

A.Subramanian vs R.Pannerselvam on 8 February, 2021

Equivalent citations: AIR 2021 SUPREME COURT 821, AIRONLINE 2021 SC 41

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Bench: M.R. Shah, R. Subhash Reddy, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9472 of 2010

A.SUBRAMANIAN & ANR.

...APPELLANT(S)

VERSUS

R. PANNERSELVAM

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the defendants in the civil suit challenging the judgment dated 28.04.2009 of Madras High Court in Second Appeal No.39 of 2009 by which judgment the High Court had allowed the second appeal of the plaintiff setting aside the judgment of the First Appellate Court dated 26.11.2008 in A.S. No.172 of 2005 and restoring the judgment dated 06.02.2004 in O.S.No.188 of 2002 of the trial court decreeing the suit.

2. Parties shall be referred to as referred in the Original Suit. Brief facts of the case giving rise to this appeal are:

The plaintiff, R. Pannerselvam, who is the respondent in this appeal, filed O.S. No.188 of 2002 in the Court of District Munsif, Namakkal praying for permanent injunction interdicting the defendants from disturbing the peaceful possession and enjoyment of the plaintiff over the suit property. The suit property was measuring 1777-1/2 sq.ft. comprising in Survey No.172/1 situated at Kalappanaickenpatti

Village. Plaintiff's case in the suit was that suit property originally belonged to one Dhasi Naidu son of Thalama Naidu who went to Sri Lanka as a Farm Labour and died at Sri Lanka. The son of Dhasi Naidu, Krishnasamy Naidu came to India in 1981 and entrusted the suit property and other properties to one Ghani Sahib, who had been managing and enjoying the properties.

3. The plaintiff claimed to have purchased the suit property by registered deed on 16.07.2001 for a valid consideration from the descendants of Dhasi Naidu. The plaintiff's further case was that the first defendant was formerly military serviceman, and the second defendant who was son-in-law of the first defendant, working as constable in police department, attempted to disturb the plaintiff's peaceful possession and enjoyment over the suit property. Hence, the suit was filed. The documents filed along with the plaint were power of attorney executed by legal heirs of Dhasi Naidu dated 22.05.2001, sale deed dated 16.07.2001 and sale deed dated 14.03.1946 in favour of Dhasi Naidu and house tax receipt dated 27.02.2001.

4. Defendant No.1 filed written statement refuting the claim of the plaintiff; defendant admitted that suit property belonged to Dhasi Naidu. The defendant pleaded that registered sale deed dated 16.07.2001 itself is a fabricated and forged one. So called legal heirs-descendants of Dhasi Naidu as alleged in sale deed are fictitious and are not true legal heirs of the said Dhasi Naidu. The title of the suit property is itself questionable, the plaintiff along with Ghani Sahib has fabricated two special powers and plaintiff under Order VII Rule 14 of C.P.C. with the said documents had filed suit. The defendants in the written statement had set up the claim that Dhasi Naidu's son Sanjeevi Naidu had entrusted the suit property and other properties to one P. Rangaraju Naidu by a registered power of attorney, who later died, leaving behind his only legal heir Mrs. Arjuna Devi, who died leaving behind her daughters, Nalanda, Indira and Gunabarathi. Defendant No.1 on behalf of her three daughters filed a suit against the Ghani Sahib questioning his tenancy which suit was dismissed and had been taken in appeal being A.S.No.297 of 1994.

5. The plaintiff examined himself as PW.1. Defendant examined DW.1 to DW.6. Plaintiff filed seven exhibits. The trial court framed the following three issues:

“a) Is the permanent injunction sought for by the plaintiff in the suit is available to him?

b) Is the statement of the defendants that the plaintiff is not the real owner of the suit property correct?

c) What are the other reliefs available to the plaintiff?

6. The trial court held that power of attorney dated 22.05.2001 was prepared at Sri Lanka and registered at Namakkal Sub-Registrar's office. The documents filed on behalf of the plaintiff are Exhibits PW1 and PW2. The trial court held that the plaintiff has right over the property, the possession of plaintiff was also found proved. The trial court decreed the suit.

