

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1218 of 2013

Mannangkatti Gounder (since deceased)

1.Ramachandran

...Appellants/ Appellans 1 & 2/

Defendants

2.M.Loganathan

3.M.Banumathy

... Appellants 2 and 3/

Appellants 3 & 4

Vs.

Sulochana

... Respondent/ Respondnet /
Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree passed in A.S.No.29 of 2008 on the file of the learned Additional Subordinate Judge, Thiruvannamalai dated 07.09.2010 confirming the decree and judgement passed in O.S.No.71 of 2003 on the file of the learned Principal District Munsif, Thiruvannamalai dated 29.11.2007.

For Appellants : Ms.V.Vanitha

For Respondent : Mr.G.Rajan

JUDGEMENT

The respondent herein is the plaintiff in O.S.No.71 of 2003 on the file of the learned Principal District Munsif, Thiruvannamalai. One Mr.Mannangkatti Gounder and the second appellant herein are the defendants 1 and 2 in the suit. The plaintiff filed the said suit for permanent injunction to restrain the defendants from in any manner interfering with her peaceful possession and enjoyment of the suit property. The suit was decreed as prayed for by the trial Court by decree and judgement dated 29.11.2007. As against the same, Mr.Mannangkatti Gounder who is the first defendant in the suit has filed an appeal in A.S.No.29 of 2008 on the file of the learned Additional Subordinate Judge, Thiruvannamalai. During the pendency of the said appeal, the first defendant passed away. Therefore, the appellants 1 to 3 herein namely Mr.Ramachandran, Mr.M.Loganathan and Ms.M.Banumathy were impleaded as respondents in the said First Appeal. The First Appellate Court by decree and judgement dated 07.09.2010, dismissed the appeal thereby confirming the decree and judgement of the trial Court. That is how the appellants are before this Court with this second appeal.

2.The facts of the case are as follows:-

The suit property is comprised in S.No.443/5 at Vedandavadi Village, Thiruvannamalai District. The total extent of the said property is 0.28.5 hectares. Admittedly, this property was a poromboke land belonging to the Government. On the North of the suit property, the properties of the defendants are situated. The first defendant is the owner of the property comprised in S.No.443/3C and the second defendant is the owner of the property comprised in S.No.443/3B. Both the properties are situated on the North of the suit property. According to the plaintiff, the defendants have got no right whatsoever over the suit property. The suit property was assigned by the Government to the plaintiff by order dated 29.01.2002 (Ex.A.1). Even before that, according to the plaintiff, she was in possession and enjoyment of the suit property and based on her possession only, patta was granted to her. Thus, the plaintiff claims that she is the absolute owner of the suit property and she is in possession of the same.

3.The case of the defendants is that, it is true that the suit property is a poromboke land but, while enjoying the respective properties situated in S.No.443/3B and 443/3C, the defendants have occupied the entire suit property and they have been in possession and enjoyment of the same annexing to their respective properties. According to them, the Eastern portion of 0.35 acres in the suit property is with the second defendant and the Western portion is in the hands of the first defendant. Thus, they are in possession and enjoyment of the suit property.

4.It is the further case of the defendants that earlier, the plaintiff had filed a suit in O.S.No.114/2003 on the file of the learned Additional District Munsif, Thiruvannamalai for permanent injunction to restrain the Tahsildar and other Revenue Authorities concerned from cancelling the patta issued in the name of the plaintiff. But, during the pendency of the said suit, patta in the name of the plaintiff was cancelled under Ex.B.1 on 18.07.2005. But, the learned Additional District Munsif, Thiruvannamalai by decree and judgement dated 10.07.2006 decreed the suit in favour of the plaintiff. The further case of the defendants that since, that decree was obtained behind the back of the defendants, that is not binding on them.

5.Based on the above pleadings, the trial Court framed appropriate issues and called upon the parties to let in evidence both oral as well as documentary evidence. On the side of the plaintiff as many as two witnesses were examined and 10 documents were exhibited. On the side of the defendants as many as three witnesses were examined and two documents were exhibited. An Advocate Commissioner was appointed to note down the physical features and his report was marked as Ex.C.1 and the rough sketch was marked as Ex.C.2.

6. Having considered the above, the trial Court decreed the suit and the First Appellate Court also confirmed the same. That is how the appellants herein are before this Court with this second appeal.

7. This second appeal has come up today for admission. By way of notice of motion, the respondent has made appearance through learned counsel. I have heard the learned counsel for the appellant and the learned counsel for the respondent and I have also perused the records carefully.

8. As I have already pointed out, this is a simple suit for injunction based on possession. Admittedly, the suit property was originally a poramboke land. Patta was originally issued under Ex.A.1 to the plaintiff. When it was sought to be cancelled at the behest of the defendants, the plaintiff filed yet another suit in O.S.No.114 of 2003. In the said suit, unfortunately, the defendants were not added as parties to the said suit. From the records, it is seen that the said suit in O.S.No.114 of 2003 was dismissed for default. Even before it could be restored by the plaintiff, the Tahsildar concerned rushed to cancel the patta issued in favour of the plaintiff under Ex.B.1. This was taken note off by the trial Court and the trial Court in O.S.No.71 of 2003 has granted decree for permanent injunction in favour of the plaintiff herein restraining the Revenue Authorities from cancelling the patta issued in favour of her. But, the fact remains that even before the grant of the decree for permanent injunction, patta had already been cancelled. Neither cancellation order was subsequently withdrawn nor it was set aside by the Court below. In O.S.No.114 of 2003, even after coming to know that the patta had already been cancelled, the suit was not amended by way of challenging the cancellation order.

9. At any rate, as of now, the order cancelling the patta remains undisturbed. Therefore, it is doubtful whether the plaintiff has got title or not. It is either for the plaintiff or for the defendants to work out their remedies in respect of title. So far as the present suit is concerned, as I have already pointed out, it is only a simple suit for permanent injunction based on possession. The Courts below on appreciating oral as well as documentary evidence, have found that the plaintiff is in possession of the property. In the said finding, I do not find any infirmity. I find no substantial question of law involved in this matter, so as to admit this second appeal. Therefore, this second appeal deserves to be dismissed even at the admission stage itself. However, the matter needs some clarification. As I have already pointed out, since, the land originally belonged to the Government, as a poramboke land, since, the earlier suit in O.S.No.114 of 2003 is only for injunction, and since, even before the decree for injunction could be granted patta had already been cancelled, it is for the parties to work out their remedies in respect of the title. Present judgement is pertaining only to the possession.

10.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Additional Subordinate Judge,
Thiruvannamalai.

2.The Principal District Musnif,
Thiruvannamalai.

1 cc to M/s.S. Thamizharasi, Advocate, Sr. 5419

1 cc to Mr.G. Rajan, Advocate, sr. 5437

Second Appeal No.1218 of 2013

VD (CO)

kk 3/3

सत्यमेव जयते

WEB COPY