

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2016

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1100 of 2015 and

M.P.No.1 of 2015

1.Kumar @ Selvakumar
2.Kannammal
3.Marimuthu
4.Rathinammal
5.Kuppurani
6.Kumudham

.. Appellants/D2 and Lrs of D1
vs.

1.Kaliammal
2.Palaniammal
3.Ayili
4.Anjalai
5.Elumalai
6.Anandan

.. Respondents/Plaintiffs

Prayer:- This Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree in A.S.No.53 of 2012 on the file of the learned Principal Subordinate Judge, Tiruvannamalai dated 18.09.2015 confirming the decree and judgment made in O.S.No.106 of 2009 dated 28.09.2012 on the file of the learned Principal District Munsif cum Judicial Magistrate, Chengam.

For Appellants : Mr.A.Thameem Mohideen for
Mr.S.Kumaradevan

JUDGMENT

The defendants in O.S.No.106 of 2009 on the file of the learned Principal District Munsif cum Judicial Magistrate, Chengam are the appellants herein. The respondents herein are the plaintiffs in the suit. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties and for damages to the tune of Rs.50,000/- and for cost. The learned Principal District Munsif cum Judicial Magistrate, Chengam by decree and judgment dated 28.09.2012 decreed the suit in part thereby granting the decree for permanent injunction with exemplary cost of Rs.25,000/- to be paid by the defendants/appellants to the plaintiffs/respondents. So far as the damages claimed in the

suit was concerned, the suit was dismissed. As against the decree and judgment passed by the trial Court, the appellants/defendants filed an appeal in A.S.No.53 of 2012 on the file of the learned Principal Subordinate Judge, Tiruvannamalai. By decree and judgment dated 18.09.2015, the First Appellate Court partly allowed the appeal thereby setting aside the exemplary cost imposed on the defendants/appellants by the trial court however, the First Appellate Court confirmed the decree granted by the trial Court in respect of permanent injunction. Challenging the same, the defendants/appellants are before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The case of the plaintiffs is as follows:-

There are two Items of suit properties. The suit properties were purchased by one Mr.Thoppaiyan. Mr.Thoppaiyan is now no more. The first plaintiff is the wife and other plaintiffs are the children of Mr.Thoppaiyan. Thus, According to the plaintiffs, they are the absolute owners of the suit properties and they are in possession and enjoyment of the same. The first defendant is the father of the second defendant. The first defendant and Mr.Thoppaiyan are the brothers. According to the plaintiffs, in the year 1958, in respect of the joint family properties, there was a partition between Mr.Thoppaiyan and the first defendant/first appellant herein, in which, the joint family properties were all partitioned. Long after the partition, the suit properties were purchased by Mr.Thoppaiyan out of his own earnings. Thus, According to the plaintiffs, the defendants have got no right whatsoever over the suit properties.

4.It is also the case of the plaintiffs that during the year 1979, the first defendant filed a suit in O.S.No.286 of 1979 on the file of the learned District Munsif, Tiruvannamalai, for declaration of his title and for the consequential relief. In that suit, he alleged that the joint family nexus continued till 1971 and only in the year 1971, there was an oral partition, in which, the suit properties were allotted to the first defendant. Thus, according to the first defendant, the suit properties belonged to him and he was in possession and enjoyment of the same. This said suit was resisted by Mr.Thoppaiyan, contending that the suit properties were purchased out of his own earnings in which, the first defendant herein have got no right whatsoever.

5.After full contest, the suit in O.S.No.286 of 1979 was dismissed on 19.08.1994 thereby negating the claim made by the

first appellant herein for title. As against the same, the first appellant/ first defendant filed an appeal in A.S.No.94 of 1994 on the file of the learned Subordinate Judge, Tiruvannamalai. The same was dismissed by the learned Subordinate Judge on 27.02.1996 thereby confirming the decree and judgment of the trial Court. As against the same, the first appellant herein filed a second appeal in S.A.No.899 of 1997 before this Court and the same was dismissed by this Court on 02.02.1998 thereby confirming the decree and judgment of the learned Subordinate Judge, Tiruvannamalai in A.S.No.94 of 1994 dated 27.02.1996. Thus, came to an end, the first round of litigation.

