

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2016

PRONOUNCED ON : 24.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.52 of 2011

and

M.P.No.1 of 2011

Thangavel

...

Appellant

Vs.

Arumbavur Town Panchayat
Rep.by its Executive Officer,
Arumbavur Village,
Veppanthattai Taluk,
Perambalur District.

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree in A.S.No.1 of 2010, on the file of Sub-Court, Perambalur, dated 27.07.2010 in confirming the judgment and decree in O.S.No.147 of 1999 on the file of the District Munsif Court, Perambalur, dated 31.07.2009.

For Appellant : Mr.S.Mohan

For Respondent : Mr.D.Suryanarayanan

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the Judgment and Decree dated 27.07.2010 made in A.S.No.1 of 2010 on the file of the Sub-Court, Perambalur, confirming the Judgment and Decree dated 31.07.2009 made in O.S.No.147 of 1999 on the file of the District Munsif Court, Perambalur.

2. The suit has been laid for Permanent Injunction.

3. The averments contained in the plaint are briefly stated as follows:

The suit property belongs to the plaintiff ancestrally. The Survey No.642/2 measures 9 cents and it originally belonged to the plaintiff's father Arumuga Padayachi and his Pangali, viz., Ponnusamy Padayachi ancestrally and in the partition between them, Ponnusamy Padayachi was allotted Western side 4 1/2 cents and Arumuga Padayachi was allotted Southern side 4 1/2 cents and accordingly, the plaintiff, after the demise of his father, is entitled to the suit property, now, subdivided as 642/4B Hectare 0.02.0 and UDR patta has been granted in respect of the suit property in favour of the plaintiff. The plaintiff has also hypothecated the suit property to Kadhar Board and the legal

heirs of Ponnusamy Padayachi had sold the property in the year 1970 and in the said sale deed, the property of Arumuga Padayachi has been shown in the boundary recitals. The defendant has no right or interest over the suit property. The defendant is attempting to encroach into the suit property and put up road and also drainage. But the attempt of the defendant was prevented by the plaintiff. The plaintiff issued pre-suit notice to the defendant, to which, the defendant did not respond. Hence, the suit for permanent injunction.

4. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The defendant has disputed the title, possession and enjoyment of the suit property by the plaintiff. According to the defendant, the suit property originally belonged to Muthusamy and Muthusamy and plaintiff's father had entered into an agreement with regard to pathway in the year 1945 and subsequently, Muthusamy had laid road in the suit property and handed over the same to the defendant for the formation of road and accordingly, the defendant formed the road in the suit property and the plaintiff is not the owner of the suit property and hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to 11 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to 8 were marked and Exs.C1 and 2 were also marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The lower appellate court confirmed the judgment and decree of the trial Court and dismissed the first appeal filed by the plaintiff. Aggrieved over the judgment and decree of the Courts below, the present second appeal has been filed.

7. The suit has been laid simpliciter for bare injunction. The plaintiff claims title to the suit property and according to the plaintiff, he is in possession and enjoyment of the suit property and inasmuch as the defendant Panchayat attempted to interfere with his possession and enjoyment over the suit property and attempted to lay road and drainage over the suit property, the plaintiff has been necessitated to file the suit for permanent injunction.

8. The defendant has disputed the title, possession and enjoyment of the suit property by the plaintiff vehemently. According to the defendant, there is already a path way in the suit property laid by the defendant. The defendant had also put up drainage under the suit property and it is used as a link pathway by the people for approaching the connecting roads and therefore, the plaintiff is not entitled to obtain the relief sought for in the suit.

9. The plaintiff claims title to the suit property on the footing that it belongs to him ancestrally. The suit property is stated to be situated in Arumbavur village, S.F.No.642/4B Hectares 0.02.0 vide the description of the suit property. The plaintiff has not given the boundaries, within which, the suit property is comprised of. According to the plaintiff, Survey No.642/2, where the suit property is situated contains 9 cents and that, it belonged to the plaintiff's father Arumuga Padaiyachi and his Pangali viz., Ponnusamy Padaiyachi ancestrally. How the above said property belongs to them ancestrally, no material is forthcoming on the side of the plaintiff. However, according to the plaintiff, Arumuga Padayachi and Ponnusamy Padaiyachi partitioned 9 cents situated in survey No.642/2 and in the said partition, 4 1/2 cents

on the northern side was allotted to Ponnusamy Padayachi and 4 1/2 cents on the southern side was allotted to Arumuga Padaiyachi. The plaint averment does not disclose as to when the above said partition took place and whether it was a oral partition or a partition by deed had also not been mentioned. Further, it has also not been established by the plaintiff that pursuant to the partition, the southern half that was allotted to Arumuga Padaiyachi was in his possession and enjoyment and after Arumuga Padayachi, the same was in possession and enjoyment of the plaintiff.

