

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2016

PRONOUNCED ON : 21.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.71 and 72 of 2011
and
M.P.No.1 of 2011

S.A.No.71 of 2011

C.Natarajan	...	Appellant
	Vs.	
K.Dhinasundari	...	Respondent

S.A.No.72 of 2011

C.Natarajan	...	Appellant
	Vs.	
1. K.Dhinasundari		
2. Kirubanandam	...	Respondents

Prayer in S.A.No.71 of 2011: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 12.07.2010 made in A.S.No.32 of 2009 on the file of the Sub-Court, Gudiyattam, Vellore District, confirming the Judgment and Decree dated 04.08.2009 made in O.S.No.391 of 1999 on the file of the District Munsif Court, Gudiyattam.

Prayer in S.A.No.72 of 2011: Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 12.07.2010 made in A.S.No.33 of 2009 on the file of the Subordinate Judge, Gudiyattam, confirming the Decree and Judgment dated 04.08.2009 made in O.S.No.271 of 2000 on the file of the District Munsif Court, Gudiyattam.

For Appellant : Mr.K.A.Ravindran
in both Second Appeals

For Respondents : Mr.T.Dhanyakumar
in both Second Appeals

JUDGMENT

S.A.No.71 of 2011: The defendant, in O.S.Nos.391 of 1999 on the file of District Munsif, Gudiyattam, has preferred Second Appeal No.71 of 2011 against the judgment and decree made in A.S.No.32 of 2009 on the file of the Sub-ordinate Judge, Gudiyatham, dated 12.07.2010 confirming the judgment and decree dated 04.08.2009 in O.S.No.391 of 1999 on the file of the District Munsif Court, Gudiyattam.

S.A.No.72 of 2011: The plaintiff, in O.S.No.271 of 2000 on the file of District Munsif, Gudiyattam, has preferred Second Appeal No.72 of 2011 against the judgment and decree made in A.S.No.33 of 2009 on the file of the Sub-ordinate Judge, Gudiyatham, dated 12.07.2010 confirming the judgment and decree dated 04.08.2009 in O.S.No.271 of 2000 on the file of the District Munsif Court, Gudiyattam.

2. The plaint averments in O.S.No.391 of 1999 are briefly stated as follows:

The suit property originally belonged to the family of Govinda Gounder and his brothers and forefathers and by the partition deed dated 31.07.1980, it fell to the share of late Govinda Goundar and he sold the same to one Abdul Haffes Sahib under a registered sale deed dated 30.04.1982. The extent of land purchased by Abdul Haffes Sahib was one acre in dry Survey No.256/2, out of 2.01 acre and the heirs of Abdul Haffes Sahib sold the same to the plaintiff under a registered sale deed dated 11.11.1994 for a valid consideration and inasmuch as there was mistake in respect of the boundaries in the above mentioned sale deed, the plaintiff had obtained a rectification deed to the sale deed dated 11.11.94, on 21.11.1995, and since the date of purchase, the plaintiff is in possession and enjoyment of the suit property without any interruption from any one including the defendant. While so, the defendant attempted to interfere with the possession and enjoyment of the suit property and hence, the plaintiff has been necessitated to file the suit for declaration and permanent injunction.

3. The averments contained in the written statement filed by the defendant, in brief, are as follows:

The suit is not maintainable either in law or on facts. It is false to state that the extent of 1.0 acre situate in survey No.256/2 originally belonged to Govinda gounder and then, Abdul Haffes Sahib and thereafter, the plaintiff, as alleged in the plaint. The extent of hectare 0.07.0, situate in the above said survey number is being used for several decades by Chinnasamy Naicker and after his death, by his legal heirs and they have been in exclusive possession and enjoyment of the same openly, absolutely and without any interruption for more than the statutory period and hence, they have perfected title by adverse possession. Even if, Govinda gounder and Abdul Haffes Sahib had any title, they had lost the same under extinguishment. The Government of Tamil Nadu recognising the title of the above said legal heirs of Chinnasamy Naicker, assigned patta for the above said survey number to Namadevan, who is the son of Chinnasamy on 23.03.1986 and since Abdul Haffes Sahib lost his title over the said cart track, he never raised any objection for granting patta to the above said Namadevan. Abdul Haffes Sahib has been granted patta excluding the battai, which is an extent of acre 0.17.0 and he had acre 0.83 in the above said Survey No.256/2. The

Government has subdivided the cart track into separate sub divisions and assigned survey Nos.256/2B and 256/2C. Survey No.256/C, covering an extent of 0.83 acre, has been assigned to Abdul Haffes Sahib. The defendant purchased the lands of Chinnasamy Naicker from his legal heirs on 30.12.1998 including the above said battai and he has been possession and enjoyment of the same. The Government has also granted patta for his lands, including the battai, in favour of the defendant. Hence, the defendant is the absolute owner of the above said battai and he is enjoying the same by paying kist to the Government. The legal heirs of Abdul Haffes Sahib were in enjoyment of an extent of Acre 0.83 only and they have no right to convey more extent in Survey No.256/2C to the plaintiff. Hence, the suit filed by the plaintiff, without any title or possession, is liable to be dismissed.