6. Not having been satisfied with the same, the first appellant/ first defendant again filed another suit in O.S.No.270 of 1998 on the file of the learned Subordinate Judge, Tiruvannamalai, for partition and for separate possession of the suit properties herein. In that suit, the first defendant claimed that the suit properties were joint family properties in which, he had half share. During the pendency of the said suit in O.S.No.270 of 1998, Mr.Thoppaiyan died and therefore, the plaintiffs herein were all brought on record as his legal representatives. The said suit was dismissed by the trial Court. The first appellant however did not chose to file any first appeal against the same. Thus, the claim for partition made by the first appellant herein has come to an end, in the second round of litigation.

7. Then started the third round of litigation. The first defendant/ the first appellant herein then filed another suit in O.S.No.184 of 2003 claiming that he was in possession and enjoyment of the suit properties and to restrain the plaintiffs/respondents herein from in any manner interfering with his peaceful possession and enjoyment of the suit properties. That suit was dismissed on 21.12.2004 for default. The first defendant did not take any steps to restore the same. Thus, the third round of litigation also came to an end.

8. There was yet another litigation initiated by the defendants and one Mrs.Kannammal for damages in O.S.No.74 of 2005 against the third plaintiff in the present suit. The said suit was dismissed on 18.04.2006. There was no appeal filed against the same and thus, the fourth round of litigation came to an end.

9. Despite the above four rounds of litigations, having lost in all the suits, the defendants in the present suit managed to obtain patta for the suit properties in their favour under the Updating Register Scheme (UDR Scheme). Armed with the same, claiming possession of the suit properties, the defendants tried

to disturb the possession of the plaintiffs. Therefore, the plaintiffs were forced to file the present suit against the defendants for permanent injunction to restrain the defendants from in any manner interfering with their peaceful possession and enjoyment of the suit properties and in respect of the above vexatious litigations, namely, O.S.No.286 of 1979; A.S.No.94 of 1994, O.S.No.899 of 1997, O.S.No.270/1998, S.A.No.184/2003; O.S.No.74 of 2005 and O.S.No.128 of 2007, the plaintiffs claimed a total sum of Rs.50,000/- as damages from the defendants towards the litigation expenses of the above suits.

10.The defendants/appellants filed a written statement before the trial Court wherein, they have contended again that the suit properties, absolutely, belong to them and they are in possession and enjoyment of the same. They have further contended that the plaintiffs are not entitled for damages.

11.From the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, the third plaintiff was examined as P.W.1 and as many as 15 documents were marked. On the side of the defendants, two witnesses were examined and as many as four documents were exhibited. The documents relied on by the defendants are "A" register copy for the second item of the suit property (Ex.B.1) patta for the first item of the suit property (Ex.B.2) patta for second item of the suit property (Ex.B.3) and the copy of kist receipts dated 01.05.1993 (Ex.B.4).

12.Having considered all the above, the trial Court decreed the suit in part thereby granting the decree for permanent injunction. The trial Court was also pleased to impose a cost of Rs.25,000/- to be paid by the defendants to the plaintiffs. However, the First Appellate Court taking a lenient view, set aside the cost but, confirmed the decree for permanent injunction in favour of the plaintiffs. That is how the defendants are before this Court with this second appeal.

13.In this second appeal, the learned counsel for the appellants would submit that Exs.B.1 to B.4 would go to show that the suit properties are in the exclusive possession and enjoyment of the appellants herein and the same was not duly considered by the Courts below. So far as the title is concerned, according to the learned counsel, there is ample proof to show that the plaintiffs have got no title over the suit properties.

14.I have considered the above submissions.

15.At the outset, I should say that this is a classic example of a case where, one party, (the defendants) have tried to use all the avenues available in law to knock at the doors of

one Court or the other repeatedly with vexatious litigations so as to waste the time of the Subordinate Courts as well as this Court and the time, energy, money of the plaintiffs viz., the opposite party.

16.As I have already narrated, the claim for title made by the appellants in O.S.No.286 of 1979 on the file of the learned District Munsif, Tiruvannamalai was dismissed and the second appeal filed by the defendants before this Court in S.A.No.899 of 1997 was also dismissed. After the end to the above litigations, I do not understand as to how the appellants herein can claim that they have got title or right over the suit properties. After dismissal of the second appeal in S.A.No.899 of 1997, the first defendant filed yet another suit in O.S.No.270 of 1998 on the file of the learned Subordinate Judge, Tiruvannamalai, for partition claiming that he had half share in the suit properties. That suit was dismissed and the same has become final. Even after the dismissal of the suit for partition, I do not understand how the appellants can still claim that they have got right over the suit properties.