10. In this connection, the plaintiff mainly relies upon certain revenue records to claim title to the suit property. But, as rightly contended by the defendant's counsel, revenue records cannot be equated to documents of title and therefore, on the basis of such documents, the title of the plaintiff, in respect of the suit property, cannot be upheld in any manner. It is not the case of the plaintiff that he has been granted patta in respect of the suit property, after giving notice to all concerned. Further, according to the plaintiff, the heirs of Ponnusamy Padayachi alienated their share in the year 1970 and in the said sale deed, the property belonging to Arumuga Padayachi has been shown as one of the boundaries and on that basis also, the

plaintiff claims that he has title to the suit property. The copy of the said sale deed has been marked as Ex.A2, but it has not been explained as to how the boundary recitals can confer title to the suit property on the plaintiff. Admittedly, the defendant is not a party to the above said sale deed. Therefore, when the defendant is not a party to Ex.A2, the boundary recitals thereof would not be taken against the defendant and consequently, on that score alone, this court cannot hold that the plaintiff has title to the suit property.

11. It is the case of the plaintiff that the defendant attempted to interfere with the possession and enjoyment of the suit property by the plaintiff and in that process, attempted to lay road and drainage over the suit property, which was thwarted by the plaintiff and also, the plaintiff has filed the suit for permanent injunction. On the other hand, as per the case of the defendant, the suit property originally belonged to Muthusamy and that, there was an agreement between Muthusamy and plaintiff's father, that agreement did not fructify and consequently, Muthusamy laid a pathway in his land and handed over the same to the defendant and the defendant had laid the link pathway/road in the suit property connecting other roads for the use of common people.

12. Plaintiff's counsel forcibly argued that the defendant has failed to establish that Muthusamy has handed over the property to the defendant Panchayat and the defendant has also not placed any material to show that it formed road in the suit property as claimed by them and if really, any road had been put up on the suit property and drainage channel laid, the defendant would have had records pertaining to the same and since those records were not placed, the defendant's case should be rejected and the plaintiff's case be upheld.

13. The plaintiff having coming to the Court seeking necessary relief based upon his title to the suit property and also, claiming to be in possession and enjoyment of the suit property has to establish his case prima facie. The plaintiff having failed to establish his case cannot be allowed to pick holes in the defendant's case and seek the relief sought for in the suit.

14. As per the reasonings above made, it could be seen that though the plaintiff claims that the suit property belongs to him ancestrally and subsequently, he had obtained the same by partition, when there is nothing to indicate to uphold the above case of the plaintiff by acceptable and reliable evidence and when the plaintiff has

also not established his possession and enjoyment of the suit property in any manner, other than marking certain revenue records, merely because, the defendant has not established its case, on that score alone, this Court cannot straight away decree the suit laid by the plaintiff.

15. Further, in this case, at the instance of the plaintiff, the suit property was inspected by the Commissioner and the Commissioner has filed his report and plan. A perusal of the commissioner's report and plan would go to show that the suit property has been shown in the red colour portion measuring North-South 3 1/2 feet and East-West 27 1/2 feet and at the same time, there is a path measuring 3 1/2 feet and 6 feet length connecting Mariyamman Kovil street and Metal road of Theraniyar street. The said Street proceeds to West and joins Sakkadiyar street and therefore, from the report and plan of the advocate commissioner, it could be seen that there is a path way on the Southern side, North-South measuring 20 feet in length and therefore, it could be seen that the suit property has been only used as path way connecting other roads for the use of common people and water pipe has also been laid underneath and it could also be seen that the same has been in the possession and enjoyment of the defendant

Panchayat for the use of the common people. The above position would only go to indicate that at no point of time, the suit property has been in possession and enjoyment of the plaintiff. On the other hand, it has been used only as a pathway by the people for linking the other connecting roads and in these circumstances, the contention of the plaintiff's counsel that the plaintiff's case should be accepted, inasmuch as the defendant has failed to establish its claim over the suit property cannot be countenanced in any manner.

16. The plaintiff's counsel contended that the plaintiff should be afforded the liberty to file appropriate suit for declaration and other necessary reliefs, in case of dismissal of this appeal and in this connection, he relies on the decision rendered in S.A.No.776 of 2016 dated 23.09.2016. This Court is unable to accede to the above request of the plaintiff's counsel.

17. In the light of the above reasons, it could be seen that both the courts below have rightly approached the matter in the right perspective and consequently, found that the plaintiff has failed to establish his title, possession and enjoyment over the suit property and rightly, dismissed the suit laid by the plaintiff. I do not find any

reason to interfere with the well considered and reasoned judgment and decree of the Courts below.

In conclusion, the second appeal is dismissed as devoid of merits, inasmuch as no substantial question of law is involved in this second appeal. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. The Sub-Court,
Perambalur.
2. The District Munsif Court,
Perambalur.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.S. A.No.52 of 2011
and
M.P.No.1 of 2011

24.10.2016