



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.04.2015
CORAM :

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Second Appeal (MD) No.380 of 2014
and
MP(MD) No.1 of 2014 and 1 of 2015

Periyakka ... Appellant/Respondent/Defendant

Vs.

Pandiammal ... Respondent/Appellant/Plaintiff

Second Appeal is filed under Section 100 C.P.C against the judgment and decree in A.S.No.40 of 2012, dated 28.02.2014 on the file of the Sub Court, Melur Camp, reversing the judgment and decree passed made in O.S.No.7 of 2008, dated 09.06.2011 on the file of the District Munsif Court, Melur.

For Appellant : Mr.A.Arumugam for
Mr.H.Thayumanaswamy

For Respondent : Ms.J.Anandhavalli

JUDGMENT

The defendant in the Original Suit is the appellant in the Second Appeal. The respondent herein, claiming to be a cultivating tenant in respect of the suit property, filed O.S.No.7 of 2008 on the file of the District Munsif Court, Melur for a permanent injunction restraining the defendant therein (the appellant in the Second Appeal) from in any way interfering with the peaceful and enjoyment of the suit property until vacated by following due process of law.

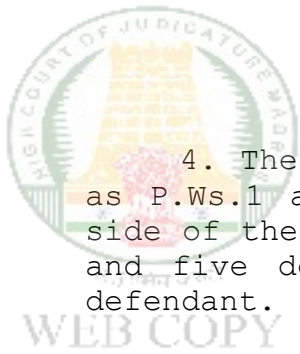
2. The suit property has been described as 25 cents of wet land comprised in Re-Survey No.14/7 at Melamadai Village, Madurai North Taluk. The suit was resisted by the appellant herein/defendant that the suit property was not in possession and enjoyment of the respondent herein/plaintiff at any point of time and that the mistake that was committed by the revenue officials by wrongly granting patta in the name of Mariammal, mother of the respondent herein, the respondent herein/plaintiff chose to file a frivolous suit.

3.The learned trial Judge, framed the following issues:-

"(i)Whether the plaintiff is not in possession of the suit property?

(ii)Whether the plaintiff is entitled for the relief of permanent injunction against the defendant as prayed for?

(iii)To what other reliefs, the plaintiff is



4. The parties went for trial, in which two witnesses were examined as P.Ws.1 and 2 and 29 documents were marked as Exs.A1 to A-29 on the side of the plaintiff whereas two witnesses were examined as D.Ws.1 and 2 and five documents were marked as Exs.B.1 to B-5 on the side of the defendant.

5. The learned trial Judge, on appreciation of evidence held that the plaintiff was not entitled to the relief sought for in the plaint and accordingly, dismissed the suit by judgment and decree dated 09.06.2011.

6. The respondent herein/plaintiff preferred an appeal on the file of the Sub Court, Melur Camp in A.S.No.40 of 2012. The learned lower Appellate Judge, after hearing, allowed the appeal, set aside the decree of the trial Court and decreed the suit for the relief of permanent injunction as prayed for by judgment and decree dated 28.02.2014. It is as against the said decree of the lower Appellate Court reversing the decree of dismissal of the trial Court and decreeing the suit, the present Second Appeal has been filed.

7. The Second Appeal was admitted on 01.04.2014, identifying the following to be the substantial question of law that has arisen for consideration in the Second Appeal:-

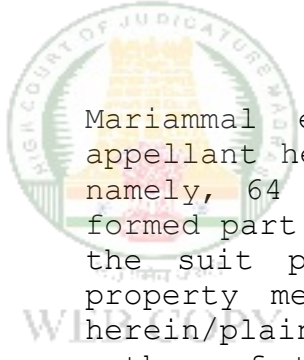
"Whether the suit is legally maintainable in the Civil Court in view of Section 16-A of Act 10 of 1969, Tamil Nadu Agricultural Land and Record of Tenancy Right Act, 1969 especially when the plaintiff claims relief solely on the ground that she is cultivating tenant?"

