

(2011) 01 MAD CK 0091

In the Madras High Court

Case No : S.A. No. 1316 and 1317 of 1997

P. Lakshmanan and L. Thangaraj

APPELLANT

Vs

P. Arumugam (Died) and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Specific Relief Act, 1963 — Section 38

Citation : (2011) 01 MAD CK 0091

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : B. Soundrapandian, for the Appellant; V. Nicholas, for 5th Respondent in S.A. No. 1316 of 1997 and 2nd Respondent in S.A. No. 1317 of 1997 and K. Kalyansundaram, for Respondents 6 to 10 and Respondents 12 to 14 in S.A. No. 1316 of 1997 and Respondents 3 to 7 and 9 to 11 in S.A. No. 1317 of 1997, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—The Plaintiffs in O.S. No. 2514 of 1993 on the file of the I Additional District Munsif Court, Coimbatore are the

Appellants.

2. The Plaintiffs filed the suit for injunction stating that the suit property and other properties belonged to the 4th Defendant ancestrally and the total

extent of the properties owned by the family was an extent of 60 x 90 feet and thereafter there was a partition in the family and in that partition the

1st Plaintiff was allotted an extent of 60 x 30 feet of property and the 1st Plaintiff constructed a house in that property and is enjoying the same. As

the Defendants attempted to interfere with the Plaintiffs right to the suit property, the suit was filed for injunction.

3. The Defendants 1 to 3 filed a statement denying the oral partition and also the

enjoyment of the property by the 1st Plaintiff. The 4th Defendant also filed the separate statement stating that the property is his self acquired property and the 1st Plaintiff can not claim any right in the property and the 4th Defendant sold an extent of 30 x 30 feet to the 3rd Defendant under a registered sale deed dated 30.11.1993 and the remaining properties are in the possession of the 4th Defendant. Therefore, the Plaintiffs were never in possession of the property and they are not entitled to injunction.

4. The trial Court on the basis of the documentary evidence held that the property was the ancestral property belonging to the Plaintiffs and

Defendants 1, 2 and 4 and the suit property was allotted to the share of the 1st Plaintiff and he has put up construction and he is in possession of

the property and therefore he is entitled to injunction. Aggrieved by the same, the Defendants 1 and 3 filed an appeal in A.S. No. 2 of 1996 and

the 4th Defendant filed an appeal in A.S. No. 5 of 1996 on the file of the First Additional District Court, Coimbatore and the learned First

Additional District Judge confirmed the finding of the trial Court and held that the 1st Plaintiff is the owner of the suit property and he is possession

and enjoyment of the same. Nevertheless, the learned First Additional District Judge, Coimbatore allowed the appeal on the ground that the suit

filed for injunction without a prayer for declaration is not maintainable and the Appellants/ Plaintiffs ought to have prayed for declaration, when the

title was disputed and having not prayed for declaration, the suit for bare injunction is not maintainable. Aggrieved by the same, these two Second

Appeals are filed.

5. Mr. B. Soundarapandian, the learned Counsel for the Appellants submitted that both the Courts below have concurrently held that the suit

property belongs to the 1st Appellant and therefore the concurrent finding of fact cannot be interfered with in the Second Appeals and the lower

appellate Court allowed the appeal and dismissed the suit only on the ground that the suit for bare injunction is not maintainable in the absence of

any declaration of title and the reasoning of the lower appellate Court that a suit for bare injunction without a prayer for declaration is not

maintainable is against the Judgments rendered by this Court reported in A.P. Kuppusamy and Others Vs. P. Kumarapalayam Municipality, and

Yadhavan and Another Vs. Md. Dayanudin and Others, and even in a suit for bare

injunction the Court can give incidental finding about the title

and the suit cannot be thrown out on the ground that the relief of declaration was not sought for.

6. On the other hand, Mr. V. Nicholas the learned Counsel for the 2nd Respondent in S.A. No. 1317 of 1997 and 5th Respondent in S.A. No.

1316 of 1997 submitted that when title to the suit property is in dispute it is the duty of the Plaintiffs to pray for declaration and a suit for bare

injunction is not maintainable. He relied upon the judgment reported in 2011 (1) Law Weekly 235 (T. Matheswari v.T.G. Tulasi) in support of his

contention that a suit for injunction is not maintainable when the title is in dispute.

7. Mr. K. Kalyanasundaram, the learned Counsel for the Respondents 6 to 10 and 12 to 14 in S.A. No. 1316 of 1997 and Respondents 3 to 7

and 9 to 11 in S.A. No. 1317 of 1997 submitted that the lower appellate Court has erroneously held that the Appellants are the owners of the suit

property and they are in possession of the suit property and the Appellants failed to prove the oral partition alleged by them and in the absence of

any proof of oral partition the Appellants cannot claim title to the suit property and without prayer for declaration the suit for bare injunction is not

maintainable and he also relied upon the judgment of the Hon'ble Supreme Court reported in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by

LRs. and Others, .

8. According to me, the following substantial question of law arises for consideration in these Second Appeals:

Whether the suit for bare injunction without a relief of declaration is maintainable ?

9. In these appeals there is no dispute regarding the relationship between the parties. The 4th Defendant is the father and the 1st Plaintiff and

Defendants 1 and 2 are his sons. The 2nd Plaintiff is the son of the 1st Plaintiff. The 3rd Defendant is the daughter's daughter of the 4th Defendant.

