

(1996) 12 MAD CK 0051

Madras High Court

Case No: O.S.A. No. 123 of 1996 and CM.P. No's. 6830 and 6831 of 1996

Mr. S. Marimuthu

APPELLANT

Vs

G. Kumaraswamy, Mrs.
Visalakshi
Kumaraswamy,
Dharamalingam (given
up) and Corporation of
Madras

RESPONDENT

Date of Decision: Dec. 3, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 35, 35A
- Specific Relief Act, 1963 - Section 6, 6(4), 9
- Tamil Nadu Court Fees and Suits Valuation Act, 1955 - Section 52

Citation: (1996) 12 MAD CK 0051

Hon'ble Judges: P. Sathasivam, J; Abdul Hadi, J

Bench: Division Bench

Advocate: Mohan Parasaran, for the Appellant; G. Kumaraswamy Party in person for Respondents 1 and 2 and Mr. Anand Venkatesh for Mr. N. Kannadasan for 4th Respondent, for the Respondent

Judgement

Abdul Hadi, J.

The plaintiff in O.S. No. 206 of 1996 on the file of this Court (which was originally O.S. No. 6725 of 1991 on the file of City Civil Court, Madras) has preferred this Original Side Appeal. The appeal lies in a narrow compass since actually the plaintiff virtually secured the relief prayed for by him in the suit and this appeal has been preferred only against the sum of Rs. 50,000/- directed to be paid by him to the 1st defendant-1st respondent as "compensation for the illegal acts committed by him" and is also directed against certain observations made by the learned trial Judge while making the abovesaid direction.

2. The main prayer in the suit is for declaring the plaintiffs title to the suit property marked as "ABCDEFGIJ" including the portion coloured in red and shown as "CDEF" in the plaint plan which was the subject matter of O.S. No. 5884 of 1981 (City Civil Court, Madras) and also the portion coloured in blue and marked as "ABIJ" in the plaint plan. There was also a prayer for mandatory injunction, directing the 2nd defendant - 2nd respondent, who is the wife of the 1st respondent to execute and register a rectification deed by showing the correct extent of 1,073 sq.ft. in place of 890 sq.ft. shown in the schedule and plan to the said sale deed dated 4-2-1981. There was also a prayer for permanent injunction, restraining defendants 1 to 4 (defendant No.4 being the Corporation of Madras) from interfering with the plaintiffs possession of the suit property. Appeal against D3 has been actually given up.

3. The above referred to sale deed dated 4-2-1981 is Ex. A3 in favour of the plaintiff executed by the 2nd defendant, based on which the suit has been laid. In the schedule to the said sale deed, what has been sold is described inter alia as premises being part of "Plot No. 7 measuring 890 sq.ft. or thereabouts."

4. On the footing that the schedule in the said sale deed wrongly described the extent as 890 sq.ft. or thereabouts, but it should be actually 1,073 sq.ft. within the boundaries mentioned therein, the suit was laid. The learned trial Judge has accepted the said claim made by the plaintiff only to the extent of 1027.9 sq.ft. (and not 1,073 sq.ft.) and has granted a decree as follows:

The title of the plaintiff over 1027.9 sq.ft. of land more specifically demarcated in the plan appended to this judgment is hereby declared. A copy of the said plan will form part of the decree.

5. In so far as the relief of permanent injunction is concerned, the same has also been granted as against defendants 1 to 3 with regard to the plot for which the plaintiff's title is declared.

6. The plaintiff accepts the abovesaid decree for declaration and injunction and has not preferred this appeal regarding the same. Likewise, the plaintiff also accepts one other portion of the decree granted, viz., the decree for mandatory injunction, directing the 2nd defendant "to rectify the document by correcting the extent as 1027.9 sq.ft. in the schedule of document in Ex.A3 in the place of 890 sq.ft. or thereabouts."

7. What he is aggrieved is only with reference to the following direction of the learned trial Judge, which runs as follows:

But the plaintiff is directed to pay a sum of Rs. 50,000/- to the 1st defendant as compensation for the illegal acts committed by him, within a period of ten days from to-day.

As already indicated, the plaintiff is also aggrieved by certain observations made by the learned trial Judge, while granting the abovesaid compensation against him.