8. The arguments advanced by Mr.A.Arumugam, learned counsel appearing for the appellant herein/defendant and by Ms.J.Anandavalli, learned counsel appearing for the respondent herein/plaintiff are heard. The judgments of the Courts below and other materials available on record received from the Courts below are also perused and taken into consideration.

9. Though the above question alone was formulated at the time of admission of the Second Appeal, learned counsel appearing for the appellant herein/defendant sought the leave of the Court, during the course of arguments, to raise an additional substantial question of law and this court permitted the same. Accordingly the following question has been formulated as additional substantial question of law that has arisen in the second appeal:-

"Whether the lower Appellate Court has committed an error in upholding the claim of the plaintiff in the light of the admission made by her that no cultivation is being done in the suit property for four years prior to the examination of P.W.1 and in the light of the confusing and contradictory stand taken by her in the plaint, more particularly, in view of her claim that she has got title to the suit property?"

10. The case of the respondent herein/plaintiff, as pointed out by the learned counsel appearing for the appellant herein/defendant, is ambiguous but also confusing and full of inbuilt contradictions. It is the contention of the respondent herein/plaintiff that her mother

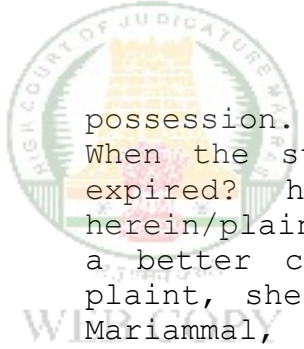


Mariamammal entered into an agreement for sale (purchase) with the appellant herein/defendant in respect of a larger extent of the property namely, 64 cents of land of which the suit property measuring 25 cents formed part and that subsequently, by an oral sale, she got possession of the suit property and became the absolute owner of the above said property measuring 64 cents. The next stand taken by the respondent herein/plaintiff is that by a long uninterrupted peaceful possession, the mother of the respondent herein perfected title by adverse possession. The third stand taken by the respondent herein/plaintiff is that in recognition of her possession, patta was granted in favour of Mariammal, the mother of the respondent herein/plaintiff in Patta No.163 and still Mariammal had been insisting upon the appellant herein/defendant to execute a sale deed in her favour, but the appellant herein/defendant who agreed to execute the sale deed in favour of one Periyasamy, son of the said Mariammal, executed a sale deed and conveyed only an extent of 39 cents in favour of Periyasamy, the brother of the respondent herein/plaintiff. The fourth contention raised by the respondent herein/plaintiff is that, after such a sale effected in favour of her brother, the remaining 25 cents continued to be in the possession of Mariammal, the mother of the respondent herein/plaintiff as cultivating tenant. On the basis of the above said four different pleas, the respondent herein/plaintiff has come forward with the suit for permanent injunction against the appellant herein/defendant.

11. A reading of the above pleading itself will show that the respondent herein/plaintiff herself is not sure as to in what capacity she came to be in possession of the suit property. Admittedly, a larger extent of 64 cents of which the suit property measuring 25 cents forms part was owned by the appellant herein/defendant. Having admitted the title of the appellant herein/defendant, the respondent herein/plaintiff can succeed in her attempt to get the relief of permanent injunction, only if she is able to show a better right that can be enforced against the appellant herein/defendant. In an attempt to show that the respondent herein/plaintiff is having a better title than that of the appellant herein/defendant, the respondent herein/plaintiff took a plea that her mother became the owner of the suit property by virtue of an oral sale. When such oral sale took place has not been stated in the pleadings, but during the course of evidence, oral evidence was adduced to the effect that such oral sale took place in the year 1976. However, details regarding date or month in which such sale took place were not furnished.

12. Admittedly, the value of the suit property as on the date of alleged oral sale was alleged to be Rs.16,000/-. No sale of an immovable property worth not less than Rs.100/- can be effected orally or by an unregistered document. It has got to be effected by a registered document as per Section 54 of the Transfer of Property Act Indian Registration Act, 1908. Therefore, the respondent herein/plaintiff cannot succeed in her attempt to establish her case that her mother got title to the suit property by way of purchase from the appellant herein/defendant in the year 1976.