The case of the Plaintiffs was that by selling the ancestral property the suit property and larger extent was purchased by the 4th Defendant and

thereafter there was a partition and in that partition the 1st Plaintiff was allotted an extent of 30 x 60 feet of property and he had put up

construction in that property. The contention of the Defendants/ Respondents

was that the property is the self acquired property of the 4th

Defendant and there was no oral partition as alleged by the Plaintiffs and the 4th Defendant is in possession and enjoyment of the property and

sold an extent 30 x 30 feet in favour of the 3rd Defendant and another extent was sold by the 4th Defendant in favour of the wife of the 1st

Defendant and therefore the Plaintiffs have no title over the same.

10. The trial Court on the basis of Exs. A1 and A2 held that by selling the property belonging to the family under Ex.A2 the suit property and the

larger extent was purchased under Ex.A1 and therefore held that the suit property and the larger extent was the ancestral property belonging to the

Plaintiffs and Defendants 1,2 and 4. Further, Exs.A3 and A4 are the house tax receipts and Exs. A6 and A8 are the water tax receipts in respect

of the suit property and they stand in the name of the 1st Plaintiff and also on the basis of the evidence of P. Ws.2 to 4 the Courts below held that

there was a oral partition and in that oral partition the suit property was allotted to the share of the 1st Plaintiff and he had put up construction and

therefore he is the owner of the property and he is in possession and enjoyment of the same. The learned first appellate Judge also concurred with

the findings of the trial Court after appreciating the oral and documentary evidence and held that the 1st Plaintiff the 1st Appellant herein is the

absolute owner of the suit property and he is in possession and enjoyment of the same. Therefore, both the Courts below have concurrently held

that after independently analyzing the evidence available on record that the 1st Appellant is the owner of the suit property and he is in possession

and enjoyment of the same. therefore hold that the concurrent finding of fact cannot be interfered with and both the Courts below have rightly

come to the conclusion that the 1st Plaintiff/ 1st Appellant is the owner of the property and he is in possession and enjoyment of the same.

11. The next question to be decided is:Whether the suit for bare injunction is maintainable ?

12. It is submitted by the learned Counsel for the Appellants that when the 1st Plaintiff comes to the Court with a specific case that he is the owner

of the suit property and he is in enjoyment of the same and his possession is sought to be disturbed by the Defendants, it is enough to file the suit

for injunction. Merely because the title is disputed in the written statement, it is

not necessary to pray for declaration. In the judgment reported in *Yadhavan and Another Vs. Md. Dayanudin and Others*, , this Court has held that a suit for bare injunction is maintainable and question of title can be gone into incidentally for deciding relief of injunction claimed in the suit. Similarly, in the judgment reported in *A.P. Kuppusamy and Others Vs. P. Kumarapalayam Municipality*, , this Court has held that u/s 38 of Specific Relief Act, 1963, the relief of injunction can be granted even if no declaratory relief is expressly prayed for and suit for bare injunction is maintainable. The Hon'ble Supreme Court in the judgment reported in *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others*, has laid down the law in regard to suits for prohibitory injunction relating to immovable property is as under:

(a) Where a cloud is raised over the Plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the Plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the Plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some *prim facie* right of a third party over it, is made out or shown.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where *de jure* possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(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). 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.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved

is simple and straightforward the Court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to

the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction,

should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or

wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire

into title and cases where it will refer to the Plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

Therefore, when necessary pleadings are there regarding title, the parties have let in evidence regarding title, the Court can go into the question of

title and give a finding even in a suit for injunction.

13. In this case, as stated supra, the Appellants have pleaded that the property is the ancestral property in the hands of the 4th Defendant and in a

oral partition, the suit property was allotted to the share of the Appellants and they have put up construction and they are in possession and

enjoyment of the same. Therefore, the Plaintiffs/ Appellants have specifically pleaded about their title and possession and that was denied by the

Respondents in the written statement and parties have let in evidence regarding title and both the Courts have concurrently held that the Appellants/

Plaintiffs are the owners of the suit property and they are in possession and enjoyment of the same. Therefore, as held by the Hon"ble Supreme

Court in the judgment referred to above, there are specific pleadings regarding title and evidence was let in and the Courts below have rightly

decided the question regarding title and that is permissible in a suit for injunction. Therefore, the findings of the lower appellate Court that a suit for

bare injunction without a prayer for declaration of title, when the same is disputed by the Defendants is not maintainable, is not correct. Further, in

my opinion, that contingency may arise if prior to the filing of the suit the title of the Plaintiff is disputed by the Defendants and in that event it is

incumbent on the part of the Plaintiffs to pray for declaration and that situation may arise before filing of the suit by exchange notice and reply

notice. Therefore, when the Plaintiffs filed the suit based on their title and possession and prayed for injunction and during the pendency of the suit

the Plaintiffs title is questioned by the Defendants for the first time then the Court can go into the question of title also, when necessary pleadings

are there and there is no need for the Plaintiffs to pray for declaration in that suit. Therefore, as held by the Hon"ble Supreme Court the judgment

referred to above, a suit for bare injunction is maintainable when parties have come to Court with a specific case of ownership and let in evidence

about the title and in that case the Courts below can incidentally give a finding regarding title and the suit cannot be dismissed on the ground that the

suit is not maintainable for not praying the relief of declaration. Hence, the substantial question of law is answered in favour of the Appellants and

the suit for bare injunction is maintainable and as the Appellants proved that there are the owners of the property and they are in possession and

enjoyment of the suit property, they are entitled to injunction as prayed for.

14. Hence, the judgment and Decree of the trial Court is confirmed and the first appellate Court judgment and Decree are set aside and the

Second Appeals are allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.