

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.471 of 2001

Annamalai ...Appellant/Appellant/1st Defendant

Vs.

1.S.Karunamurthy ...1st Respondent/1st Respondent/Plaintiff

2.Ramakrishnan

3.Ramachandran ... 2nd and 3rd Respondents/
2nd and 3rd Respondents/
2nd and 3rd Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree of the learned Subordinate Judge, Maduranthagam dated 15.12.1999 in A.S.No.83 of 1998 confirming the judgment and decree of the learned District Munsif, Maduranthagam dated 30.09.1997 in O.S.No.558 of 1994.

For Appellant	: Mr.K.S.Sundar
For R.1	: Mr.K.Govi Ganesan
For RR2 & 3	: No Appearance

JUDGEMENT

The first defendant in O.S.No.558 of 1994 on the file of the learned District Munsif, Maduranthagam, is the appellant herein. The first respondent herein is the plaintiff in the suit. The other respondents are the other defendants in the suit. The said suit was filed by the first respondent herein for permanent injunction to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. The trial Court by decree and judgment dated 30.09.1997 decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.83 of 1998 on the file of the learned Subordinate Judge, Maduranthagam. By decree and judgment dated 15.12.1999, the First Appellate Court

dismissed the appeal thereby confirming the decree and judgment of the trial Court. That is how the appellant is before this Court with this second appeal.

2.The case of the plaintiff in brief is as follows:-

The suit property was originally owned by one Mrs.Kalusam Beevi. The plaintiff purchased the suit property from the said Mrs.Kalusam Beevi by way of registered sale deed dated 24.05.1993. From the said date onwards, he has been in possession and enjoyment of the same. According to the plaintiff, the defendants have got no right whatsoever over the suit property. Assuming that the defendants had title originally for the suit property, they have lost it because, the plaintiff has perfected his title by means of adverse possession in respect of the suit property. At any rate, according to the plaintiff, since, he has been in possession of the suit as on the date of filing of the suit, he is entitled for the decree of permanent injunction.

3.In the written statement, the first defendant/the appellant herein contended that the suit property belongs to him. The suit property was purchased by him by means of registered sale deed dated 17.04.1987 from one Mrs.Kaliammal and others who are the wife and children of one Mr.Selvarasu. According to him, the suit property was purchased by the ancestors of the vendor of the first defendant by means of a sale deed dated 24.10.1955. In respect of the patta, there is a dispute between the plaintiff and the first defendant and the same is pending before the Revenue Authorities. Thus, according to the first defendant/appellant herein, the plaintiff has got no title for the suit property and the contention of the plaintiff that he has perfected his title by adverse possession, is not correct. He would further submit that the first defendant has been in possession and enjoyment of the suit property. Thus, according to the first defendant, the suit is liable to be dismissed.

4.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and 11 documents were exhibited. On the side of the defendants, two witnesses were examined and 8 documents were exhibited. P.W.1 is the plaintiff and P.W.2 is a Villager who has spoken about the plaintiff's possession of the suit property. Ex.A.1 is the sale deed dated 02.05.1993 executed by Mrs.Kolusum Beevi in favour of the plaintiff. Ex.A.2 is the patta issued in the name of Mr.Karunamurthy. Ex.A.3 is the chitta extract. Ex.A.4 is the Adangal extract for the suit property to show possession. Ex.A.5 is the proceedings of the Deputy Collector. Ex.A.6 is the kist receipts in the name of Mr.Karunamurthy and Mr.Sahur Saibu. Ex.A.7 is a copy of the

letter sent by Mr.Karunamurthy to the Sub Inspector, Padalam. Ex.A.8 is the sale deed executed by Mr.Raman in favour of Mrs.Laxmiammal. Ex.A.9 is the sale deed executed by Mrs.Laxmiammal in favour of Mr.Hameed Kasim. Ex.A.10 is the sale deed executed by Mr.Kannan in favour of Mr.Hameed Kasim. Ex.A.11 is the sale deed executed by Mrs.Kuppammal in favour of Mr.Hameed Kasim.