13. Even the plea of oral purchase, came to be given a go by in the very same paragraph by taking a plea that Mariammal, the mother of the respondent herein/plaintiff acquired prescriptive title by adverse



possession. What is the date from which her possession became adverse? When the statutory period of limitation conferring prescriptive title expired? have not been clearly stated. Suppose, the respondent herein/plaintiff stuck on to the above stand, she might have got somewhat a better case. But unfortunately, in the very next sentence of the plaint, she had stated that after patta was transferred in the name of Mariammal, but Mariyammal was insisting upon the appellant herein/defendant to execute the sale deed in her favour. The said plea will show incorporation of an admission that the appellant herein/defendant was the owner of the property and if at all, Mariammal was in possession of the same, it was nothing but a permissive possession. On that score alone, the claim of perfection of title by adverse possession by Mariammal, has got to be discountenanced.

14. Out of the 64 cents, owned by the appellant herein/defendant, 39 cents within specified boundaries, came to be conveyed by the appellant herein/defendant under a sale deed dated 21.02.2000, a certified copy of which has been produced as Ex.B3. In the said sale deed itself, the appellant herein/defendant has made it clear that out of the total extent owned by her in the same survey number, she was retaining the balance extent of 25 cents for herself under her enjoyment. There is noting in Ex.B.3 to show that the property conveyed under the said document to Periyasamy was already in the possession and enjoyment of Mariammal, the mother of the respondent herein/plaintiff either as an agreement holder or as a cultivating tenant. There is also nothing in the said document to show that the remaining extent of 25 cents was in the possession of Mariammal, the mother of the purchaser under the said sale deed and the same would continue to be in her possession as cultivating tenant. Neither Mariammal, the mother of the respondent herein/plaintiff nor Pandiyammal, the respondent herein/plaintiff did take steps to get their names recorded as cultivating tenant under the provisions of Tamil Nadu Agricultural Land and Record of Tenancy Right Act, 1969.

15. The power to decide whether a person is a cultivating tenant in respect of the land in question has been given to the Authorised Officer (i.e.,) Record Officer, under the said Act and Civil Court's jurisdiction to decide such a question has been taken away. However, in some of the judgments, it has been held that when such a question arises incidentally in a suit for some other relief, for example, in a suit for injunction based on possession, such a question can be incidentally gone into by the Civil Court. In the case on hand, though the respondent herein/plaintiff would have chosen to make a claim that she is the cultivating tenant in respect of the suit property, admittedly there is no entry in the register of tenancies kept under the the above said Act showing the name of the respondent herein/plaintiff as cultivating tenant in respect of the suit property and at no point of time, any one's name appeared in the said register as a cultivating tenant in respect of the suit property.

16. Though the respondent herein/plaintiff would have taken a stand that her mother and after her mother, the respondent herein/plaintiff herself was in possession and enjoyment of the suit property as a cultivating tenant, except the Adangal extract which shall be in tune with patta and the settlement register, no other document came to be produced by the respondent herein/plaintiff to show that she was in possession as a cultivating tenant. Hence, the respondent



herein/plaintiff cannot substantiate her contention that she is a cultivating tenant in respect of the suit property.

17. However, learned counsel appearing for the respondent herein/plaintiff would contend that even if a person without any title or right derived from the title holder, is in possession and enjoyment of the property and such possession is an established one, he/she cannot be thrown out even by the real owner without following due process of law and that what the respondent herein/plaintiff had prayed for in the suit, is nothing but such a protection till eviction by due process of law.

18. In the absence of any of lacunae indicated above and provided the respondent herein/plaintiff is able to prove her possession, the above said contention may appear to be tenable. But what is due process of law? - has got to be understood in proper perspective. When a person comes to the Court with a plea that he/she is in possession and enjoyment of the property and he/she should not be evicted without following due process of law, such a claim can be maintained and sustained against everybody except the real owner. Even as against the real owner of the property, if the plaintiff is able to show that he/she has got a right falling short of title enforceable against the real owner, namely, a protected tenant or a person having right of pre-emption or a person having right to restrict the user of the property by the owner in a particular way, such prayer of the person filing suit can be sustained subject to proof of such right.

