

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2016

PRONOUNCED ON : 20.10.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.476 of 2008

and

M.P.No.1 of 2008

Varadarajan (died)

1.Saroja

2.R.Amudha

... Appellants/LRS of the
deceased Plaintiff

Vs

1.The Commissioner,
Namakkal Municipality,
Paramathi Road,
Namakkal.

2.Palanivel

... Respondents 1 & 2/Defendants

3.V.Arunraj

... 3rd Respondent/LRS of the
deceased Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the learned Additional District Judge, Namakkal dated 17.09.2007 in A.S.No.242 of 2003 confirming the judgment and decree of the learned Additional District Munsif, Namakkal dated 16.06.2003 in O.S.No.552 of 2002.

For Appellants : Mrs.Mythili Suresh for
M/s.Sarvabhauman Associates

For R.1 : Mr.P.Srinivas

For R.2 : Mr.A.Nagarathinam

For R.3 : No Appearance

JUDGMENT

Aggrieved by the dismissal of suit by the trial Court and confirmed by the First Appellate Court, the plaintiffs have preferred this second appeal on the ground that they being in the settled possession of the suit premises, even though they are trespassers, they cannot be evicted without following due process of law. However, the Courts below have erroneously dismissed the suit overlooking Section 38 of the Specific Relief Act.

2.The brief facts leading to the case, are as under:-

The original plaintiff Mr.V.Varadarajan and one Mr.Chellappa Gounder put up a petty shop on the suit premises prior to 15 years of the date of filing of the suit. On 14.02.1996, Mr.Chellappa Gounder retired from the partnership of the petty shop and since then, Mr.V.Varadarajan, the original plaintiff continued to carry on the business in the suit premises and paying rent to the the first defendant Municipality regularly. At the instigation of the second defendant, the first defendant has filed caveat on 16.10.2002, which has caused apprehension in the mind of the original plaintiff that he may be evicted from the suit premises without following the due process of law and therefore, the suit has been filed for permanent injunction restraining the defendants 1 & 2 from evicting the plaintiff without following the due process of law.

3.The first defendant in his written statement has contended that the suit property which is more fully described as Ward C, Block 5, T.S.No.222 does not belong to the first defendant and it stands in the name of one Mr.Kuppusamy and Mr.Periyasamy sons of Mr.Chinna Gounder.

4.According to the written statement of the first defendant, it is contended that originally, Mr.Chellappa Gounder was running a petty shop on the street margin and paying rent to the first defendant. While expansion of the road, Mr.Chellappa Gounder has shifted the petty shop to a patta land owned by Mr.Kuppusamy and Mr.Periyasamy and now, Mr.V.Varadarajan, the original plaintiff has filed the suit as if the land belongs to the first defendant and the second defendant who has purchased the property from Mr.Kuppusamy and Mr.Periyasamy is trying to evict the plaintiff without following the procedure established under law.

5.The second defendant has filed a written statement on the line of the first defendant with further details tracing title over the suit property. According to the second defendant, it is

contended that the suit bearing S.No.222 was originally owned by Mr.Nalli Gounder who settled the property in favour of his wife Maarayee and minor children Mr.Kuppusamy & Mr.Periyasamy vide settlement deed dated 04.05.1946. Mrs.Maarayee, Mr.Kuppusamy and Mr.Periyasamy later divided the property among themselves by way of partition deed dated 27.07.1987. The second defendant has purchased a portion of the property from one Mr.Subramani the sole legal representative of Mr.Kuppusamy on 04.01.2002 and from Mr.Saravanan, the sole legal representative of Mr.Periyasamy on 18.03.2002. Patta has also been issued to the second defendant and he is in possession of the suit property. While so, during the expansion of the road, the plaintiff moved his petty shop from the road margin into the patta land of the second defendant stealthily and has filed the present suit suppressing the facts. He being a trespasser, he cannot seek injunction against the true owner.

6.The trial Court after framing issues and after examining the witnesses has held that it was Mr.Chellappa Gounder who originally got the tenancy under the first defendant, so he alone can seek injunction. The plaintiff who claims right through Mr.Chellappa Gounder has no privity of contract with the first defendant Municipality and if at all any contract exist between Mr.Chellappa Gounder and the plaintiff, it will not bind the first defendant. Further, it has been held by the trial Court that from the evidence, it is proved that the suit property is owned by the second defendant and the first defendant is not the owner of the suit property. Being so, the plaintiff had knowingly impleaded the first defendant as a party to the suit just to make out a case of settled possession of the suit property in his favour. Holding so, the trial Court dismissed the suit. The First Appellate Court has also confirmed the decree and judgment passed in O.S.No.552 of 2003 concurring the views expressed by the trial Court.

7.This Court before admitting this second appeal and framing substantial question of law, thought it fit to issue notice to the respondent regarding admission. Accordingly, on receipt of notice, the respondents appeared through their respective counsel and submitted that there is no substantial question of law involved in this second appeal and therefore, according to them, the second appeal is liable to be dismissed.

8.The learned counsel for the appellants/plaintiffs vehemently contended that both the Courts below have held that the plaintiff is in possession of the suit property. Being so, there is no bar in seeking injunction against the true owner if, there is an attempt to dispossess the occupant forcibly without following the procedure established under law.

9.The learned counsel for the appellants/plaintiffs relying upon Section 38 of the Specific Relief Act, contended that a person in possession without title can sustain a suit for injunction even against the true owner if, there is an attempt to evict him by force, without following the procedure established under law.

