

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.410 of 2009

and

M.P.No.1 of 2009

1. K.Subramani

2. K.S.Murugan

... Appellants/Plaintiffs

- Vs -

1. The District Collector,  
Krishnagiri District,  
Collectorate Office,  
Krishnagiri Town and District.

2. The Commissioner Panchayat Union,  
Uthangarai, Uthangarai Town and Taluk,  
Krishnagiri District. ... Respondents/Defendants.

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 25.11.2008 made in A.S.No.62 of 2007 on the file of the learned Principal Subordinate Judge, Krishnagiri confirming the Decree and Judgment dated 08.08.2007, made in O.S.No.7 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Uthangarai.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.T.Jayaramaraj  
Government Advocate (C.S.)

J U D G M E N T

The plaintiffs in O.S.No.7 of 2005 on the file of the learned District Munsif cum Judicial Magistrate, Uthangarai are the appellants and the respondents are the defendants in the suit. The plaintiffs filed the said suit for permanent injunction to restrain the defendants from in any manner to interfere with their peaceful possession and enjoyment of the suit properties. The trial Court by decree and judgment dated 08.08.2007, dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.62 of 2007 on the file of the learned Principal Subordinate Judge, Krishnagiri. By decree and judgment dated 25.11.2008, the lower appellate Court

dismissed the appeal. As against the same, the appellants are before this Court with this second appeal.

2. The second appeal has come up today for admission. I have heard the learned counsel appearing for the appellants and the learned Government Advocate appearing for the respondents and I have perused the records carefully.

3. The case of the plaintiffs in brief is as follows:

(i) There are two items of suit properties. The first item is two cents of land comprised in Survey No.16/2B1 (New Survey No.27) and the second item is yet another two cents of land comprised in the very same Survey Number viz. 16/2B1. The first item is situated on the west of the second item of the suit schedule property. According to the plaintiffs, they have constructed three shops bearing Door Nos.108A, 108B and 108C in the first item of suit schedule property and four shops in the second item of the suit schedule property bearing door Nos.109A, 109B, 109C and 109D. The plaintiffs have got electricity service connection for all the said shops. According to the plaintiffs, the suit properties were purchased by one Vajaravel by means of a registered sale deed dated 01.04.1939. From the date of purchase, Mr.Vajaravel was in possession and enjoyment of the suit properties. From Mr.Vajaravel and his sons, the plaintiffs purchased the suit properties by means of two different sale deeds dated 11.10.1984 and 12.10.1984. Thus, from the date of purchase, the plaintiffs are in possession and enjoyment of both the items of the suit properties. After purchase of the suit properties, they constructed the shops. According to the plaintiffs, the defendants have got no right over the said properties whatsoever.

(ii) But the defendants took the stand that what was purchased by Mr.Vajaravel under the sale deed dated 01.04.1939 (Ex.A1) is only the land comprised in Survey No.16/2, whereas, the suit property is comprised in Survey No.16/3. But in the sale deed executed by Mr.Vajaravel and his sons, the Survey No.16/3 has been added as though Mr.Vajaravel had title for this property also. It is the further case of the defendants that the property comprised in Survey No.16/3 belongs to the second defendant.

(iii) Based on the above pleadings, the Trial Court framed appropriate issues. On the side of the plaintiffs, the first plaintiff was examined as P.W.1 and as many as 9 documents were marked as Exs.A1 to A9. On the side of the defendants the second defendant was examined as D.W.1 and as many as 17 documents were marked as Exs.B1 to B17. During Trial, an Advocate Commissioner was appointed and his report has been marked as Ex.C1 and his plan was marked as Ex.C2. Having considered all the above, the trial Court dismissed the suit and

the same was confirmed by the lower Appellate Court and that is how the appellants are before this Court with this second appeal.

4. In this second appeal, the learned counsel appearing for the appellants would submit that it is the admitted case of the defendants that the plaintiffs are in possession and enjoyment of the suit properties and the Courts below ought to have decreed the suit in favour of the plaintiffs. Having considered the above submissions, the following substantial question of law is framed:

"Whether the Courts below were right in declining to grant the decree for permanent injunction to the plaintiffs though the defendants have admitted that the plaintiffs are in possession and enjoyment of the suit properties by applying the principle that there cannot be any permanent injunction against the true owner of the land ?

5. The learned counsel appearing for the appellants would submit that the plaintiffs have proved that they are in possession and enjoyment of the suit properties. He would further submit that the electricity service connection stands in the name of the plaintiffs and that would go to show that they are in possession and enjoyment of the suit properties. He would further submit that the defendants have admitted that the plaintiffs are in possession of the suit properties.

6. The learned Government Advocate appearing for the respondents would submit that it is true that the plaintiffs are in possession and enjoyment of the suit properties but they have got no right to continue in possession of the suit properties as they are only trespassers. He would further submit that a decree of permanent injunction against the defendants cannot be granted as the defendants are the true owners of the land.

7. I have considered the above submissions.

8. The plaintiffs in this case claim title by means of sale deeds dated 11.10.1984 and 12.10.1984. Of course these two properties conveyed are situated in Survey No.16/3. The original owner Mr. Vajaravel had title for the property conveyed in Survey No.16/2 (vide Ex.A1 dated 01.04.1939). Thus, under Ex.A1, Mr.Vajaravel had no title for the property comprised in Survey No.16/3. The said document viz., Ex.A1 pertains only to the property comprised in Survey No.16/2. Thus, the Courts below were right in holding that the plaintiffs have not proved their title for the suit properties. But admittedly, the plaintiffs are in possession of the suit properties. They have constructed shops on the suit properties and they are enjoying the same. Therefore, the defendants have got every right to

evict them from the suit properties and remove the encroachments but such removal of encroachments can be done only by following the procedure established by law. Though, in general, a decree for permanent injunction cannot be granted against the true owner of the property, in this case, since the plaintiffs have been in settled possession of the suit properties and their shops have been assessed to house tax, they are entitled for injunction, but such injunction can be only a qualified one and not an absolute one. In other words, possession of the plaintiffs should be protected until they are evicted by lawful means by the defendants and to that extent, there can be a decree for permanent injunction. The Courts below have failed to consider the same and accordingly the substantial question of law is answered.

9. In the result, the second appeal is allowed. The decree and judgment of the trial Court and confirmed by the lower appellate Court is hereby set aside and there shall be a decree for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties until the plaintiffs are evicted from the suit properties by the defendants by following the procedure established by law. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

kk

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Krishnagiri.
2. The District Munsif cum Judicial Magistrate, Uthangarai.
3. The Section Officer, V.R. Section,  
High Court, Madras.

+ 1 cc to Spl.Govt.Pleader(CS), High Court, Madras SR 64759

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