

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.2038 of 2004

Date of Reserving the Judgment 13.07.2015	Date of Pronouncing the Judgment 21.07.2015
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1.Varadarajan Pillai

2.Narayanaswamy

...Appellants/Appellants/Plaintiffs

Vs

1.Thulasidoss

2.Govindasamy Thevar

...Respondents/Respondents/Defendants

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 29.04.2004 made in A.S.No.169 of 2003 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 15.09.2003 passed in O.S.No.88 of 2001 on the file of the District Munsif Court, Sirkali.

For Appellants : Mr.V.Bhiman

For Respondents : Mr.S.Sounthar

J U D G M E N T

The second appeal arises out of the judgment and decree dated 29.04.2004 made in A.S.No.169 of 2003 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 15.09.2003 passed in O.S.No.88 of 2001 on the file of the District Munsif Court, Sirkali.

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

The plaintiffs are the owners of the suit property described as ABCDEFGHI in the plaint plan. Though the 2nd plaintiff purchased the property recently, the 2nd plaintiff and his father were in enjoyment of the property for a long number of years. The 1st plaintiff had obtained the suit property of 15 cents in S.No.331/24 under Ex.A.1/Exchange Deed. He has also purchased 10 cents in R.S.No.331/21 under Ex.A.2/Sale Deed, dated 07.10.1991. The 2nd plaintiff has also purchased 12 cents in R.S.No.331/24 under Ex.A.3/Sale Deed, dated 10.07.1997. He has also purchased 2 cents in R.S.No.331/24. Thus, both the plaintiffs totally own an extent of 40 cents. Further, there is no demarcation in ground between R.S.No.331/21 and R.S.No.331/24. The plaintiffs are in possession and enjoyment of the suit property. While so, the 1st defendant at the instigation of the 2nd defendant is trying to interfere with the peaceful possession and enjoyment of the suit property of the plaintiffs and hence, the plaintiffs are constrained to file a suit for permanent injunction.

3. The 1st respondent herein who is the 1st defendant in the suit had filed the written statement wherein it was stated that the plaintiffs have not come to the court with clean hands. The 2nd item of the property viz., property in R.S.No.331/24 is undivided Gram Samuthayam Property. The 1st item is unnecessarily included in the suit so as to create confusion. The defendants make claim only in respect of 2nd item of the property viz., R.S.No.331/24. The father of the 1st defendant Boovaragavan Pillai had purchased an extent of 2 cents in undivided Gram Samuthayam property in R.S.No.331/24 under Ex.B.1/Sale Deed, dated 18.08.1958. But this defendant is in occupation of 2 cents in R.S.No.331/24 which is adjacent to their property i.e., on the western side. Likewise, the 2nd defendant's father purchased 4 cents in undivided Gram Samuthayam property in R.S.No.331/24 which is on the eastern side of the 1st defendant's 2 cents. The 2nd defendant and his predecessor-in-title have been in possession and enjoyment of 4 cents in R.S.No.331/24 for a period of more than 50 years. The vendors of the plaintiffs have no right to sell an extent of 29 cents in R.S.No.331/24 and hence, the claim of plaintiffs for 29 cents in R.S.No.331/24 is unsustainable. The

plaintiffs never had any exclusive possession over the entire suit property. The defendants are in possession of their respective undivided share in the 2nd item of the suit property. Hence, the suit for permanent injunction against the co-owner, who is in actual possession is not maintainable. Thus, by stating the above averments the 1st defendant prayed for the 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 to P.W.5, D.W.1 to D.W.4 and Exs.A.1 to A.14 and Exs.B.1 to B.4, dismissed the suit. Aggrieved against the judgment and decree of the trial court, the plaintiffs preferred an appeal in A.S.No.169 of 2003 on the file of the Principal Subordinate Court, Mayiladuthurai.

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

6. At the time of admission, the following question of law has been framed.

"1. When the defendants specifically pleaded in their written statement and plan that they are in possession of specific and certain portions of the property in S.No.331/24, whether the courts belows are right in law in dismissing the suit on the ground that no injunction can be granted against co-owner?"

2. When the defendants specifically state that they are in possession of certain definite portions only, whether the lower appellate court erred in law in holding that description of properties in the plaintiffs documents do not tally with plaint schedule?"

7. Challenging the concurrent judgments of the Courts below, the learned counsel for the appellants would submit that the first plaintiff had purchased 10 cents in R.S.No.331/21 under Ex.A.2/Sale Deed, dated 07.10.1991 and the second plaintiff had purchased 12 cents in R.S.No.331/24 and 2 cents within the stated boundaries, totaling 14 cents under Ex.A.3/Sale Deed, dated 10.07.1997. Further, the 1st plaintiff had got 15 cents in R.S.No.331/24 under

Ex.A.1/Exchange Deed, dated 10.06.1969. So, the plaintiffs are entitled to 29 cents in R.S.No.331/24. However, the defendants got only 2 cents in R.S.No.331/24 under Ex.B1/Sale Deed, dated 18.08.1958 and 4 cents was purchased by the second respondent's father within the stated boundaries. That factum was not considered by both the Courts below. Both the Courts below have held that the suit property is a common undivided property. The total extent is 39 cents and so, it is an undivided property. Even in the Exs.B.1 and B.2/Sale Deeds, it has been specifically stated that it is an undivided property. On that basis, the Courts below has committed an error in dismissing the suit stating that an order of injunction cannot be granted against the co-owners. However, in the deposition, D.W.1 to D.W.4 had specifically stated that they are in possession of the stated boundaries. In such circumstances, there arises no question of co-ownership. That factum was not considered by the Trial Court and hence, the learned counsel for the appellants prayed for setting aside the decree and judgment passed by the Courts below.