7. The defendants filed an appeal before the Sub Court, Namakkal being A.S. No.172 of 2005. The First Appellate Court entered into the validity of power of attorney Exhibits PW1 and PW2 and observed that Exhibit PW1 is in circumstances by suspicious surrounding. The First Appellate Court, however, came to a conclusion that power deed written abroad need not be registered. The First Appellate Court, further, came to the conclusion that execution and authentication of power of attorney, Exhibit PW1 having not been proved, the sale deed Exhibit PW2 is also adversely affected. Hence, plaintiff has failed to establish his title over the suit property. The First Appellate Court has, further, found that defendant No.1 had instituted O.S.No.524 of 1987 which was for the same property in which defendant No.1 had claimed declaration and possession of the property for himself and her three daughters which suit having been dismissed, the defendant has also not been able to prove that suit property belonged to the three daughters of defendant No.1 and possession lies with them. The First Appellate Court allowed the appeal and set aside the decree on the ground that plaintiff had failed to prove his title. Aggrieved by the judgment of the First Appellate Court the plaintiff has filed the second appeal.

8. The High Court vide its judgment dated 28.04.2009 allowed the second appeal by deciding three substantial questions of law affirming the decree of trial court granting injunction in favour of the plaintiff. The High Court found that defendant having filed Original Suit No.524 of 1987 for declaration and recovery of possession of the suit property which was dismissed by the trial court against which A.S. No.297 of 1994 having also been dismissed, the finality was achieved to the previous proceedings that defendant has neither title nor in possession of the suit property and the possession of the plaintiff having been admitted by the defendant, the suit of the plaintiff deserved to be decreed. The High Court was further of the view that the First Appellate Court ought not to have entered into the validity of the Exhibits A-1 and A-2. The High Court allowed the appeal. Aggrieved against the judgment of the High Court, the defendants have come up in this appeal.

9. Ms. K. Abhirame, learned counsel has appeared on behalf of the appellants and Shri V. Prabhakar, learned counsel has appeared for the respondent.

10. Learned counsel for the appellants submits that the plaintiff having claimed right to the suit property on the basis of sale deed dated 16.07.2001 which sale deed was not found to be valid having not been executed by proper power of attorney by the heirs of Dhasi Naidu, the suit of the plaintiff deserved to be dismissed. It is submitted that the plaintiff can succeed in the suit on the strength of his own case and the plaintiff cannot take any advantage of the weakness of the case of the defendants. Even defendants failed to prove their title and possession the suit of the plaintiff could not have been decreed mere on the fact that the defendants failed to prove their title and possession.

11. Learned counsel for the appellants further submitted that the documents filed by the defendants were not considered by the trial court as well as by the High Court. Learned counsel for the appellant has placed reliance on the judgments of this Court in Nagar Palika, Jind vs. Jagat Singh, Advocate, (1995) 3 SCC 426; Yamuna Nagar Improvement Trust vs. Khariati Lal, (2005) 10 SCC 30 and Jagdish Prasad Patel (dead) Through Legal Representatives and another vs. Shivnath and others, (2019) 6 SCC 82.

12. Shri V. Prabhakar, learned counsel appearing for the respondent refuting the submission of the counsel for the appellants contends that plaintiff has successfully proved his possession which was also admitted by the defendant in his statement, the suit for injunction was rightly decreed by the trial court. It is submitted that in essence the plaintiff has also successfully proved his titled by registered sale deed. The property was purchased by a registered sale deed on the basis of power of attorney executed by legal heirs of Dhasi Naidu. The power of attorney having been prepared at Sri Lanka and registered by Sub-Registrar Namakkal, First Appellate Court committed error in holding the power of attorney not properly executed and authenticated. It is submitted that the plaintiff having demolished the old structure which is proved from the evidence on record, the possession of the plaintiff could not be denied by the defendant. The defendant having filed suit for declaration as well as recovery of possession of the suit property against Ghani Sahib, the manager of the property which suit having been dismissed there is no right in the defendant to resist the suit of the plaintiff.