4. The plaint averments contained in O.S.No.271 of 2000 are briefly stated as follows:

The suit property belongs to the plaintiff. He has purchased the same by a registered sale deed dated 30.02.1988 for a valid consideration and he has been in possession and enjoyment of the same by paying kist to the Government. The Government of Tamil Nadu has issued patta in respect of the suit property in the name of

the vendor on 22.03.1986 and patta pass book to the plaintiff on 30.09.1995 and the Chitta and Adangal stand in the name of Plaintiff. The plaintiff has raised Mango plantation in the suit property. Except the plaintiff, no one, including the defendants, is in possession and enjoyment of the suit property. The plaintiff and his vendor have been continuously, openly and exclusively enjoying the suit property for more than the statutory period and they have perfected title by adverse possession. The defendants, without manner of right or title, attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and hence, the plaintiff has been necessitated to file the suit for declaration and permanent injunction.

5. The averments in the written statement filed by the second defendant and adopted by the first defendant are stated as follows:

The suit is not maintainable either in law or on facts. The second defendant purchased the lands bearing survey No.256/2, to an extent of 1.0 out of 2.01 acres, from one Abdul Haffes Sahib's heirs under a registered sale deed dated 11.11.1994. Previously the said lands belonged to the family of Govinda gounder and his brothers and forefathers and by the partition deed dated 31.07.1980, it fell to the

share of late Govinda gounder and he enjoyed the same till he sold it to Abdul Haffes Sahib under a registered sale deed dated 30.04.1982. The heirs of Abdul Haffes Sahib sold the same to the first defendant dated 11.11.1994. Since there was a mistake in the boundaries, rectification deed was also obtained by the first defendant on 21.11.95. Now, the new survey Number is 256/2B, extent 0.07.0 (17 cents) and survey No.256/2C, extent 0.33.0 (83 cents). Patta has been given to the first defendant as she is in possession and enjoyment of the same. Since the plaintiff tried to interfere with the possession and enjoyment of the defendants, the first defendant preferred O.S.No.391 of 1999 against the plaintiff. Hence, the suit is liable to be dismissed.

6. On the basis of the joint memo filed by the parties in O.S.No.391 of 1999 and O.S.No.271 of 2000 were jointly tried and the evidence recorded in O.S.No.391 of 1999 has been treated as evidence recorded in O.S.No.271/2000 and accordingly, common judgment was rendered in both suits by the trial Court.

7. For the sake of convenience, the parties are referred to by their ranking in the trial Court in O.S.No.391/1999.

8. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to 14 were marked. In support of the defendant's case, DW1 was examined and Exs.B1 to 6 were marked and Exs.C1 and 2 were also marked.

9. On a consideration of the oral and documentary evidence adduced in the case, the trial Court was pleased to decree the suit in O.S.No.391/1999 and dismiss the suit in O.S.No.271/2000 in respect of survey No.256/2B and decree the suit in respect of the other suit property covered in the said suit. Aggrieved over the common judgment and decree of the trial Court dated 04.08.2009, the defendant has preferred the respective first appeals before the lower appellate Court and the lower appellate Court was also pleased to dismiss the first appeals. Accordingly, the above mentioned second appeals have been preferred in respect of both litigations.

10. The extent of 0.17cents in Survey No.256/2B is the disputed property. Insofar as other survey numbers are concerned, the parties have not raised any controversy.

11. The plaintiff claimed title to the disputed property (Survey No.256/2B measuring 0.17cents) inclusive of other properties under the sale deed dated 11.11.94, which has been marked as Ex.A3. According to the plaintiff, the said disputed property and other properties originally belonged to Kandappa gounder and to establish the same, she has marked the copy of the registered sale deed in the name of Kandappa gounder dated 16.02.1939, as Ex.A6. Further, according to the plaintiff, the partition was effected between the family members of Govinda gounder under the registered partition deed dated 31.07.1980. The disputed property and other properties fell to the share of late Govinda gounder and the copy of the above mentioned registered partition deed, is marked as Ex.A1. The further case of the plaintiff is that Govinda gounder sold the disputed property and other properties to Abdul Haffes Sahib under the sale deed dated 30.04.1982 and the same has been marked as Ex.A2. As found earlier, the plaintiff has purchased the disputed property and other properties from the heirs of Abdul Haffes Sahib under the sale deed dated 11.11.1994, which has been marked as Ex.A3. Since there is a mistake in the boundaries in the sale deed dated 11.11.1994/Ex.A3, the plaintiff had also obtained rectification deed dated 21.11.1995 in respect of the above sale deed and the rectification deed has been marked as Ex.A4. Therefore, from the

above mentioned documents filed on the side of the plaintiff, it can be seen that the courts below have correctly come to the conclusion that the disputed property covering an extent of 0.17 cents in survey No.256/2B has been enjoyed by the plaintiff and her vendors and accordingly, the plaintiff is able to establish her title to the disputed property through various sale deeds of her vendors and her sale deed.

