

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2008

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM  
AND  
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

O.S.A.NO.266 OF 2004

P.Durgachalam (died)  
1.Chinthamani  
2.Kanakavalli  
3.Bhuvaneswari  
4.V.Manoharan  
5.V.Karunakaran  
6.V.Dinakaran

.. Appellants/Defendants 2 to 7

Vs.

1.K.Venkatesan(deceased) .. 1<sup>st</sup> Respondent/Plaintiff  
2.K.V.Kasthuri  
3.K.V.Hemalatha  
4.K.V.Yuvaraj  
5.R.Chidarth(minor)  
(rep. by his father and guardian  
P.K.Raghunath) .. Respondents 2 to 5  
(respondents 2 to 5 are  
brought on record as LRs of  
the deceased sole respondent  
vide order, dt.30.09.2008  
in CMP Nos.1459 to 1461/2008)

This Original Side Appeal has been preferred under Order XXXVI Rule 1 of O.S. Rules against the common judgment and decree of the learned Single Judge made in C.S.No.360 of 1993, dated 2.12.2003.

For Appellants : Mrs.Sujatha Rangarajan

For Respondents : Mr.S.V.Jayaraman, SC  
for Mr.N.Maninarayanan

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JUDGMENT

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

<https://hcservices.ecourts.gov.in/reserves> This appeal challenges the judgment of the learned Single Judge made in C.S.No.360 of 1993, whereby the relief of

declaration and recovery of possession was granted, while Tr.C.S.Nos.478 of 1997 and 493 of 1997 were dismissed.

2.The plaintiff in C.S.No.360 of 1993 has filed the suit, stating that the first defendant and the predecessors-in-title of the defendants 2 to 7 had represented to the plaintiff that they were the absolute owners of the land measuring 1 acre and 11 cents comprised in S.No.82/1 at Saligramam, Vadapalani, Madras and entered into an agreement of sale dated 2.9.1962 with the plaintiff; that the plaintiff was in possession and enjoyment of the property; that one Krishnan claimed that the entire land of 1 acre and 11 cents in S.No.82/1 belonged to the joint family and the defendants had only 1/6th share and he has filed the suit for partition in O.S.No.258 of 1983; that though it was dismissed by the trial court, it was decreed in A.S.No.202 of 1967, which was also confirmed by the High Court; that the land allotted to the plaintiff in S.No.82/1 is in possession and enjoyment of the plaintiff ever since his purchase; that the plaintiff has obtained plan sanctioned by the Corporation of Madras to put up his construction on the land; that the defendants had not only sold their shares in the entire extent, but also the other shares also and have cheated the plaintiff; that the defendants are bound by their sale deed and partition arrangement and they cannot go back; that the defendants are attempting to trespass into the land of the plaintiff; that the defendants have no right, interest or title to interfere in the absolute right of the plaintiff; that the plaintiff filed a suit in O.S.No.173 of 1991 on the file of the City Civil Court, Madras for permanent injunction; that the plaintiff also filed I.A.No.347 of 1991 for interim injunction; that though in the counter, the respondents therein had admitted the facts of the plaintiff's purchase to an extent of 18849 sq.ft. in S.No.82/1, they took up a stand that the sale deed would become null and void in view of the findings in A.S.No.202 of 1967, dated 16.12.1969; that being a party to the said sale deed, they cannot allege that the said deed would be null and void; that the said I.A. was dismissed and the appeal thereon was also dismissed; that the defendants are neither in actual possession nor in possession as per law and cannot claim to be in possession and hence now the plaintiff has filed the suit for declaration of his title to the suit property and for consequential relief of injunction.

