless the contrary is proved.

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In the case on hand, the defendant failed to prove that the property was purchased in the name of his mother for the joint family. Even after knowing that the sale deed was in favour of the Plaintiff, the defendant has not taken any steps as against the said sale deed. Therefore, the Plaintiff proved the possession and enjoyment of the Suit property.

Hence, the Court below has not erred in decreeing the suit for permanent injunction since the respondent plaintiff in the plaint claimed that the appellant trespassed into the suit property and cut and carried the trees and filed the suit for permanent injunction and he is in possession and enjoyment of the suit property by the plaintiff on the date of the suit. Accordingly, the Substantial questions of law No.a and c are answered.

16. As far as the Substantial question of law that *b) Whether the Lower Appellate Courts not erred in decreeing the suit for permanent injunction without a prayer for declaration of title to the suit property inspite of the fact that the defendant appellant denied the title of the plaintiff to the suit property and claim possession with him?* is concerned, in the instant case, there is no dispute that the plaintiff has purchased the suit schedule property from the mother of the



defendant and the defendant has not denied the execution of the sale deed by mother of the defendant in favour of the plaintiff in the written statement. While the plaintiff has proved her title and her possession through Ex.A1 and A2, the defendant neither filed any suit agitating the sale deed dated 02.06.1997 executed by his mother, nor filed cross objection as against the findings of the Trial Court. Further, before disposing of the suit schedule property to the plaintiff, the defendant has not taken any steps for partition of the suit schedule property. Since the plaintiff has substantive documents ie. Ex.A1 and Ex.A2, to prove her title and possession over the suit schedule property and the defendant has no right over the property, she has not sought for the relief of declaration in the suit. As there is only relief of permanent injunction sought by the plaintiff, the Trial Court has not framed the issue for the declaration of title. There is no cloud over the title of the property as the Plaintiff established her case through sufficient deeds. It is well settled law that mere denial of title by the defendant is not sufficient for seeking relief of declaration and there should be cloud over the title of the property. In such circumstances, the Trial Court has not properly considered with regard to the possession of the suit schedule property even though the documents Ex.A1 and Ex.A2 have been marked to prove the title and possession of the property. However the First Appellate Court has discussed about the documents Ex.A1 and Ex.A2 marked by the plaintiff and came to a correct conclusion that the plaintiff has proved her title over the suit schedule property and her possession and



enjoyment of the same and correctly allowed the first appeal filed by the plaintiff by setting aside the Judgment and Decree passed by the Trial Court.

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17. At this juncture, the learned counsel for the appellant has relied upon the following judgments:

(i) M. Ramamoorthy v. R. Thirunavukkarasu reported in 2015(39) RCR (Civil) 606.

(ii) R. Renuka and Ors v. N. Krishnakumari and Anr. In S.A. (MD) No.346 of 2018.

On a careful perusal of those judgments, it is clear that ‘in cases, where title to property is under dispute or clouded, a Suit for bare injunction cannot be maintained, parties should pursue a more comprehensive declaratory Suit for title. In the case on hand, the Plaintiff purchased the property from the mother of the defendant and the Plaintiff proved his case through title deeds and revenue records, but the defendant has not filed any documents to prove his case. Thereby, there is no cloud over the title of the property and bare injunction Suit is maintainable without the prayer for declaration of title. Hence, the lower appellate Court is not erred in decreeing the suit for permanent injunction without the prayer for declaration of title to the suit property inspite of the fact that the defendant appellant denied the title of the plaintiff to the suit property and claim



possession with him. Accordingly, the substantial question of law No.b is answered.

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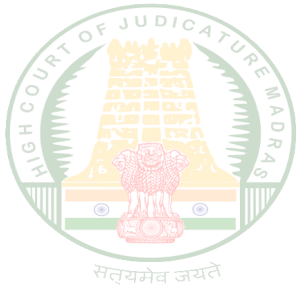
18. Accordingly, this second appeal is ***dismissed***. Consequently, connected civil miscellaneous petition stands closed. No costs.

24.11.2025

Lbm
Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To:

1. The Subordinate Judge,
Ranipet Vellore District
- 2.The District Munsiff Cum Judicial Magistrate No.I,
Walajah.
3. The Section Officer, VR Section,
High Court, Madras.



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S.A. No.60



P. DHANABAL, J.

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S.A. No. 601 of 2015

24.11.2025