

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2016

PRONOUNCED ON : 02.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 90 of 2011

and

M.P.No.1 of 2011

1.Thangamuthu

2.Manoharan

...

Appellant

Vs.

1.Lingappan

2.Easwaramoorthi

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 7.10.2010 made in A.S.No.23 of 2009 on the file of Principal District Court, Namakkal reversing the judgment and decree dated 25.02.2008 made in O.S.No.554 of 2004 on the file of District Munsif, Paramathi.

For Appellants : Mr.S.Silambanan
Senior counsel
for M/sProfexs Associates

For Respondents : Mr.V.P.Sengottuvel

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the Judgement and Decree dated 07.10.2010 made is A.S.No.23 of 2009 on the file of the Principal District Court, Namakkal reversing the Judgement and decree dated 25.02.2008 made in O.S. No.554 of 2004 on the file of the District Munsif, Paramathi.

2. The suit for Permanent injunction.

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

The suit property belonged to the plaintiffs ancestrally and there is no title deed for the property and the property is situated at Kothamangalam Village, Arasampalayam Grama Natham S.No.262. Patta has been issued in favour of the plaintiff's father Kaliappa Gounder and Kaliyappa Gounder had constructed house in the suit property and was in possession and enjoyment of the same. After his death, the assessment of the house property was made in the name of the first plaintiff and electricity connection is also in the name of the first plaintiff. The first plaintiff's brother's son by name Sathismohan has filed a suit in O.S.No.671 of 2001 for partition on the file of the Sub-Court, Namakkal and later, the suit was compromised. In the compromise memo and decree, the suit property is shown in "B" Schedule property as 7th item and the same was allotted to the plaintiffs and thus, the plaintiffs are entitled to the suit property. The defendants, without any title or interest over the suit property, made attempt to disturb the peaceful possession and enjoyment of the suit property and hence, the suit.

4. The avernments contained in the written statement in brief are stated as follows:

The property contained in the suit survey number originally belonged to Sadayappa Gounder, the father of the first defendant and he sold specific extent of the property to the grandfather of the plaintiff viz., Palaniappa Gounder on 24.01.1933 for a valuable consideration with specific boundaries, excluding the southern- western side in suit survey No.262 north-south 12 cubit and east-west 20 cubit and excluding the above said property, the remaining portion of the property with a house facing northern side only was sold and the property, under the above said sale, is situated in Survey No.262/21 as per subdivision and the property, situated in Survey No.262/20, was not sold and the plaintiff has laid the present suit clubbing the property situated both in Survey No.262/21 and 262/20 and giving the common boundaries for the suit property in survey number 262 without any basis. The property, situated in Survey No.262/20, is in possession and enjoyment of the defendants and they are paying necessary tax for the same. Suppressing the above fact, the plaintiffs laid false suit for permanent injunction by clubbing whole property in the suit survey number. Hence, the suit is liable to be dismissed.

5. In support of the plaintiffs' case, PW1 has been examined and Exs.A1 to 10 were marked. On the side of the defendants, DW1 has been examined and Exs.D1 to 3 were marked. Exs.C1 and C2 were also marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit. The first appeal preferred by the defendants was allowed and consequently, the judgement and decree of the trial Court was set aside. Aggrieved over the same, the present appeal has been preferred by the plaintiffs.

7. The suit property has been described as being situated in Kothamangalam Village, Arasampalayam Grama Natham Survey No.262, comprising 8688 $\frac{3}{4}$ sq.ft tiled house and other appurtenants within specified boundaries situated in Ward No.3, Old Door No.21, New Door No.106 including the usual Cart Track and other easementary rights. According to the plaintiffs, as averred in the plaint, the suit property belongs to them ancestrally and to their knowledge, there is no title deed for the suit property and it is Natham property and the first plaintiff's father Kaliyappa Gounder has been granted patta in respect of the suit property and accordingly, the

house has been put up on the suit property by kaliyappa Gounder and thereafter, the plaintiffs have been in possession and enjoyment of the suit property. Therefore, according to the plaintiffs, putting forth a specific case that the suit property as described in the plaint, being ancestral in nature, no title deed pertaining to the same is available.