17.Not stopping with that, the first defendant filed yet another suit in O.S.No.184 of 2003 claiming that he was in actual possession and enjoyment of the suit properties and finally, he allowed that suit to be dismissed for default. It was not subsequently restored. Thus, his claim for possession was also negatived by the Court. It is not understandable as to how the appellants/defendants would still claim that they have got some rights over the suit properties.

18.As I have already pointed out, the defendants and one Mrs.Kannammal had filed yet another suit in O.S.No.270 of 1998, on the file of the learned District Munsif, Tiruvannamalai against the third plaintiff in the present suit for damages. That suit was also dismissed.

19.Narration of the above facts would go to show that at the instance of the appellants, the following litigations were initiated and they were all lost, namely:-

"O.S.No.286 of 1979; A.S.No.94 of 1994,
S.A.No.899 of 1997;
O.S.No.270/1998;
O.S.No.184/2003;
O.S.No.74 of 2005 and
O.S.No.128 of 2007"

20.Finally, the present suit in O.S.No.106 of 2009 was filed by the respondents herein and it has now come upto the level of present second appeal at the instance of the appellants/defendants. This narration would clearly go to

justify my remarks made at the beginning of the judgment that the appellants have abused the process of Court on several occasions commencing from the year 1979 with endless litigations. The Courts below have rightly held that the defendants have got no right whatsoever over the suit properties and the claim made by them are all false.

21. Admittedly, the suit properties were purchased by Mr. Thoppaiyan. The plaintiffs in the present suit are the legal representatives of Mr. Thoppaiyan and thus, the plaintiffs have got title and they are in possession of the suit properties. After the dismissal of the above suits in the year 2003, the appellants/defendants have managed to obtain patta for the suit properties in their favour under the UDR scheme from the Government and solely based on these two pattas, now the appellants claim that they have got right, title over the suit properties and they also further claim that they are in possession of the suit properties.

22. In my considered view, the alleged pattas which were obtained after the dismissal of the above suits and in ignorance of the judgments in the earlier litigations would be of no help to the appellants to claim any right whatsoever over the suit properties. Thus, I do not find any merit in this second appeal. Further, I do not find any substantial question of law at all involved in this second appeal so as to admit the same and instead, I find that this second appeal is an yet another vexatious litigation filed by the defendants. Therefore, this second appeal deserves to be dismissed with heavy cost on the appellants.

23. For having wasted the precious time of this Court; the time of the Courts below and having wasted the time of the plaintiffs commencing from the year 1979 with all these vexatious litigations, I am of the view that directing the appellants to pay a sum of Rs.30,000/- as cost will meet the ends of justice. It is really painful to impose such a huge cost on the appellants but, having regard to the facts narrated above, this Court has got no other option but, to impose such a huge cost on the appellants. Further, this case will be a lesson for the similarly placed persons who have similar intention to file one after the other to misuse the Courts as a platform to wreck vengeance to their opponents.

24. Since, in this second appeal, notice has not been ordered to the respondents and since, this Court thought it fit to impose cost on the appellants, for having wasted the time of the Courts, the appellants are directed to pay jointly a sum of Rs.30,000/- (Rupees thirty thousand only) as cost to the Varadhappa Choultry Orphanage, Old No.288, New No.891, Tondiarpet High Board, Old Washermenpet, Chennai - 600 021 (opp.

To Old Washermenpet P.O.) Ph.No.044 25951521, within a period of eight weeks from today. The authority in administration of the said Institution shall use the said amount to give food to the children.

25.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment passed by the First Appellate Court is hereby confirmed. Consequently, connected miscellaneous petition is closed. The appellants are directed to pay the said cost within the stipulated period.

Registry is directed to post the matter on 11.03.2016 for reporting cost compliance by the appellants.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Tiruvannamalai.

2.The Principial District Munsif cum
Judicial Magistrate,
Chengam.

3.The Person.In-charge,
Varadhappa Choultry Orphanage,
Old No.288, New No.891,
Tondiarpet High Board,
Old Washermenpet,
Chennai - 600 021
(opp. To Old Washermenpet P.O.)
Ph.No.044 25951521,

+1cc to Mr.S.Kumaradevan, Advocate sr.2165

S.A.No.1100 of 2015

jsv[co]
srg 04/02/2016