8. The above referred to O.S. No. 5884 of 1981 was a suit filed by the 1st defendant herein against the plaintiff herein u/s 60 of the Specific Relief Act on the footing that there was forcible dispossession of the suit property therein (25" x 10"-extent, said to be part of present suit property) by the plaintiff herein. That suit was dismissed in 1985 on the footing that there was no trespass by the plaintiff herein in relation to the suit property therein. However C.R.P. No. 1382 of 1985 filed by the 2nd defendant against the said dismissal was allowed on 5-7-1991 and the suit O.S. No. 5884 of 1981 was decreed, directing the plaintiff herein to restore possession of the suit property therein to the 1st defendant herein. Thereafter, the 1st defendant herein filed E.P. No. 2953 of 1991 to execute the said decree. However, in view of the interim injunction obtained by the plaintiff on 6-12-1991 from the City Civil Court (while the present suit was pending initially in the City Civil Court) in I.A. No. 16282 of 1991, the said execution petition has been stayed.

9. Before we consider the submissions of learned counsel for the appellant and of the 1st respondent, as party in person, we must initially point out that even at the outset, we pointed out to learned counsel for the appellant, what is contained in paragraph 44 of the impugned judgment:

Even at the time of arguments, I expressed my opinion in open Court that the plaintiff has acted high - handedly and he has to pay for the same. Learned counsel for the plaintiff also submitted that he will abide by the terms, though he wanted a reduction in the amount. Plaintiff is directed to pay a sum of Rs. 50,000/- (Rupees Fifty thousand only) to the first defendant as compensation for his illegal acts.

In the light of what has been observed above, we asked him whether this would not amount to the appellant's counsel before the learned trial Judge, conceding to the learned trial Judge's observation that the appellant has acted high-handedly and that on that score, he would abide by the terms that might be stipulated by the learned trial Judge, though he would like to have reduction in the amount of compensation that might be stipulated by the learned trial Judge. In this connection, the 1st respondent-party in person also represented that the learned trial Judge initially suggested a sum of Rs. 1,00,000/- towards the abovesaid compensation, but since learned counsel for the plaintiff wanted reduction thereof, the learned trial Judge reduced it to Rs. 50,000/-.

10. But, learned counsel for the plaintiff-appellant submits that even assuming that any such concession was made by the said learned counsel before the learned trial Judge, it would not bind the plaintiff at all since such awarding of compensation against the plaintiff and in favour of the 1st defendant is absolutely without jurisdiction and is not maintainable in the present suit filed by the plaintiff against the defendants, claiming the abovesaid reliefs, (1) particularly when there was no such claim by the defendant against the

plaintiff, either by way of any counter claim to the present suit or otherwise and there was neither plea, nor proof regarding the alleged liability of the plaintiff to the defendant for any such compensation and (2) particularly when such a claim that might be made by the defendant would be barred by the law of limitation pursuant to Article 87 of the Limitation Act since the alleged trespass was as early as 8-8-1981 and the present suit was filed only in 1991, ten years later, while Article 87 says that for compensation for trespass upon immovable property, the suit must be filed within three years from the date of trespass. As against this purely legal argument of learned counsel for the appellant the 1st respondent-party in person could not say anything contra. We also see great weight in the said argument of learned counsel for the appellant in view of the absence of any counterclaim or plea or proof regarding any claim for such compensation by the 1st respondent and in view of the abovesaid Article 87.

10-A. It is also to be noted that even by way of a separate suit, the contesting defendants did not claim damages for the forcible dispossession found in the above referred to judgment in the Civil Revision Petition, despite the fact that the judgment in the said Civil Revision Petition itself states thus:

The petitioner (1st defendant) also claimed that he is entitled to compensation for the unlawful destruction of the compound wall, removal offence and the coconut trees and stated that separate claim will be made.

(Emphasis supplied)

In the same judgement it is also stated thus:

The respondent (plaintiff herein) also stated that there was no demolition of any compound wall, but a compound wall had been constructed within the limits of the property of the respondent under the sale deed dated 4-2-1981... According to the respondent, there was no coconut tree and there was, therefore, no question of destruction of any coconut trees....

10-B. No doubt, there are the following observations in the judgment in the abovesaid Civil Revision Petition:

If there was any shortage or excess, the concerned parties should have taken necessary steps to get their rights adjudicated by resorting to a court of law and the parties cannot be allowed to annex properties belonging to others under the guise of making good the deficiency or setting right the excess.

Such observations by themselves, could not necessarily lead to the conclusion that the plaintiff is liable to pay any damages to any of the contesting defendants herein, particularly when the plaintiff has subsequently filed the present title suit and established his case and obtained a decree as stated above.

10-C. At any rate, even though the 1st defendant earlier stated that he would make a separate claim for compensation for the damages alleged to have been suffered by him, he has not chosen to take any legal action to establish his said claim separately and in such a situation, we are unable to see how such compensation could be fastened on the plaintiff and that too to the extent of Rs.50,000/- without any specific evidence regarding the plaintiffs liability to pay compensation or the quantum of his liability.