13. We have considered the submission of the learned counsel for the parties and have perused the records.

14. The plaintiff in his plaint claimed title and possession, and sought restraining the defendants from disturbing plaintiff's peaceful possession and enjoyment over the suit property. In the suit plaintiff has prayed for the following reliefs:

a)by means of permanent injunction interdicting the defendants, and their man from disturbing the peaceful possession and enjoyment of the plaintiff over the suit property in any manner;

b)by granting further other relief or reliefs as the Hon'ble Court deems fit in the circumstances of the case;

c)awarding the cost of the suit by the defendants and thus render justice."

15. The trial court found that the plaintiff has proved his right over the property as well as possession, he was entitled for decree of injunction. All the three courts have referred to the earlier suit being O.S.No.524 of 1987 filed by the defendants which suit was dismissed by the trial court and appeal against which being A.S. No.297 of 1994 was also dismissed which judgments were brought before the trial court by the plaintiff. The copy of the judgment dated 23.11.1992 in O.S. No.524 of 1987 of the trial court has been brought on record as Annexure P5. The suit was filed by defendant No.1 along with his three minor daughters and he being father, guardian and next friend of daughters, the plaintiff of O.S. No.524 of 1987 claimed title over the suit property through Shri P. Rangaraju Naidu. Ghani Sahib who was manager, was impleaded as defendant and suit was filed for declaration and possession and permanent injunction. The defendant contested the suit where defendant took the plea that the property belonged to Dhasi Naidu whose son Krishnasamy Naidu, who came to India and executed power of attorney in favour of defendant for managing the suit property since then the defendant was in possession and user. The trial court held that the plaintiff has failed to prove his title as well as possession. The possession of defendant was admitted by Subramanian who was the plaintiff in the said suit. In paragraph 11 of the judgment following was

held by the trial court:

“11.....In this suit, it has been admitted by the plaintiffs that the defendant is in possession of the suit properties. Under the circumstances since the plaintiffs have admitted that the defendant is in possession of the suit properties, it is held that even though the defendant has not produced the power of attorney executed by Krishnasamy in favour of defendant, in the deposition DW1 has made a claim that the defendant is the power of Krishnasamy is an acceptable one. From the deposition of DW2, it is held that Dasi Naidu died leaving behind Sanjeevi Naidu, Nallu Naidu and Krishnasamy Naidu as his legal heirs..... It is also held that the defendant is in possession and managing the suit property in his capacity as the power agent of Krishnasamy and defendant is not a tenant in the suit property and accordingly issue number 2 and 5 are answered respectively.”

16. The suit for declaration and possession filed by Subramanian was dismissed against which A.S. No.297 of 1994 was filed which was dismissed by the District Court, Salem on 08.09.1995.

17. The High Court in its judgment has rightly referred to the earlier litigation and held that in view of the findings in the earlier suit filed by Subramanian and his three daughters it is sufficient to hold that defendants are not in possession of the suit property. The High Court has also rightly observed that plaintiff's possession is based on the admission of the defendant himself made in the suit. In paragraph 24, the High Court has held:

“24.....The Plaintiff's possession is based on admissions made by the defendants themselves and also the factum of the previous proceedings, which D-1 initiated and met with his waterloo.”

18. The submission which has been made by the counsel for the appellants is that in the suit, plaintiff has claimed his title and possession, the High Court committed error in not entering into the question of title of plaintiff and without determining the title of the plaintiff the suit ought not to have been decreed. Learned counsel for the appellants has placed reliance on the judgment of this Court in Nagar Palika, Jind vs. Jagat Singh, Advocate, (1995) 3 SCC 426. In the above case suit was filed by the respondent for injunction which was resisted by Municipal Committee on the ground that the respondent was neither the owner of the land in question nor was he in possession. The trial court dismissed the suit. The First Appellate Court had decreed the suit and second appeal was dismissed by the High Court. Nagar Palika filed appeal before this Court. The argument was raised before this court by Nagar Palika that the Court of law proceeded on the assumption that the acquisition of title through the sale deed which has not been produced before the High Court was admitted fact in the case and had never been questioned by the Municipal Committee. This Court in paragraph 6 disapproving the judgment of the First Appellate Court held following:

“6. The counsel appearing for the respondent, could not explain as to how in face of such clear denial of the title and possession of the respondent by the Municipal Committee in its written statement, the Court of Appeal proceeded on the

assumption that the acquisition of the title through the sale deed, which had not been produced before the Court, was an admitted fact in the case and had never been questioned by the Municipal Committee. According to us, when the Court of Appeal proceeded to consider the evidence relating to the possession of the respondent after the alleged date of purchase by him through the sale deed in question, which was never produced before the Court, the Court of Appeal committed a grave error. It never applied its mind to the main issue, in a suit based on title, whether the respondent had proved his title to the suit property. It cannot be disputed that onus to prove his title to the property in question was on the said respondent. It further appears, that on behalf of the appellant, it was pointed out before the Court of Appeal that the said respondent was claiming the share of one of the co-shares in the patti, but no co-sharer can convey title to a specific part of joint property. However omitted to consider the basic issues in the case, the Court of Appeal proceeded only to consider the revenue records from the year 1974-75 like jamabandhi for the year 1974-75 and Khasra Girdwari pertaining to the year 1977-79.”

19. In the suit stand was taken by the respondent that the suit be treated under Section 6 of the Specific Relief Act, 1963. This Court repelled the above submission. In paragraph 9, the plea of respondent based on Section 6 was rejected by this Court by making following observation:

“9. We fail to appreciate as to how the principle of Section 6 of Specific Relief Act, 1963 can be applied in the facts and circumstances of the present case. The respondent, who was the plaintiff, never alleged that he had been dispossessed by the appellant-Municipal Committee. On the other hand, he claimed to be the owner of the land in question and asserted that he was in possession over the same. He sought for permanent injunction restraining the appellant from interfering with his possession. Both the parties led evidences in support of their respective claims including on the question of title.”

20. In the present case the possession of the plaintiff was upheld by the High Court on two main reasons. Firstly, the defendant of the suit, Subramanian had earlier filed a suit for recovery of possession and declaration for the same property against Ghani Sahib who was manager of the property which suit was dismissed and recovery of possession having been rejected, defendant cannot even make a plea to be in possession and secondly defendant in his cross-examination himself admitted that the plaintiff after purchase had demolished the construction. The High Court in paragraph 13 of its judgment has extracted the relevant excerpts from the statement of DW1’s deposition during cross-

examination. In paragraph 13 of the judgment after quoting from deposition of DW1, the High Court held:

“13.....A bare perusal of those excerpts would clearly display as to how DW1(D1) went to the extent of half-Heartedly admitting partly the reality) and denied the rest of the truth, without having any responsibility to speak truth. For the purpose of achieving success in the litigative battle, by hook or crook, D-1 went to the extent of pleading before this Court quite antithetical to the Judgments and decrees in O.S.No.524 of 1987 and in A.s. No.297 of 1994 (Exs.A-3, A-5, A-6 and A-7) that the previous suit was not for recovery of possession of the suit property. But, those judgments and decrees would clearly indicate that the earlier suit was filed by D-1 and his three children for declaration and recovery of possession of the entire property including the suit property. In the said previous suit, the first defendant and his legal heirs contended that they derived title from their original porosities Rangarajulu Naidu and obtained the suit property under a power deed and they failed in both the courts. As such, that is much more than sufficient to hold that the defendants are not in possession of the suit- property herein.”

21. The High Court was also right in its view that it is a common principle of law that even trespasser, who is in established possession of the property could obtain injunction. However, the matter would be different, if the plaintiff himself elaborates in the plaint about title dispute and fails to make a prayer for declaration of title along with injunction relief. The High Court has rightly observed that a bare perusal of the plaint would demonstrate that the plaintiff has not narrated anything about the title dispute obviously because of the fact that in the previous litigation, DW1 failed to obtain any relief.