3.The defendants filed the written statement, contending that they sold the land measuring an extent of 1 acre and 11 cents in S.No.82/1 to many persons, including the plaintiff, who purchased an extent of 18849 sq.ft. out of 1 acre and 11 cents as per registered sale deed dated 12.3.1963; that the plaintiff purchased the suit property after verifying the marketable title of the property; that the plaintiff had not at all been in possession and enjoyment of the suit property; that the plaintiff has suppressed the material fact of pendency of the another suit in O.S.No.4255 of 1987 and obtained patta in his

name, but on representing the fact to the Tahsildar, the patta issued in his name was cancelled; that further, the plaintiff, by suppressing the fact of pendency of suit in O.S.No.4255 of 1987, obtained an ex parte interim injunction in I.A.No.347 of 1991 against the defendants stating that he was in possession and enjoyment of the suit property; that neither Doraiarasan nor the plaintiff had never been in possession and enjoyment of the suit property; that the statement of the plaintiff that the defendants attempted to trespass into the suit property by removing the fences put up by the plaintiff is utter false; that the ex parte temporary injunction obtained by the plaintiff in I.A.No.347 of 1991 in O.S.No.173 of 1991 was vacated by filing necessary counter; that the appeal filed by the plaintiff against the said order was dismissed and that under these circumstances, the suit was to be dismissed.

4. On the above pleadings, 5 issues were framed. On the side of the plaintiff, P.W.1 was examined and Exs.P.1 to P.4 documents were marked. On the side of the defendants, D.W.1 was examined and Exs.D.1 to D.13 were marked. After hearing the submissions made and also considering the materials placed, the learned Single Judge has decreed the suit in C.S.No.360 of 1993 and dismissed the other two suits. Hence this appeal has arisen at the instance of the defendants in C.S.No.360 of 1993.

5. The only question that would arise for consideration in this appeal is whether the plaintiff is entitled for the relief of declaration and consequential permanent injunction as decreed by the learned Single Judge?

6. Advancing arguments on behalf of the appellants, the learned counsel would submit that the learned Single Judge should have dismissed C.S.No.360 of 1993 for declaration and permanent injunction and in alternative for recovery of possession, while dismissing the suit filed by the plaintiff in Tr.C.S.No.493 of 1997 for permanent injunction; that it is pertinent to point out that both the suits were filed by the same plaintiff against the respondents/appellants; that originally the suit was filed for injunction in C.S.No.360 of 1993 and subsequently, a fresh suit was filed in C.S.No.360 of 1996 for declaration of title of the suit property and for consequential relief of injunction; that it is pertinent to point out that the suit was filed after all the rights, interest and title of the plaintiff in the suit property became extinguished; that admittedly, the appellants have been in continuous possession of the property ever since 1969 and thus, they have perfected title by adverse possession; that the learned Single Judge has interpreted the judgment and decree in A.S.No.202 of 1967 of the Principal Subordinate Court, Chengalpet erroneously and found it is totally invalid, but the same is not correct; that it was clearly held in the said judgment that the purchase made by the 19<sup>th</sup> respondent/plaintiff in C.S.No.360 of 1993 was not the bona fide purchase and also he

was not in possession; that the decree made in A.S.No.202 of 1967 has not been executed by filing an execution petition within a period of 12 years from the date of the said decree; that though the plaintiff has abandoned his right, interest and title to the suit property, had larger extent of land as claimed by him that he was bona fide purchaser for value; that O.S.No.4255 of 1987 was filed only for bare injunction by one Vadivelu, the predecessor in title to the appellants, to prevent the attempt of trespass into the suit property; that the claim made by the plaintiff in C.S.No.360 of 1993, as the owner of the said property, was a fraudulent claim after disposal of the suit property; that in the said suit, Dorairasan and others remained ex parte in the trial and after filing the written statement and after framing of issues; that one of the issues in the suit was whether the plaintiffs have got right, interest and title in the suit property and whether the plaintiffs are entitled for permanent injunction; that the suit was decreed on 21.6.1998 and the possession and title of the appellants in the suit property has never been disturbed; that the learned trial Judge has taken into consideration the family arrangement dated 14.7.1981 as the basis for granting the relief; that if to be so, all members of the family arrangement should have been added as parties, but not done so and hence such declaration should not have been granted.

