

**Subramanian Vs. Habibullah**

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**SooperKanoon Citation :** [sooperkanoon.com/1167583](http://sooperkanoon.com/1167583)

**Court :** Chennai

**Decided On :** Jul-03-2013

**Judge :** G.Rajasuria

**Appellant :** Subramanian

**Respondent :** Habibullah

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

03. 07.2013 Coram: THE HONOURABLE MR.JUSTICE G.RAJASURIA  
S.A.No.306 of 2013 and M.P.No.1 of 2013 1. Subramanian 2. Devi 3.  
Bhuvaneshwari 4. Naganathan 5. Vijayakumar .. Appellants Vs.

1. Habibullah 2. Mansur Ali .. Respondents This second appeal is directed against the judgement and decree dated 08.12.2011 passed by the learned Principal Subordinate Judge, Mayiladuthurai in A.S.No.97 of 2010 confirming the judgment and decree dated 19.08.2010 passed by the learned Principal District Munsif, Mayiladuthurai in O.S.No.146 of 2009. For Appellants : Mr.S.Sounthar

**JUDGMENT**

This second appeal is focussed by the plaintiffs, inveighing the judgement and decree dated 08.12.2011 passed by the learned Principal Subordinate Judge, Mayiladuthurai in A.S.No.97 of 2010 confirming the judgment and decree dated 19.08.2010 passed by the learned Principal District Munsif, Mayiladuthurai in

O.S.No.146 of 2009.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

3. Broadly but briefly, narratively but precisely, the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus: a]. The plaintiffs filed the suit for bare injunction in respect of the five items of the properties described in the schedule of the plaint on the ground that the Power of Attorney of E.M.Jabarullah one Muhamed Yakoob executed five sale deeds in their favour and that subsequently, they took possession. While so, the defendants' without any manner of right started interfering with the peaceful possession and enjoyment of the plaintiffs suit properties. Whereupon, the suit was necessitated to be filed. b]. Per contra, the defendants filed the written statement, challenging and refuting the averments/allegations in the plaint, the warp and woof of the same would run thus: The plaint is fraught with rebarbative averments. A bare suit for injunction is untenable. The said principal, viz., E.M.Jabarullah did not execute any power deed as alleged in the plaint. Wherefore, the said alleged power of attorney who allegedly sold the suit properties in favour of the plaintiffs under various sale deeds are void and the suit filed as such was not maintainable. In fact, the original owner E.M.Jabarullah vide sale deed bearing Document No.807/1990 sold the entire suit property under Ex.B5 in favour of D1-Habibullah. At no point of time, the plaintiffs were in possession and enjoyment of the suit properties. Accordingly, they prayed for the dismissal of the suit. d]. Issues were set down for trial, during which, on the plaintiffs' side P.Ws.1 to 4 were examined and Exs.A1 to A7 were marked. On the defendants' side D.Ws.1 and 2 were examined and Exs.B1 to B14 were marked. f]. Ultimately, the trial court dismissed the suit; as against which, the plaintiffs preferred the appeal for nothing but to be dismissed by the first appellate court confirming the judgment and decree of the trial court. f]. Challenging and impugning the judgments and decrees of both the courts below, the plaintiffs have preferred this second appeal on various grounds and also suggesting the following substantial questions of law. a)Whether the lower appellate court erred in declining relief of injunction on the ground that plaintiff did not seek for declaration of title,

when title documents produced by plaintiffs on the face of it proves conveyance of title to suit property in his favour?. b) Whether the registration of power deed and power cancellation deeds are not prima facie proof of its execution when principal wants to challenge the same after 20 years?. c) Whether the courts below erred in not following well settled legal principle ".possession follows title". when deciding the suit for bare injunction?. (extracted as such) 4. Heard the learned counsel for the appellant/plaintiff.

5. The learned counsel for the appellants/plaintiffs would pyramid his argument, which would succinctly and precisely be set out thus: Under Exs.A1 to A5, the plaintiffs purchased the five items of the suit properties from one Muhamed Yakoob the power of attorney of the original owner Jabarullah. When the said Jabarullah was examined as witness before the court as DW2, he denied the very execution of the power deed Ex.A7 as well as the cancellation deed Ex.A6 and both the courts below without taking into account, the realities, simply dismissed the suit warranting interference in this second appeal.

6. At the outset itself, I would like to fumigate my mind with the recent decision of the Hon'ble Apex Court reported in 2012(8) SCC148[Union of India v. Ibrahim Uddin and another]..

7. A mere running of the eye over the judgments and decrees of both the courts below would exemplify and demonstrate that they gave the concurrent finding to the effect that the suit was bad for want of declaration of a title as D1 claims absolute title over the suit property in view of Ex.B5. Whereas the admitted original owner of the suit properties Jabarullah would deny the execution of the power deed and also the cancellation deed.

8. I recollect and call-up the following decisions:

1. [2008]. 4 SCC594[Anathula Sudhakar vs. P.Buchi Reddy (dead) by L.Rs.and others and certain excerpts from it would run thus: ".12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect

in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere Suit for injunction, and in such a Suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the Plaint and convert the Suit into one for declaration. Alternatively, he may withdraw the Suit for bare injunction, with permission of the Court to file a comprehensive Suit for declaration and injunction. He may file the Suit for declaration with consequential relief, even after the Suit for injunction is dismissed, where the Suit raised only the issue of possession and not any issue of title.". (ii) One other decision of this court dated 22.12.2010 rendered in S.A.No.569 of 2006[ Maruthamuthu vs. Kaliaperumal (died) and 9 others]..

9. The trial court also went to the extent of giving a finding of fact that there is nothing to highlight and spotlight the fact that the plaintiffs were in possession and enjoyment of the suit properties from the date of filing of the suit. At least, if there was some evidence that the plaintiffs' were either rightly or wrongly in occupation of the suit properties, they would be to some extent justified in seeking such a prayer for injunction; but that is also not the case here. In fact, without mincing words and pulling no punches, the learned counsel for the appellants/plaintiffs would submit that in view of the proposition of law that ".possession follows title"., the plaintiffs wanted to assert their possession. Inasmuch as the very title itself claimed by the plaintiffs is in doldrums and there is no prayer in the suit for that and there is also no clinching evidence or even prima facie circumstances to establish and prove their title, both the courts below were justified in holding that the suit should be dismissed. All told, I could see no question of law, much less substantial question of law is involved in this matter.

10. On balance, this second appeal is dismissed. However there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed. vj2 To  
1. The Principal Subordinate Judge Mayiladuthurai 2. The Principal District Munsif Mayiladuthurai

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