

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.489 of 1999

Judgment reserved on 15.06.2015	Judgment pronounced on 19.06.2015
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Mehala .. Plaintiff/Respondent/Appellant

Vs

1.Padmanabhan @ Pathu

2.Amaravathi

3.Poochayal

.. Defendants/Appellants/Respondents

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 25.09.1998 in A.S.No.26 of 1998 on the file of the Sub Court, Bhavani reversing the Judgment and Decree dated 22.01.1998 in O.S.No.110 of 1996 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Mr.A.Sundaravadhanam
for Mr.V.Bharathidasan

For Respondents : Mr.T.P.Manoharan

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 25.09.1998 in A.S.No.26 of 1998 on the file of the Sub Court, Bhavani reversing the Judgment and Decree dated 22.01.1998 in O.S.No.110 of 1996 on the file of the Principal District Munsif Court, Bhavani.

2.The averments made in the plaint are as follows:-

The plaintiff is the absolute owner of the suit property. The plaintiff was granted patta by the Government of Tamil Nadu on 12.09.1989 and the H.S.D. Number is 589/199. The survey number of the suit property is 834 and the block number is 11. Eversince the date of grant of patta, the plaintiff is in possession and enjoyment of the suit property. The plaintiff and her husband are working as Coolie daily wage workers at Komarapalayam, near Bhavani. They used to come once in a week to visit the suit property. Since the roof of

the thatched shed in the suit property was in a dilapidated condition, they have arranged to reconstruct the new thatched residential house. The defendants are the sons and wife of the deceased Krishnasamy Gounder, who had previously filed a suit against the father and husband of the plaintiff, namely, Ponnan and Karuppan in O.S.No.89/1991. During the pendency of the suit, the said Krishnasamy Gounder died and the defendants have not taken steps to implead themselves as legal heirs of the said Krishnasamy Gounder and therefore, the suit filed in O.S.No.89/1991 was dismissed. Now, the defendants illegally and unlawfully attempted to disturb the possession and enjoyment of the suit property by the plaintiff. On 05.01.1996, the defendants attempted to trespass and disturb the peaceful possession and enjoyment of the suit property of the plaintiff. Hence, the plaintiff filed a suit in O.S.No.110 of 1996 for permanent injunction restraining the defendants 1 to 3, their men and agents from interfering with the peaceful possession and enjoyment of the suit property in any manner.

3.The gist and essence of written statement filed by the defendants are as follows:

The defendants denied the allegations made in the plaint as false. The defendants submitted that the suit property absolutely belongs to the defendant by hereditary. The suit property originally belonged to the father and husband of the defendants, namely, Krishnasamy Gounder by virtue of a registered sale deed dated 22.05.1991 executed by one Palani Gounder. Ever since the date of purchase, the said Krishnasamy Gounder was in possession and enjoyment of the suit property. The said Krishnasamy Gounder has constructed the house and also paying the house tax. After the death of the Krishnasamy Gounder, the defendants alone were in possession and enjoyment of the suit property and also paying the taxes for the suit property. The defendants are enjoying the property by using as cattle shed and storing the agricultural things in the thatched shed. It is further submitted by the defendants that the plaintiff has no manner of right over the suit property and she was residing along with her family at Sakthi Sugar Quarters, Nachimuthupuram Colony, Koothampoondi Post, via Sakthi Nagar for more than eight years which is about 10 kms far from the suit property. Previously, the said Krishnasamy Gounder filed a suit for permanent injunction against the Harijan People in O.S.No.89/1991 and an interim injunction has been granted in favour of the said Krishnasamy Gounder. Subsequent to his death, the suit was dismissed as abated. The defendants do not have knowledge about the suit in O.S.No.89/1991 and they came to know about that only when they received the summon and notice of the suit. The plaintiff suppressing all these facts obtained Patta fraudently and without knowledge of the defendants. It is further submitted that due to previous enmity, the plaintiff has filed the suit with a view to harass the defendants and to get unlawful gain. Hence, they prayed for dismissal of the suit.

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1, P.W.2, D.W.1, D.W.2 and Exs.A1 to A4 and Exs.B1 to B12, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.26 of 1998 on the file of the Sub Court, Bhavani.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the plaintiff.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1.Has not the First Appellate Court committed an error of law in holding that the suit for bare injunction without the prayer for declaration in the face of denial of title is not maintainable legally?