11. Learned counsel for the appellant also argues that regarding very many observations made by the learned trial judge, there is no evidence. The following observations are pointed out in this regard:

(i) "A Judicial Officer who is bound to act in accordance with law, has... abused his official position."

(Emphasis supplied)

(ii) "In this case, the plaintiff who is bound to administer the law, had no faith in it."

(iii) "It is clear that the plaintiff has not come to Court with clean hands and he misused his official position with the help of police."

(iv) "The plaintiff who discharges his duty as a guardian of law himself misused his official position with the active connivance of his own associates, namely, police officers."

In this regard, the 1st respondent-party in person has not pointed out before us any evidence recorded in this suit, which would warrant the above referred to observations. (We may also here point out that the only oral evidence in this case is by P.W. 1, the plaintiffs son and D.W. 1, the 1st defendant, and if at all, D.W. 1 only says that plaintiff made forcible or illegal encroachment over a part of the suit property and paid some penalty to the municipal authorities regarding the construction put up by the plaintiff over the suit land.

11A. We must also observe that simply because after meeting failure in the summary suit u/s 6 of the Specific Relief Act, the plaintiff comes forward to file a title suit as the present one, he cannot be blamed that he is coming to Court with unclean hands, since only seeks the relief, which is provided under law. Section 6 (4) of the Specific Relief Act itself says thus:

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Further, it must also be noted that while he succeeded initially in O.S. No. 5884 of 1981 and got dismissal of the said suit against him, he failed only in the subsequent C.R.P. No. 1382 of 1985. But, even in the order dated 5-7-1991 in the said C.R.P., the 1st respondent herein could not point out any strictures as such having been passed against

the present plaintiff by the learned Judge of this Court, who passed the said order. Further, one other observation of the learned trial Judge, particularly the latter part of it is also, according to us, not proper. The said observation runs as follows:

With eyes open, the trespass also continued for years together, and till the order was passed in C.R.P. No. 1382 of 1995, he continued his unlawful possession, and only after the order was passed in the said C.R.P., he thought of filing a suit to "declare his title with consequential reliefs.

It is obvious that only after the abovesaid order in the C.R.P., the plaintiff would normally get cause of action for filing the present title suit. So, the plaintiff filing a suit only after the order in the C.R.P. cannot be put against him. Further only because there was some discrepancy regarding the extent between what is contained in the schedule to the abovesaid sale deed and the actual extent conveyed to him under the said sale deed, the confusion arose, which led to the decree that was passed in the C.R.P. u/s 6 of the Specific Relief Act and the said confusion has also now been made clear by the learned trial Judge himself in the present suit. Therefore also, it cannot be said that there is any real justification for the remarks passed by the learned trial Judge in his judgment against the conduct of the plaintiff.

12. We also point out that in *Gopalakrishna Pillai v. Venkatesam Pillai* ((1967) I.M.L.J.346= 80 L.W.76) this Court has also pointed out that since the very object of title suit is to obtain reversal of the result of the summary suit u/s 6, a prayer for interim injunction in the title suit is maintainable and is to be considered on its merits. (Vide also [Chunni and Another Vs. Sullahar and Another](#),) [Mohammad Hussain Suleman Shaikh and Another Vs. Batukbhai Vijibhai and Others](#), and *Man Doddatahma v. Santaya Ram* (AIR 1922 Bom 216)). In the said (1967) I M.L.J. 346= 80 L.W.76 (supra) it has also been observed that where a decree for possession had been obtained by the defendant u/s 9(old Section corresponding to present Section 6) of the Specific Relief Act, a suit by the plaintiff in possession without surrendering such possession in pursuance of the decree in favour of the defendant, for a declaration of his title and for injunction restraining the defendant from executing his decree would be maintainable. The following observation therein is also significant:

There is nothing in the language of the section to take away the remedies available to a person in possession of property as of right, and entitled to remain in possession. of course, it goes without saying that when there is a valid decree for possession against a plaintiff, he will not be granted an injunction from executing that decree. If the legality of the decree is not questioned, a decree-holder cannot be restrained from executing the decree as between the parties to the decree. When a suit on title questioning the order in the summary suit is filed, in one sense the decree or order for possession is impugned, and in manner provided by law as no appeal is competent. The object of the title suit is in substance to have the summary order for possession set aside on the basis of title and right to present possession. In such a suit if the plaintiff in possession has claimed

declaration of his title, in my view it may properly be followed by the consequential relief of injunction: See *Mari v. Santaya* (AIR 1922 Bom 216).

