

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.540 of 2015

K.Palanisamy

... Appellant

vs.

1.The President,
Pallitharupatty Village,
Panamarathupatty Post,
Salem Taluk and District.

2.The Block Development Officer,
Panamarathupatty Panchayat Union,
Panamarathupatty Post,
Salem Taluk and District.

3.The State of Tamilnadu rep. By
The District Collector,
Collectorate,
Salem 636 001.

4.K.Periyasamy

....Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 10.09.2014 made in A.S.No.59 of 2012 on the file of the Principal Subordinate Judge, Salem modifying the judgment and decree dated 01.03.2012 made in O.S.No.729 of 2008 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.C.Prabakaran

For Respondents: Mr.T.Jayaramraj
Government Advocate (CS)

For Respondents

1,2, & 4 : No appearance

J U D G M E N T

The appellant is the second plaintiff in a suit for injunction.

2.It is the case of the plaintiffs that they are in possession and enjoyment of the suit properties situated in S.Nos.61/6 and 61/7 at Pallitherupatti Village, Salem Taluk, Salem District which is admittedly a gramanatham property. It is the further case of the plaintiffs that the defendants were trying to interfere with their peaceful possession and enjoyment of such property wherein their ancestors and thereafter themselves are continuously living for several decades. The defendants who are officials of the local panchayat and the District Collector of Salem opposed the suit by contending that the plaintiffs are not entitled to the relief, as they are not in possession of the suit properties.

3.The trial court after considering rival pleadings of the parties and the evidence let in by them dismissed the suit. Challenging such dismissal, the second plaintiff filed the first appeal while the first plaintiff has chosen not to challenge. The first appellate court granted the relief of injunction in so far as Survey No.61/6 is concerned, while confirming the judgment and decree of the trial court in so far as the property situated in Survey No.61/7 is concerned. Thus, the first appellate court allowed the appeal in part and granted the decree as stated above.

4.Challenging such finding of the first appellate court in not granting the relief in respect of S.No.61/7, the second plaintiff has filed the present appeal, while the official defendants have not chosen to file any appeal as against the grant of the relief in respect of S.No.61/6.

5.The second appeal was admitted by this court by raising the following substantial questions of law:

"a) Whether the courts below are framed necessary issue involved in the suit in respect of identity of the property concerned and rendered finding thereon which could alone resolve the lis?

b) Whether the issue of boundaries are prevail over extent has framed and decided after effective adjudication of the suit?

c) Whether the defendants are entitled to disturb the plaintiff without even issuing a notice has mandatory under section 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905, if the property in Survey No.61/7 is a Natham Poramboke land?"

6.Mr.C.Prabakaran, learned counsel appearing for the appellant submitted that patta was granted to the plaintiffs in respect of S.No.61/6 and while enjoying such property, the plaintiffs were continuously enjoying the adjacent property in S.No.61/7 and therefore, the courts below failed to consider such aspect, while rejecting the relief in respect of such survey number. He further contended that the suit property, admittedly a grama natham, was enjoyed by the plaintiffs' father and his brother in common and in a partition that took place in the year 1973, the present property under dispute in S.No.61/7 was allotted to the share of the plaintiffs' father. Therefore, he contended that the plaintiffs after the death of their father are entitled to enjoy the same and therefore, the courts below erred in rejecting the relief of injunction in respect of the said survey number.

7.On the other hand, the learned Government Advocate (CS) appearing for the respondents reiterated the findings rendered by the courts below in respect of S.No.61/7 and further submitted that the plaintiffs have not proved their possession over the suit property at S.No.61/7 and therefore, the concurrent finding rendered by the courts below in respect of the said survey number need not be interfered with.

8.Heard both sides and perused the materials placed before this court.

9.It is seen that the suit was filed in respect of the properties situated at Survey Nos.61/6 and 61/7. It is also not in dispute that both the properties are grama natham. Now, the lower appellate court has granted the relief of injunction in favour of the plaintiffs in respect of S.No.61/6 and rejected the said relief in respect of S.No.61/7. As the present second appeal is filed only by the second plaintiff and no cross appeal or other second appeal is filed by the official defendants challenging the decree granted by the appellate court in respect of S.No.61/6 is concerned, this court is of the view that the respondents cannot raise any dispute with regard to the relief granted to the plaintiffs in respect of S.No.61/6. Learned Government Advocate also fairly submitted that the respondents are not raising any dispute with regard to S.No.61/6.

10.Now, the only question that has to be seen is whether the relief of injunction can be granted in respect of S.No.61/7.

11.Admittedly, neither in the partition deed marked as Ex.A1 or in any other document, the extent of property at S.No.61/7 was shown at any point of time. Moreover, the said property is admittedly given to the local panchayat for establishing a

school building. The courts below have concurrently found based on the pleadings of the respective parties and the appreciation of the evidence, that the plaintiffs are not entitled to the relief of injunction in respect of S.No.61/7 where the extent is not given.

12.No doubt, the learned counsel for the appellant sought to rely on a decision of this Court reported in 2013(2) MLJ 424, S.Lakshmi vs M.Tamilselvi, to contend that the courts below ought to have taken the boundaries of the property at S.No.61/7 to grant the relief. Perusal of the facts and circumstances of the above case would show that they are totally different and distinguishable and therefore, the said decision cannot be applied to the present case. In any event, when the present suit is the one for bare injunction and both the courts below have concurrently found that the plaintiffs are not in possession and enjoyment of the property at S.No.61/7, I do not find any perversity in such finding rendered based on appreciation of evidence. Accordingly, the questions of law raised in this appeal are answered against the appellant and consequently, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Subordinate Judge,
Salem.
- 2.The Principal District Munsif Court,
Salem.
- 3.The President,
Pallitharupatty Village,
Panamarathupatty Post,
Salem Taluk and District.
- 4.The Block Development Officer,
Panamarathupatty Panchayat Union,
Panamarathupatty Post,
Salem Taluk and District.

5.The District Collector,
Collectorate,
Salem 636 001.

+1cc to M/S C.Prabakaran, Advocate Sr.68417
+1cc to the Special Government Pleader Sr.68293

S.A.No.540 of 2015

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srg 04/01/2017



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