2.Has not the First Appellate Court committed an error of law in holding that the appellate has not be established is exclusive possession of the suit property any face of patta, kist and oral evidence?"

7.Challenging the concurrent judgment and decree of the First Appellate Court, the learned counsel for the appellant/plaintiff would submit that the suit property is a Natham Poromboke in Survey No.834 and Patta has been issued in favour of the appellant as per Ex.A1. The appellant put up thatched shed in the suit property. The appellant/plaintiff and her husband were working as Daily wages at Komarapalayam and they used to visit the suit property once in a week. In their absence, the defendants attempted to interfere with the possession of the appellant/plaintiff. Hence the appellant filed a suit. He would further submit that as per Ex.A4, one Krishnasamy Gounder filed a suit for injunction against Ponnan and Karuppan, who are the father and husband of the appellant/plaintiff in O.S.No.89/1991, which was dismissed for default. He has further submitted that the First Appellate Court has not considered the fact that the land in S.No.834, Natham Poromboke has been assigned for houseless people. Hence, he prayed for setting aside the judgment and decree passed by the First Appellate Court.

8.Resisting the same, the learned counsel appearing for the respondents/defendants would submit that the suit itself is not maintainable without prayer for declaration of title. He would further submit that to prove the possession, the defendants have filed the documents, namely, Exs.B4 and B5, house tax receipts, Exs.B6 to B11, receipts and Ex.B12, acknowledgment given by the

Police on the complaint given by the first defendant/first respondent on 22.12.1995. It is further submitted that from the date of purchase of the suit property, they were in possession and enjoyment of the same. To prove the same, D.W.2 has been examined and the First Appellate Court, which is the last fact finding Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

9.Considered the rival submissions carefully made on both sides and perused the material documents and oral evidence.

10.On perusal of Ex.A1, it was specifically mentioned that in S.No.834, H.D.S.No.589 and Plot No.11, totally five cents has been assigned in favour of the appellant and Ex.A3 is the Plan wherein the plot allotted to the landless people has been clearly mentioned. It is pertinent to note that Ex.B1, Sale Deed is in favour of one Krishnasamy Gounder/plaintiff in O.S.No.89/1991 and also one Muthuvelappa Gounder. But whereas there is no document to show that Natham S.No.210 is equal to S.No.834. They have not filed any document to correlate that the property in Ex.B1 is related to the suit property. It is also pertinent to note that the said Krishnasamy Gounder had sent a letter to the Special Tahsildar on 07.06.1987, which is marked as Ex.B2, wherein it was stated that there was a proposal for acquiring the property for allotting the house site for Adi Dravidars and so, he requested that allotment has to be made only in Natham Poromboke and not to his property. He has also given another letter to the Collector on the Grievance Day on 05.03.1990, wherein he has stated that Ponnan and Karuppan are taking steps to get the property, which was evidenced by Ex.B3. But after that only patta has been issued in favour of the plaintiff. The respondents/defendants have filed the house tax receipts under Exs.B4 and B5 and Kist receipts under Exs.b6 to B11. But there is no evidence to show as to what is the Patta Number for the property mentioned in Ex.B1 and no Chitta has been filed to show that the kist receipts are related to the suit property. So, no relevance can be placed on Exs.B6 to B11. Furthermore the respondents/defendants have filed house tax receipts but no Property Tax Register has been filed to show that property assessment stands in whose name and when did it was assessed.

10.Per contra, the appellant herein filed the Government Assignment which was given in the year 1989 and house tax receipt under Ex.A3 which shows that the appellant is the owner of the suit property and she is in possession. It is true that it is the duty of the plaintiff/ appellant to prove her case and she cannot sought for relief on the basis of the defects and loop holes in the case of the defendants/respondents. But herein the appellant herein has filed Ex.A1, Patta Assignment in her favour by the Government in the year 1989, Plan/Ex.A3 and also house tax receipt. The plaintiff has prima facie proved her title and possession and hence she is entitled for injunction.