12. Now, according to the defendant, the disputed property is a battai and that, he had purchased the said property and other properties under the sale deed dated 30.12.88 from his vendors and the said sale deed is marked as Ex.B3. Further, according to the defendant, his vendors had title to the disputed property by virtue of the document No.3909/1942, 277/99. Therefore, according to the defendant, his vendors had title to the disputed property only by virtue of the above said documents. The registration copy of the said documents have been marked as Ex.A11 and 12. A perusal of the above said documents would go to show, as also found by the Courts below, that the defendant's vendors had not purchased the disputed property under the above said documents. It can be further seen that the defendant's vendors, without any right or title, had also conveyed the disputed property inclusive of other properties to the defendant under Ex.B3. Therefore, when the defendant is unable to establish

title to the disputed property by placing acceptable and reliable title deeds and when it is found that his vendors had no title to the disputed property, as rightly argued by the counsel for the plaintiff, the alleged patta, said to have been issued to the defendant's vendors and the defendant, marked as Ex.B1 & 2, would not confer any title over the disputed property to the defendant. It has been found by the Courts below that Exs.A11 and 12 do not pertain to the disputed property by examining the survey number and the boundaries mentioned in the said documents. That apart, the Courts below also found that the defendant has been laying claim over the disputed property only under the patta alleged to have been issued in his favour and his vendors by the Government. However, as found by the Courts below, patta cannot be equated to title deed and therefore, on the basis of the patta, the title of the defendant in respect of the suit property cannot be upheld. The above reasoning of the trial Court, in rejecting the case of the defendant does not call for any interference.

13. The defendants in the written statement had indirectly admitted that the plaintiff and her vendors have title to the disputed property. Accordingly, it can be seen that he has also claimed title to the disputed property by way of adverse possession. However, as far as the plea of adverse possession set up by the defendant, it can be

seen that the defendant has not been able to establish his hostile title against the plaintiff and her vendors in respect of the disputed property over the statutory period openly and uninterruptedly as laid down in the various authorities of the Apex Court and our High Court. Therefore, Courts below have correctly found that the defendant has failed to establish the plea of adverse possession also in respect of the disputed property.

14. It can be also seen that inasmuch as the plaintiff had acquired title to the disputed property, she has also presented the petition to the Government to issue patta in respect of the disputed property also and accordingly, the Government issued notice to the concerned persons including the defendant. On receipt of the notice, it can be seen that the defendant has laid a suit against the Government in O.S.No.465 of 95 and for the reasons best known to the defendant, he has withdrawn the said suit on coming to know that the plaintiff has taken steps to implead herself as a party in the said suit. Therefore, it can be seen that the defendant, having no title or legal claim over the disputed property, had attempted to interfere with the plaintiff's enjoyment and possession of the disputed property one way or the other and accordingly, causing interference with the plaintiff's enjoyment of the disputed property.

15. That apart, the defendant has not placed any acceptable material to hold that the disputed property is in his possession and enjoyment. It is found that some mango trees are planted in the disputed property. The defendant, in his evidence, has admitted that he is not aware as to how many mango trees are there in the disputed property and he has further admitted that the plaintiff and her husband had cut away mango trees in the disputed property. Therefore, it can be seen that the defendant has also admitted the possession and enjoyment of the disputed property by the plaintiff and her husband.

16. On a cumulative reading of the above facts, as rightly argued by the plaintiff counsel, taking advantage of the mistake that has crept in the sale deed of the plaintiff marked as Ex.A3, with reference to the boundary, it can be seen that the defendant has been causing interference with the plaintiff's enjoyment and possession over the suit property. However, the case of the plaintiff is that on coming to know of the mistake that had crept in the boundaries in Ex.A3, she has legally obtained the rectification deed marked as Ex-A4 and accordingly, it can be seen that the disputed property inclusive

of other properties has been validly purchased by the plaintiff from the rightful owners.

17. In such view of the matter, it can be seen that the issue between the parties pertains only to the questions of fact and accordingly, the courts below have rightly found that the defendant has no title, possession and enjoyment over the disputed property and on the other hand, it is only the plaintiff, who is having the title, possession and enjoyment of the suit property.

In the light of the above facts, as rightly put forth by the counsel for the plaintiff, the second appeals are dismissed as devoid of merits as no substantial questions of law are involved in the second appeals. No costs. Consequently connected miscellaneous petition is closed.

21.10.2016

Index : Yes/No
Internet:Yes/No

sms

To

1. The Sub-Court,
Gudiyattam, Vellore District.
2. The District Munsif Court,
Gudiyattam.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.Nos.71 and 72 of 2011
and
M.P.No.1 of 2011

21.10.2016