19. On the other hand, when a person is proved to be a rank trespasser and he is not proved to be a person having perfected title by adverse possession thereby defeating the title of the erstwhile owner, he/she cannot sustain a claim for injunction against the real owner of the property stating that he/she should not be disturbed except by adopting due process of law. In this regard, it shall be helpful to refer to a larger Bench decision of the Supreme Court reported in AIR 2012 SC 1727 (*Maria Margarida Fernandes and others Vs. Erasmo Jack de Sequeria (Dead) through Legal heirs*).

20. In the said case, referring to the earlier judgments of the Supreme court, the Hon'ble Full Bench of the Supreme Court laid down the law as to "what is meant by due process of law?" The relevant portion in the said judgment is found in paragraphs 81 and 82 which are extracted hereunder:-

"81. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

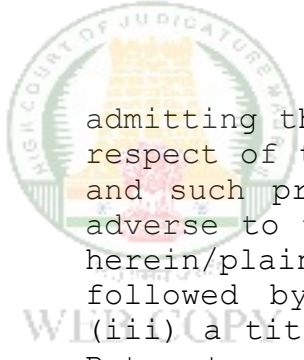
82. The High Court of Delhi in a case *Thomas Cook (India) Limited v. Hotel Imperial* 2006 (88) DRJ 545 held as under:



"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejection from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

21. If we apply the above said ratio to the facts of the case on hand, the result shall be that the respondent herein/plaintiff cannot succeed in getting a decree for injunction as prayed for, even if it is assumed that she is in possession of the suit property, because the title of the appellant herein/defendant stands established besides being admitted by the respondent herein/plaintiff and by inviting an adjudication upon the claim, the respondent herein/plaintiff has paved the way for such an adjudication which will satisfy the ingredients of due process of law. Even if it is assumed for argument sake, without



admitting that the respondent herein/plaintiff is a cultivating tenant in respect of the suit property, she shall not be entitled to the protection and such protection shall stand forfeited the moment she claimed title adverse to that of the landlord. Here is a case in which, the respondent herein/plaintiff has taken four different pleas:- (i) agreement holder, followed by purchase, (ii) perfection of title by adverse possession (iii) a title holder as per revenue records and (iv) cultivating tenant. But not even a single scrap of paper has been produced to show that at any point of time, the respondent plaintiff paid any rent either in cash or in kind. The respondent herein/plaintiff is also not in a position to state as to what was the agreed rent. In fact, the respondent herein/plaintiff has not come to the Court with clean hands.

22. All these aspects were properly taken into consideration by the learned trial Judge, which led to his conclusion that the respondent herein/plaintiff was not entitled to the relief of injunction as sought for. The learned lower Appellate Judge, without adverting to the above said aspects in proper manner, chose to interfere with the well considered judgment of the trial Court and held that the respondent herein/plaintiff was a cultivating tenant; that the respondent herein/plaintiff proved her possession and that thus, she was entitled to the relief of permanent injunction as prayed for. This Court, without any hesitation, comes to the conclusion that the said findings of the lower Appellate Court are perverse against law and hence, the judgment of the lower Appellate Court deserves to be interfered with and set aside, with the result that the decree of the trial Court shall be restored.

23. In the result, the second appeal is allowed. Consequently, the judgment and decree in A.S.No.40 of 2012, dated 28.02.2014 on the file of the Sub Court, Melur Camp is set aside and the decree of the trial court dated 09.06.2011 passed in O.S.No.7 of 2008 on the file of the District Munsif Court, Melur is restored. No costs. M.P(MD)Nos.1 of 2014 and 1 of 2015 are closed.

Sd/-

Assistant Registrar(Per.Admn)

\\True copy\\

Sub Assistant Registrar

To

1.The Subordinate Judge, Melur Camp.

2.The District Munsif, Melur.

+1cc TO M/S.H.THAYUMANSWAMY, ADVOCATE SR.NO.22980

+1cc TO M/S.J.ANANDHAVALLI, ADVOCATE SR.NO.23072

Second Appeal (MD) No.380 of 2014
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