5.The first defendant was examined as D.W.1 and one Mr.Durairaj was examined as D.W.2. Ex.B.1 is the sale deed executed by one Ms.Kaliammal and three others in favour of the first defendant. Ex.B.2 dated 24.10.1955 is the sale deed executed by Ms.Kuppammal in favour of Mr.Thirumalai Kumaran. Ex.B.3 dated 27.04.1943 is also yet another title deed. Ex.B.4 is the kist receipts in the name of the first defendant. Exs.B.5,6 and 7 are the other proceedings passed by the Tahsildar and others relating to the suit property pertaining to patta.

6.Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the first defendant/appellant is before this Court with this second appeal.

7.When this second appeal was admitted, this Court has framed the following substantial questions of law:-

"(a)When the first defendant disputes the right, title, interest and possession of the plaintiff in respect of 29 $\frac{1}{2}$ cents in S.No.279/1 and 93 $\frac{1}{2}$ cents in S.No.291, whether the courts below are correct in granting the relief to the plaintiff in a suit for bare injunction, which is not maintainable in law, as there was no relief of declaration sought for by the plaintiff ?

(b)When the burden is on the plaintiff to establish title and possession of the suit properties, whether the Courts below are correct in placing the burden on the first defendant ?

(c)Whether the Courts below are correct in granting the relief of possession contrary to the evidence and materials on record ?"

8.I have heard the learned counsel for the appellant and the learned counsel for the first respondent and I have also perused the records carefully.

9.Admittedly, it is a suit for bare injunction filed by the plaintiff to restrain the defendants from in any manner interfering with his peaceful possession and enjoyment of the suit property. Ofcourse, the title is under dispute, but, as an incidental question, the trial Court has gone into the question of title and also answered the same. It is needless to point out that though, there is no relief sought for in respect of title as an incidental question, it is not a final adjudication on the issue and the same will not act as res judicata for the appellant to work out his remedy by filing appropriate suit for declaration of title and for other consequential relief.

10.So far as the present suit is concerned, going by the oral evidence as well as documentary evidence, two Courts below, on facts, have held that the plaintiff has been in possession and enjoyment of the suit property for more than 20 years. Thus, it is crystal clear that on facts, the plaintiff has been in settled possession of property.

11.When that be so, as held by the Hon'ble Supreme Court in Ramji Rai and Anr v. Jagdish Mallah (dead) (AIR 2007 SC 900), even in the absence of a prayer for declaration of title, a suit for injunction is maintainable and thus, the Courts below were right in granting a decree for permanent injunction in favour of the plaintiff. Accordingly, I answer the first substantial question of law.

12.So far as the second substantial question of law is concerned, the question of possession is a question of fact which has been answered by the Courts below by appreciating both oral as well as documentary evidence. So far as title is concerned, since, it is not a suit for declaration of title, there is no need for the plaintiff to establish his title. As I have already pointed out, the question of title is only an incidental question and not an issue in the suit. Therefore, in the absence of any proof of title by the plaintiff, the grant of permanent injunction in favour of the plaintiff cannot be found fault with. Accordingly, the second question of law is answered.

13.So far as the third question of law is concerned, it is again on a question of fact. In my considered opinion, this is not at all a question of law. It is a pure question of fact regarding possession. Therefore, the third question of law framed as though it is a question of law, needs no answer.

14.In view of the foregoing discussions, since, I do not find any perversity in the judgments of the Courts below and

since, there is no illegality and since, the Courts below were right in granting decree for permanent injunction in favour of the plaintiff, I do not find any reason to interfere with the same. At the same time, it needs to be clarified at this stage that the decree in the suit shall not be a bar for either of the parties to work out their remedies for declaration of title claimed by respective parties and for other reliefs.

15. In the result, the second appeal fails and accordingly the same is dismissed and the decree and judgment of the First Appellate Court confirming the decree and judgment of the trial Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Maduranthagam.

2. The District Munsif,
Maduranthagam.

+1cc to Mr.K.Goviganesan, Advocate, S.R.No.64285

+1cc to Mr.M.K.S.Sundar, Advocate, S.R.No.64008

Second Appeal No.471 of 2001

ca(CO)
srg(21/01/2016)

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