11.The learned counsel appearing for the respondents mainly argued upon the fact that since there is a cloud over the title of the suit property, the plaintiff ought to have filed a suit for declaration and consequential injunction and not for bare injunction and hence the suit is not maintainable. But the argument advanced by the learned counsel appearing for the respondents does not merit acceptance because on the basis of the assignment, the plaintiff has come forward with the suit. Even though the respondents/defendants have stated that they are the owners of the property, but they very much aware of the fact that they have not filed any document to show that they are the owners of the suit property. Furthermore, there was a proposal for land acquisition and that has been objected by the said Krishnasamy Gounder under Exs.B2 and B3 and after that he filed a suit in O.S.No.89/1991 which was dismissed for default on the death of the said Krishnasamy Gounder. In such circumstances, I am of the view that the suit for bare injunction is maintainable since the plaintiff derived title by way of assignment. Hence, I am of the view that the First Appellate Court has committed error in allowing the appeal and set aside the judgment and decree of the Trial Court. So, the decree and judgment passed by the First Appellate Court is hereby set aside and the decree and judgment of the Trial Court is hereby restored. The second appeal is liable to be allowed and it is hereby allowed.

12.In fine,

- The Second Appeal is allowed.
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- The decree and judgment passed by the learned Subordinate Judge, Bhavani in A.S.No.26 of 1998 dated 25.09.1998 is hereby set aside and the decree and judgment passed by the learned Principal District Munsif Court, Bhavani in O.S.No.110 of 1996 dated 22.01.1998 is hereby restored.
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- There shall be no order as to cost.

cse

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Subordinate Court, Bhavani.

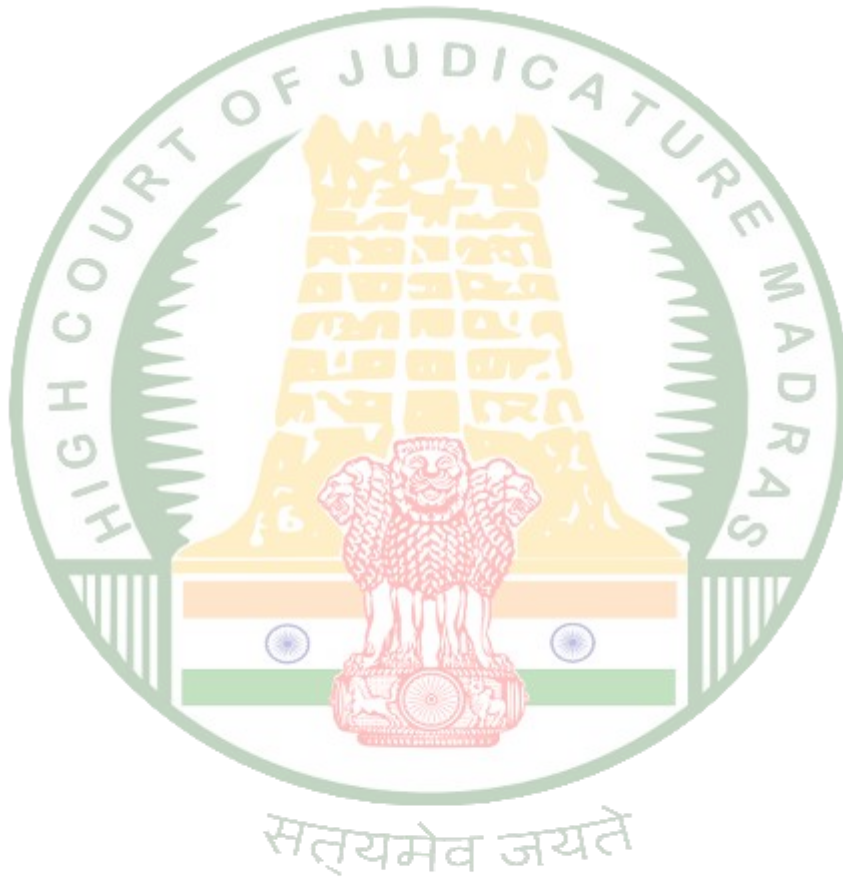
2.The Principal District Munsif,
Principal District Munsif Court, Bhavani.

+ 1 cc to Mr.T.P.Manoharan, Advocate SR 30099

+ 1 cc to Mr.V.Bharathidasan, Advocate SR 30314

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S.A.No.489 of 1999



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