7.Added further the learned counsel that the plaintiff originally filed the suit for permanent injunction and subsequently amended as one for recovery of possession and thus, it would be quite clear that he was never in possession of the property; that in the instant case, he could not claim recovery of possession, since his right was thoroughly extinguished and under these circumstances, the judgment of the learned Single Judge has got to be set aside.

8.The Court heard the learned counsel for the respondents, who has made his sincere attempt of sustaining the judgment of the learned Single Judge on the grounds mentioned therein and the Court has paid its anxious consideration on the submissions made.

9.All the above three suits were taken up for trial jointly. While C.S.No.360 of 1993 was filed for the relief of declaration and permanent injunction and in alternative for recovery of possession in respect of the property described in the schedule annexed to the plaint, the other two suits were filed for the relief of permanent injunction. Admittedly, one Vadivelu and others sold the property to an extent of 18,849 sq.ft. and 1111 sq.ft. to the plaintiff in C.S.No.360 of 1993 under registered sale deed, dated 12.03.1963 marked as Ex.P.1 and this was pursuant to an agreement entered into on 02.09.1962 by the parties for the preparation of layout. Pursuant to the same the sale was made not only in favour of the plaintiff, but also in favour of his nominees. One Krishnan, the junior

paternal uncle's son of the said Vadivelu, filed a suit in O.S.No.258 of 1963 against Vadivelu and his brothers, seeking the relief of partition. It was his case that the entire property of 1 acre and 11 cents belonged to joint family of the plaintiff therein and the other members. On dismissal of the suit, the said Krishnan preferred appeal in A.S.No.202 of 1967, whereby preliminary decree was granted in his favour on 16.12.1989 to the effect that he was entitled to 1/18th share. No final decree application was made by him. At this juncture, it is pertinent to point out that the plaintiff in C.S.No.360 of 1993, Mr.Venkatesan was shown as party in the partition suit. While the matter stood thus, family arrangement was entered into between the parties and the same was executed on 14.7.1981, wherein the said Vadivelu and his brothers were allotted 2-3/4 grounds.

10.The heirs of Vadivelu, Dhurgachalam and Chinthamani filed O.S.No.4255 of 1987 on the file of the City Civil Court for the relief of permanent injunction, contending that the defendants therein could not interfere in the said 2-3/4 grounds in view of the allotment in the family arrangements. A perusal of the copy of the plaint in the said suit marked as Ex.D.3 would clearly indicate that the fact that the subject matter of sale under Ex.P.1 would also include 2-3/4 grounds, was not whispered. The defendants therein contested the suit alleging that the entire property of 1 acre and 11 cents of S.No.82/1 was sold by Vadivelu in favour of Venkatesan and others and hence the plaintiff therein could not lay the claim of 2-3/4 grounds. A perusal of Ex.D.3 plaint would clearly indicate that there was family arrangement entered into between Vadivelu and the other members and thus, it would be quite clear that Vadivelu and others, though sold larger extent under Ex.P.1, following family arrangement, they had only 2-3/4 grounds. At this juncture, it remains to be stated that though Vadivelu and others executed Ex.P.1 Sale deed for larger extent including 2-3/4 grounds allotted to them under the family arrangement, they cannot now be allowed to say that Ex.P.1 sale deed was thoroughly invalid, but it would bind them to an extent of 2-3/4 grounds allotted to them as per family arrangement. The evidence of D.W.1, the daughter of Vadivelu, was to the effect that Ex.P.1 sale deed was executed in favour of Venkatesan in respect of 1 acre and 11 cents; that there was suit filed by her paternal uncle, namely Krishnan, where 1/18th share was declared in his favour and thereafter, there was family arrangement.