8. Resisting the same, the learned counsel for the respondents would submit that there is no dispute in respect of first item of the property viz., 11 cents in R.S.No.331/21 and the dispute is only in respect of 29 cents in R.S.No.331/24. In R.S.No.331/24, the total extent is only 31 cents. The father of the 1st defendant/1st respondent has purchased undivided 2 cents from one Alamelu Ammal under Ex.B1/Sale Deed, dated 18.08.1958. Likewise, the father of the 2nd defendant/2nd respondent had purchased undivided 4 cents from one Kuupusamy Naidu and others in R.S.No.331/4. But the Ex.A.1/Exchange Deed came into existence only on 10.06.1969. Under the said document, the first appellant had got the 'A' scheduled property, wherein it was specifically mentioned 15 cents in R.S.No.331/24. Similarly, the 2nd appellant is also alleged to have purchased 12 cents in R.S.No.331/24 and 2 cents within the stated boundaries, totaling 14 cents under Ex.A.3/Sale Deed, dated 10.07.1997. Furthermore, the 2nd appellant is also alleged to have purchased 2 cents from one Navaneetham under Ex.A.4/Sale Deed, dated 24.07.1999. The learned counsel for the respondents would further submit that one Thulasiachi had executed Ex.A.5/Settlement Deed, dated 17.09.1930 in favour of Thillai Govinda Pillai from whom the 1st plaintiff/1st appellant had got 15 cents in R.S.No.331/24. In that, it was stated that the total extent in R.S.No.331/24 is 26 cents. Further, in Exs.B.1 and B.2/Sale Deeds, it was specifically mentioned that it is an undivided property. Thus, the trial Courts have rightly considered the matter in proper perspective and hence, the learned counsel for the respondents prayed for dismissal of the appeal.

9. Considered the rival submissions made by both sides and perused the material records, oral and documentary evidences.

10. The admitted fact is that there is no dispute in respect of the first item of the property viz., 11 cents in R.S.No.331/21. So, there is no cause of action for the filing of the suit. Hence, the appellant is not entitled to any relief in this aspect.

11. The dispute is only in respect of R.S.No.331/24. To prove that the property is a divided property, the vendor of the 2nd plaintiff/2nd appellant viz., Janakiraman who executed Ex.A.2/Sale Deed, dated 10.07.1997 was examined as P.W.3. Further, to prove the possession, P.W.4/Duraisamy and P.W.5/Muthusamy were examined. It is a well settled principle of law that the plaintiff must prove his possession to seek the relief of bare injunction. So, the evidence of P.W.4/Duraisamy and P.W.5/Muthusamy who were examined to prove the possession is not trustworthy. Further, P.W.1/Varadharajan himself admits that he is residing in Kuravalur village. However, the Village Administrative Officer of Neppathur village was examined as D.W.4/Piccharaman and through him Ex.B.4 has been marked. In his evidence, D.W.4 has stated that R.S.No.331/24 has a joint patta in patta no.591 and it stands in the name of several persons. D.W.4 in his chief has stated that R.S.No.331/24 is on the eastern side of R.S.No.331/21 and that the pattadhars are using the undivided property according to their convenience. However, in Ex.B.3, D.W.4 has given the extent of land owned by each and every pattadhar in the said survey number. He has also stated that the suit property is a joint property and there is no classification for Grama Samuthayam property. In such circumstances, there is no evidence to show that the total extent of the property in R.S.No.331/24 is 31 cents.

12. But according to the plaintiffs/appellants, they are in possession of 29 cents in R.S.No.331/24, but the defendants/respondents claim 6 cents as per Ex.B.1 and B.2/Sale Deeds, wherein they had purchased the undivided property. The total extent of the property is 26 cents, whereas the appellants herein are claiming 29 cents stating that they are in possession of 29 cents. However, there is no evidence to show as to how they derived the 29 cents. Even as per the ancient document viz., Ex.A.5/Settlement Deed, dated 17.09.1930 the total extent in R.S.No.331/24 is only 26 cents. But in an injunction suit, an order of injunction cannot be granted against a co-owner. Since the respondents are co-owners, they are entitled to 6 cents. So, I am of the considered view that the property is yet to be divided and the defendants/respondents are in enjoyment of the properties only. In such circumstances, both the

Courts below had rightly held that no injunction can be granted against the co-owners. Hence, I am of the view that the plaintiffs/appellants are not entitled to any relief. So, the second appeal stands dismissed.

13. In fine,

(a) The Second Appeal is dismissed with costs.

(b) The judgment and decree passed by the Trial Court as well as the first appellate Court is hereby confirmed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The District Munsif,
Sirkali.

1 CC to Mr.V.Bhiman, Advocate SR.No. 36817

S.A.No.2038 of 2004

UG (CO)

PSI (24.08.2015)

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