12A. In the light of the above legal position, we may also state that the observation of the learned trial Judge in the present case, regarding the City Civil Court granting interim injunction on the above referred to date 6-12-1991 and continuing the same, cannot be characterised in any way badly, particularly when we also find that as against the interim injunction so granted, none of the contesting respondents herein had chosen to file any appeal.

13. We must also observe here that the observation of the learned trial Judge that the ""impartiality of the Officer (Judicial Officer, who granted the abovesaid interim injunction) raises a great suspicion" is also not an appropriate one, particularly when there is no plea or proof regarding the same. Likewise, the other observations that "the entire procedure has been flouted and the decree granted by this Court was not allowed to be executed" and "the Court has really prejudiced the case of the 1st defendant in this case"" are also not appropriate.

14. We must also point out that at the initial stage, the 1st respondent-party in person even sought to contend that the suit property involved in the above referred to suit u/s 6 of the Specific Relief Act is different from the present suit property and actually lying adjacent to it. But, this is contrary to what he has himself stated in paragraph 3 of his written statement thus:

the present (suit) is barred by res judicata because the subject matter of the present suit is the same as that of the suit O.S. No. 5884/1981.

Anyway, if what he so submitted before us is taken as correct, then his case is only further weakened since in such a situation, there could not have been a direction for payment of the abovesaid sum of Rs. 50,000/-, taking into account the decree passed in the abovesaid C.R.P. with reference to property different from the suit property herein.

15. We may also add that the 1st respondent also sought to point out some violation of municipal rule committed by the plaintiff in putting up construction over the suit land. But, that is not germane to the question in issue, which only relates to the suit land and not the construction over it.

16. With reference to the suit land, we may also point out here that the party in person has even represented before us and also made an endorsement to that effect that he is not pressing his un-numbered cross-objection to this appeal. This he did when the petition for excusing the delay in filing the said cross-objection came up before us. Further, he also represented before us that with reference to the suit property, which is actually marked in yellow colour in the plan attached to the decree, he is not making any claim.

17. We may also refer to one other contention taken up by the 1st respondent in the written submissions he filed after the entire arguments by both sides were over. In that, inter alia, we find, he proceeds as if the above referred to Rs. 50,000/- was only cost awarded to him. This contention has absolutely no basis, since the learned trial Judge himself specifically finds that the abovesaid sum was directed to be paid as "compensation for his (plaintiffs) illegal acts." Further, when the suit itself has been decreed in favour of the plaintiff, as stated above, there cannot be any scope at all for directing the plaintiff to pay cost to the defendant. Therefore, his reference to Section 35 or Section 35-A of the CPC and his contention that the Court has got discretion to award cost, is totally misconceived.

18. There is no necessity for us to deal with certain other arguments of the 1st respondent party in person since they only sought to canvass extraneous points, which are not borne out by records in the present proceeding.

19. In the result, the Original Side Appeal is allowed and the judgment and decree of the trial Judge only in so far as the direction for payment of compensation of Rs. 50,000/- by the plaintiff to the 1st defendant coupled with the above referred to observations relating thereto, are set aside. However, in the circumstances of the case, there will be no order as to costs. Consequently C.M.P. Nos. 6830 and 6831 of 1996 are dismissed. No doubt, the 1st respondent-party in person also argues that proper court fee has not been paid on this Original Side Appeal since no court fee on the above referred to Rs. 50,000/- has been paid by the appellant. We think that this contention of the 1st respondent has to be accepted in view of what is contained in Section 52 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. The court fee that has been paid is only Rs. 122/- based on the value of the suit. But, the subject matter of this appeal is different from the subject matter of the suit. In other words, the subject matter of this appeal is only with reference to the abovesaid sum of Rs. 50,000/- directed to be paid by the plaintiff to the 1st defendant, no doubt consequent upon the findings or observations, made by the learned trial Judge on the conduct of the plaintiff, to which also, the plaintiff appellant takes exception in this appeal. Apart from the main part of Section 52, saying, "The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal".

(emphasis supplied),

Explanation (4) therein also says as follows:

Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the court of first instance on the relief prayed for in the appeal.

(Emphasis supplied)

Therefore, it is clear what the 1st respondent argues is correct, though he has not specifically brought to our notice the above referred to provisions in the abovesaid Section 52. Therefore, the plaintiff - appellant is directed to pay ad valorem court fee on Rs. 50,000/-, no doubt deducting the court fee already paid, within two weeks. In the above circumstances this judgment will take effect only when the said additional court fee is paid by the plaintiff-appellant, as stated above.