

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 7.1.2015

CORAM

THE HON'BLE MS.JUSTICE K.B.K.VASUKI

S.A.No.2184 of 2002
and
C.M.P.No.18984 of 2002

I.Basavaraj

...Appellant/Plaintiff

vs.

R.Basavaraj

...Respondent/Defendant

Second Appeal is filed under section 100 of Civil Procedure Code against the judgment and decree dated 21.11.2002 in A.S.No.27 of 2002 on the file of the District Judge, Nilgiris, Uthagamandalam confirming the judgment and decree dated 29.4.2002 in O.S.No.357 of 1990 on the file of the District Munsif, Coonoor.

For appellant : Mr.V.K.Elango

For respondent : Mr.S.K.Raghunathan

JUDGMENT

The unsuccessful plaintiff is the appellant herein. The suit was filed for the relief of bare injunction in respect of 93 cents forming part of 13.81 acres in S.No.55/1D1 of Adigaratty Village, Coonoor Taluk, Nilgiri District within the four boundaries as mentioned in the suit schedule. The plaintiff claims right, title and interest and possession and enjoyment of the suit property on the strength of Exs.A1 to A5 sale deeds Exs.A6 and A7 Encumbrance Certificates and Ex.A10 Chitta. According to the plaintiff, an extent of 1.33 ¼ acres of land in R.S.No.55 of Adigaratti Village was purchased by his father by name Iyyaswamy by a registered document dated 28.09.1931, out of which, he sold 44½ cents and 93 cents on 25.6.1936 and 05.12.1936 and he repurchased an extent of 93 cents by

a registered document dated 14.1.1940. Thereafter, the plaintiff's father and after the plaintiff's father, his mother and after the plaintiff became major, have been in possession and enjoyment of the property and the same was sought to be interfered with by the defendant by attempting to forcibly dispossess the plaintiff from the suit property without any manner of right, title and interest.

2.The suit relief was resisted by the defendant not only by denying right, title and interest and possession of the plaintiff over entire extent of 93 cents in the suit survey number, but also by claiming co-ownership in respect of 1.12 acres in the same survey number. According to the defendant, the suit property measuring 93 cents is not comprised in suit survey number and the defendant is entitled to 93 cents in the suit survey number and the extent belonging to him has already been leased out to one Mahalingam and the said Mahalingam has been in possession and enjoyment of the property.

3.Both the parties in support of their respective contentions examined themselves as PW1 and DW1 and produced Ex.A1 to A18 and B1 documents. The trial court on the basis of the available evidence, arrived at a conclusion that the plaintiff failed to prove the availability of 93 cents within the four boundaries described in the suit schedule and also failed to prove his exclusive possession and enjoyment of the same and suit Survey No.55 was much before the institution of the suit, sub divided and the plaintiff was unable to show the sub division, in which the suit property was comprised. On the other hand, Ex.A10 chitta dated 12.7.1990 stands in the joint names of the plaintiff, defendant and others and the defendant is one of the co-owners of the entire extent comprised in the suit survey number and the plaintiff is hence dis-entitled to claim the relief of injunction against the co-owner and accordingly dismissed the suit. Aggrieved against the same, the plaintiff preferred an appeal AS.27/2002.

4.The lower appellate court, after analysing the evidence adduced in the case and the findings of the trial court and the reasoning based on which the findings are rendered, agreed with the same and confirmed the findings of the trial court that the plaintiff failed to identify the property for which injunction relief was sought for and 93 cents within the four boundaries referred to in the suit schedule does not represent 86 cents of land which was sought to be owned by him and the defendant and others are co-pattadars in respect of the land in S.No.55 and the same is inconsistent with his

claim that he has been in exclusive possession of the suit property and as the defendant is the co-owner in the suit property, the plaintiff cannot claim injunction against the co-owner and accordingly dismissed the appeal. Hence, this second appeal by the plaintiff before this court.

5.The second appeal is admitted on the following substantial questions of law:

"(1) Whether the courts below are right in law in relying upon Ex.A10 Chitta to give a finding that the defendant is a co-owner when Chitta is not a document of title and in Ex.A10, the name of the defendant does not find a place.

(2) Whether the courts below are right in law in holding that patta is a document of title and that a joint patta will confer co-ownership and joint possession.

(3) Whether the courts below have properly cast the burden of proof when it is settled law that when both the parties have let in evidence and produced documents, the burden of proof falls into insignificance."

6.Heard the rival submissions made on both sides and perused the records.

7.As already stated, the suit is filed for the relief of injunction thereby restraining the defendant from interfering with the plaintiff's exclusive possession and enjoyment of 93 cents comprised in the suit survey number within the four boundaries in the suit schedule. The defendant resisted the suit relief on many grounds, particularly on the ground that he is the co-pattadar and co-owner and no injunction suit lies against the co-owner. It is trite law that the plaintiff, who comes to court, succeeds or fails on the basis of his own case.

8.Insofar as the suit for permanent injunction is concerned, the main aspect to be considered is the actual possession and enjoyment of the property in question by the plaintiff. As far as the present case is concerned, both the courts below have on appreciation of entire oral and documentary evidence, particularly the admission made by PW1 in the witness box, categorically found that the plaintiff failed to prove that the suit extent of 93 cents is comprised in the

particular sub division number in the main S.No.55. As a matter of fact, the plaintiff as PW1 in the witness box, admitted his ignorance of the sub division made in the Suit Survey No.55. The documents produced on the side of the plaintiff are not sufficient and satisfactory enough to prove his right, title and interest and his exclusive possession and enjoyment of the suit extent of 93 cents. Exs.A10 chitta and A15 adangal and Ex.B1 chitta would show that the plaintiff is one of the co-pattars of the land comprised in S.No.55 and the defendant is also one such co-owner in respect of the same. Both the courts below, on the failure of the plaintiff to identify the property and the exact provision of the property in the particular survey number and his exclusive possession and enjoyment of either suit extent as described in the suit schedule or any other extent lesser than the same and having found that the defendant being one of the co-pattadars and co-owner, has been in possession and enjoyment of the property, rightly refused to grant the relief as sought for in the suit against the co-owner. Though Exs.A10 and B1 chittas cannot be the documents of title, the same would probablise the defendant's case, denying exclusive possession and enjoyment of the suit extent by the plaintiff. To that extent, Exs.A10 and B1 assumes greater importance in this permanent injunction suit.

9.As the plaintiff has come forward with the suit for permanent injunction, the initial burden is always on the plaintiff to prove his case regarding the exclusive possession and enjoyment of the suit extent and the alleged interference by the defendant into such possession. The plaintiff cannot rely on the weakness, if any, on the defendant's side for succeeding in his suit. As the finding of the courts below in disbelieving the plaintiff's version, about his exclusive possession and enjoyment of the suit item is based on sufficient material and supported by proper reasoning and as such finding rendered by the courts below is factual in nature, no substantial questions of law arise herein against such factual finding and the same need not be answered.

10.As rightly argued by the learned counsel for the defendant, the only remedy available to the plaintiff is to go for comprehensive civil suit for appropriate relief either for declaration of title or for partition or for both and the plaintiff is hence dis-entitled to get any relief in this Second Appeal.

11.With such liberty given to the plaintiff, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Ssk/rk

To

1. The District Judge,
Nilgiris,
Uthagamandalam.
2. The District Munsif,
Coonoor.
3. The Section Officer,
V.R. Section, High Court,
Madras.

1 CC to Mr.S.K.Raghunathan, Advocate SR.No. 1004

1 CC to Mr.T.V.Krishnmachari, Advocate SR.No. 828

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PUR (CO)
PSI (15.09.2015)

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