11.It could be seen from the evidence that her father has filed O.S.No.4255 of 1987 for permanent injunction and an ex parte decree was made on 12.6.1988. Though it was contended that the patta was issued in the name of Vadivelu and others cancelling the patta originally issued in the name of Venkatesan, the plaintiff in C.S.No.360 of 1993, the only document relied on by them was Ex.D.7. The trial court has rightly rejected the said document that it was only the xerox

copy and hence it cannot be taken as conclusive evidence. D.W.1 has further admitted that in the course of the written statement filed in O.S.No.173 of 1991, the sale deed made in favour of Venkatesan for 1 acre and 11 cents was referred to and subsequently, 2-3/4 grounds were allotted in the family arrangement. Even all these factual positions were admitted in the plaint in O.S.No.4255 of 1987, a copy of which was marked as Ex.D.3 and hence it would be quite clear from the evidence both oral and documentary that though a larger extent was sold under Ex.P.1 by Vadivelu and others in favour of Venkatesan, the plaintiff in C.S.No.360 of 1993, the plaintiff could claim title only to an extent of 2-3/4 grounds, which came to the hands of Vadivelu and others as per the family arrangement and hence the plaintiff cannot claim declaration for the entire extent as found in Ex.P.1 and equally, the defendants cannot be permitted to deny the title of the plaintiff in C.S.No.360 of 1993 to an extent of 2-3/4 grounds as claimed by him. Hence the declaration sought for by the plaintiff in respect of the property, namely 2-3/4 grounds, has been rightly granted by the learned Single Judge and insofar as both the other suits for permanent injunction, they were rightly dismissed.

12. In the instant case, the plaintiff, though sought for permanent injunction, was not entitled to get the same, since he was unable to show possession of the property, but at the same time, he has amended the plaint one for recovery of possession. The contention put forth by the learned counsel for the appellants is that though there was a sale deed in his favour under Ex.P.1, he has abandoned his right and he was never in possession and hence he is not entitled for recovery of possession. The court cannot agree with the said contention for the simple reason that the plaintiff in C.S.No.360 of 1993 was also made as party in the partition suit filed by Krishnan in O.S.No.258 of 1963 and thereafter, family arrangement has been made. In all these proceedings, the sale made in favour of the plaintiff in C.S.No.360 of 1993 has been referred to and it is admitted that the property remains as vacant site all along in the past. Under these circumstances, it is not the case of the defendant that the plaintiff's possession got extinguished otherwise.

13. Further, the contention put forth by the learned counsel for the appellants that all the necessary parties have not been added cannot be countenanced for the simple reason that originally, as could be seen from the available evidence, there was a sale deed under Ex.P.1 for a larger extent and thereafter, there was family arrangement made, in which 2-3/4 grounds were allotted to Vadivelu and others. The plaintiff has sought for declaration of title basing his case on Ex.P.1, sale deed. Since there was family arrangement made, in which Vadivelu and others, who were vendors under Ex.P.1, were given 2-3/4 grounds, the plaintiff limited his claim only to that extent. The contention of the appellants could be accepted if the case was rested on

family arrangement, but the plaintiff has rested his case on Ex.P.1, the sale deed and he has limited his claim to 2-3/4 grounds in view of the family arrangement and hence all the parties to the family arrangement need not be added as parties to the suit. Hence the learned Single Judge was perfectly correct in granting the relief of recovery of possession, since the possession would follow title. The learned Single Judge in appraisement and in appreciation of the evidence available, has granted the relief and hence the contentions put forth by the learned counsel for the appellants do not carry any merit. The original side appeal fails and the same is dismissed, leaving the parties to bear their costs.

Vvk

Sd/  
Deputy Registrar

/true copy/

Sub Asst. Registrar

To

The Sub Assistant Registrar,  
Original Side,  
High Court, Madras 104.

+ 1 cc to Mr. S. Raghu, Advocate, SR No.56175

+ 1 cc to Mr. S. Thankaswamy, Advocate, SR No.56268

O.S.A.NO.266 OF 2004

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