10.The learned counsel for the appellants/plaintiffs referred the following judgments in support of her contention:-

"1.Karthiyayani Amma v. Govindan (AIR 1980 Ker 224);

2.Rame Gowda (D) by Lrs v. M.Varadappa Naidu (D) by Lrs & Another (AIR 2004 SC 4609);

3.M.B.Subramaniam v. Ramasamy gounder (2009 (3) CTC 59) and

4.R.Pannerselvam v. A.Subramanian (2009 (3) CTC 493)."

11.The prime test for granting injunction against the true owner is "Whether the plaintiff has been in settled possession ?". The Hon'ble Supreme Court in Rame Gowda (D) by Lrs v. M.Varadappa Naidu (D) by Lrs & Another (cited supra) has laid down the working rule for determining the attributes of 'settlement possession' and the same is extracted below:-

"i)that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii)that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii)the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv)that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be

whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

12. In the light of the above guidelines laid down by the Hon'ble Supreme Court, if we look into the facts of the present case, whether the plaintiff was really in settled possession of the suit schedule property, this Court finds that the plaintiff who seeks an equitable relief against the true owner has not established his settled possession of the suit schedule property. The suit schedule property is described as under:-

"சொத்து விவரம்

நாமக்கல் வட்டம், நாமக்கல் டவுன் மணிக் கூண்டு அருகில் மெயின் ரோட்டுக்கும் மேற்கு, குளக்கரை சந்துக்கும் வடக்கு, பிசின்னுசாமி கட்டிடத்துக்கும் கிழக்கு. நம்பியார் மலிடெரி ஹோட்டல் கட்டிடத்துக்கும் தெற்கு இதன் மத்தியில் உள்ள தில்லைபுரம் மெயின் ரோடு கதவ் எண் 153க்கு அருகில் உள்ள காலி இடம் 2ம் இதில் உள்ள பெட்டிக்கடையம் மேற்படி சொத்துக்குண்டான சகல பாத்தியங்களும் ஈஸ்ட் மெண்ட் பாத்தியங்களும் பாத்தியப்பட்டது. இதற்கு வார்டு சிபிளாக்-5 டி.எஸ்.நெ.222 ஆகும். "

13. Thus, at the outset, this Court finds that the plaintiff has not disclosed the actual extent of the land in his possession. Neither in the pleading nor in the evidence let in by the plaintiff, there is whisper about the extent of the land. In the cross examination of D.W.1, it is pointed out that Exs.D.3, D.4 & D.5 refers S.No.359/3A and not S.No.222 which is the suit schedule. While so, it is highly doubtful whether the appellants/plaintiffs were in settled possession of the suit schedule property which falls under Ward C, Block 5, T.S.No.222, Namakkal Town. This ambiguity in the suit schedule ought to have been clarified by the plaintiff by proper document or by physical examination of the property through a Court appointed Commissioner, which the appellants/plaintiffs have failed to do.

14. Contrarily, the second defendant has marked documents tracing out his title in respect of S.No.222 through Exs.D.1 to D.7. That being so, just because one Mr.Chellappa Gounder was running petty shop, on a road margin owned by the first defendant Municipality 30 years ago and he has released the lease right in favour of the plaintiff, will not lead to a conclusion that the plaintiff was in settled possession of the

suit property for a long period which is factually a private land.

15.It is the case of the defendants that earlier, Mr.Chellappa Gounder was running petty shop on the first defendant municipality land on the road margin. When the road was expanded, he moved his petty shop into a patta land bearing S.No.222. Since, the land was vacant, at that point of time, the plaintiff has encroached upon the patta land of the the second defendant. The Courts below after considering the evidence have found this fact true and have rightly de-suited the plaintiff.

16.There is no reason for the plaintiff to implead the second defendant in the suit, if the land is owned by the first defendant. Though, the appellants/plaintiffs plead that the land belongs to the first defendant municipality, there is no acceptable reason stated in the plaint for impleading the second defendant in the suit, except alleging that the second defendant in collusion with the first defendant tried to evict the plaintiff forcibly without following the due process of law.

17.Further, for the settled possession, there must be animus possidendi as against true owner. There is no such pleading in the plaint. The alleged possession of the appellant as per the pleadings is only as against the first defendant Municipality. The plaintiff has pleaded his animus only against the first defendnat and not agaist the second defendant. During the course of trial, it has been found that one Mr.Chellappa Gounder who had established the petty shop on the road side margin having electricity connection and paying rents to the first defendant municipality have moved the petty shop into the patta land of the second defendant, when there was expansion of road. This by no stretch of imagination could be termed as a settled possession of the plaintiff, in compliance with the second working rule laid down by the Hon'ble Supreme Court in the judgment cited supra. While so, he is a ranked trespasser and without showing any semblance of settled possession, a mere occupation of a piece of land stealthily, will not confer any right to seek an injunction. More fully such an injunction can be granted against the true owner only on the basis of equity. A person who seeks equity should come to Court with clean hands. This is the case where the plaintiff has never accepted the title of the second defendant. The extent of the property has not been disclosed by the plaintiff in the plaint. Even during course of trial, he has not attempted to disclose or establish the extent of the land in his possession. Without specifying the actual extent of the land by itself disentitle the plaintiff from seeking the relief of permanent injunction.

18.For the above said reasons, this Court holds that there is no merit in the second appeal and no reason for this Court to interfere with the well considered judgments of the Courts below.

19.In the result, the second appeal is dismissed and the decrees passed by the Courts below are confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District Judge,
Namakkal.

2.The Additional District Munsif,
Namakkal.

Copy To

The Record Keeper,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.59703

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.59789

+1cc to Mr.A.Nagarathinam, Advocate, S.R.No.59694

Second Appeal No.476 of 2008

RSI (CO)
CA(30/11/2016)

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