The High court has rightly observed that the principle that plaintiff cannot seek for a bare permanent injunction without seeking a prayer for declaration is not applicable to the facts of the present case.

22. We may also refer to judgment of this Court in Nair Service Society Ltd. vs. K.C. Alexander and others, AIR 1968 SC 1165, where three-Judge Bench of this Court presided by Hidayatullah, J. has reiterated the principle that possession is good against all but the true owner. The principle enumerated in judgment of Judicial Committee in Parry v. Clissold, (1907) AC 73, was noticed in paragraph 17 to the following effect:

“(17) In our judgment this involves an incorrect approach to our problem. To express our meaning we may begin by reading 1907 AC 73, to discover if the principle that possession is good against all but the true owner has in any way been departed from. 1907 AC 73 reaffirmed the principle by stating quite clearly:

“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for

ever extinguished and the possessory owner acquires an absolute title.”

23. In paragraph 22 of the judgment, the Bench approved the dictum in 1907 AC 73.

24. Learned counsel for the appellants has also referred to judgment of this Court in *Ajendra Prasadji Narendra Prasadji Pandey vs. Swami K. Narayandasji and others*, (2005)10 SCC 11, in which case this Court elaborated the cumulative factor for granting a temporary injunction which case is clearly distinguishable and has no application in the present case. Next judgment relied by the learned counsel for the appellant is in *Jagdish Prasad Patel (dead) through Legal Representatives and another vs. Shivnath and others*, (2019) 6 SCC 82. In the above case in the suit for declaration of title and possession this Court reiterated the principle that suit for declaration of title and possession the plaintiffs will succeed on the strength of their own title irrespective of whether defendants proved their case or not. In paragraph 44 and 45 following was laid down:

“44. In the suit for declaration for title and possession, the Plaintiffs-Respondents could succeed only on the strength of their own title and not on the weakness of the case of the Defendants-Appellants. The burden is on the Plaintiffs-Respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The Plaintiffs-Respondents have neither produced the title document i.e. patta-lease which the Plaintiffs-Respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.

45. Observing that in a suit for declaration of title, the Plaintiffs-

Respondents are to succeed only on the strength of their own title irrespective of whether the Defendants-Appellants have proved their case or not, in *Union of India v. Vasavi Coop. Housing Society Limited*, (2014) 2 SCC 269, it was held as under SCC p.275, para 15) “15. It is trite law that, in a suit for declaration of title, the burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.””

25. There cannot be any dispute to the proposition laid down by this Court in the above cases. But coming to the facts in the present case the present suit giving rise to this appeal, was not a suit for declaration of title and possession rather the suit was filed for injunction. As noted above, the High Court has given cogent reasons for holding that the suit filed by the plaintiff for injunction was maintainable without entering into the title of the plaintiff in facts of the present case specially in view of the previous litigation which was initiated at the instance of defendant No.1 where he lost the suit for declaration and recovery of possession of the same property. The submission of learned counsel for the appellants that evidence filed by the defendant were not looked into is not correct.

The trial court as well as the High Court has looked into not only the oral evidence but the exhibits which were filed on behalf of the defendant which is clear from the discussion made by the High Court in paragraphs 13 and 16.

26. We do not find any error in the view of the High Court that it was not necessary to enter into the validity of Exhibits A-1 and A-2 and the suit for injunction filed by the plaintiff deserved to be decreed on the basis of admitted and established possession of the plaintiff. We, thus, do not find any error in the judgment of the High Court allowing the second appeal filed by the plaintiff by setting aside the judgment of the First Appellate Court and restoring that of trial court.

27. In the result, the appeal is dismissed.

.....J. (ASHOK BHUSHAN)J. (R. SUBHASH REDDY)J. (M.R. SHAH) New Delhi, February 08, 2021.