8. Per contra, it is the specific case of the defendants that the survey number, in which, the suit property is situated is survey No.262 and the same has been subdivided as Survey No.262 /21 and 262/20. According to the defendants, the extent situated in Survey No. 262/21 alone is in possession and enjoyment of the plaintiffs and the extent situated in Survey No.262 /20 is in possession and enjoyment of the defendants and knowing about the same fully, it is the case of the defendants that the plaintiff has come forward with the false case that they are in possession and enjoyment of 8,688 3/4 sq.ft in the suit property survey No.262 and therefore, it is the case of the defendants that the plaintiffs having not come forward with the true facts and on that ground alone, the case should be rejected. The further case of the defendants is that the entire extent in the suit survey number i.e. the suit property belongs to the defendants ancestors and they were in possession and enjoyment and the first plaintiff ancestor Palaniappa gounder had purchased certain extent in the suit survey number from the first defendant's father Sadayappa

Gounder under the sale deed dated 24.01.1933 within specified boundaries and while describing the boundaries in the said document, it has been mentioned that Sadayappa Gounder had conveyed under the said document only the northern portion situated in the suit survey number and not the entire portion. In support of their case, the defendants have also produced the registration copy of the sale deed dated 24.01.1933 executed by Sadayappa Gounder in favour of Palaniappa Gounder. A perusal of the same would go to show that under Ex.B1, the plaintiffs' predecessor in interest had been conveyed only the northern extent found in the suit property excluding the southern portion and not the entire suit property as projected by the plaintiffs. Therefore, as rightly argued by the defendants' counsel, suppressing the true facts, it could be seen that the plaintiffs have come forward with the false case, as if they had title to the entire suit property on the footing that it belongs to them ancestrally and there is no document of title with reference to the same. However, as seen from the defence set forth by the defendants, the plaintiffs' predecessor interest has purchased only a specified extent within particular boundaries in the suit survey number and the said extent is situated only at the northern side.

9. When confronted with Ex.B1, the first plaintiff examined as PW1, during the cross examination has admitted that he does not

know whether the suit survey has been subdivided at the time of filing of the suit and after the filing of the suit, on verification of the revenue records, he had come to know that his property is situated in survey no.262/21 and the property, to which, the defendants claim title is situated in survey no 262 /20. However, he would still contend that the property in survey No 262/20 is in possession and enjoyment of the plaintiffs for several years.

10. During the further cross examination, PW1 has admitted clearly that in Ex.B1 document, there has been clear mention of his residential house and also the porombokku land situated adjacent to the same on the western side and he had come to know about the said document after the institution of the suit and it is correct to state that Sadayappa Gounder had sold to his predecessor interest under Ex.B1 specified extent in survey No.262/21 after retaining the poromboku land on the western side in S.No.262/20 and as per Ex.B1, he and his predecessor in interest had only title to the extent covered in survey No.262/21 and he has further admitted that he has not mentioned in the plaint that the property situated in survey No.262/20 is porombokku and that, it is in his possession and enjoyment, as he was not aware of the same. Further down, he has also admitted that he has not specifically mentioned in the plaint that survey No.262/20 is porombokku land and the defendants have no

connection to the same in any manner. Though he would claim that the property comprised in survey No.262 /20 is in the possession and enjoyment of the plaintiffs, no material is forthcoming to establish the same prima facie on the side of the plaintiffs. Further, PW.1 has also admitted that there is no issue or problem between them and the defendants in respect of the house situated in Surve No.262/21.

11. The counsel for the defendants pointing out the above admission of the first plaintiff examined as PW1 would contend that the plaintiffs having not come to the Court with clean hands, on the other hand, having suppressed their title deed Ex.B1 and having claimed that they owned the suit property in entirety ancestrally and there is no document with reference to the same, cannot be allowed to sustain the suit, when they have failed to establish their title to the entire suit property as described in the plaint and also, failed to establish that they are in possession and enjoyment of the entire suit properties as claimed by them. He further argued that boundary recitals found in Ex.A9, would not confer title to the entire suit property to the plaintiff and that, the same would not be binding on the defendants as they are not parties in the suit pertaining to the same.

12. The above arguments of the defendants counsel seem

acceptable. No doubt, the present suit is laid simpliciter for permanent injunction. According to the plaintiffs, as they have title to the suit property and as the same is in possession of the plaintiffs, they had sought the relief of permanent injunction. However, when the above case of the plaintiffs is found to be belied under Ex.B1 and when it has been admitted that the extent of the property, which is in possession and enjoyment of the plaintiffs, is situated only in Survey no.262/21 and not in survey No.262/20 and when it has also been admitted by the first plaintiff that the extent comprised in survey Number 262/20 has been retained and only remaining portion conveyed to their predecessor in interest under Ex.B1, it does not stand reason as to how come the plaintiff could make a claim to the entire extent in survey No.262.

13. Accordingly, it could be seen that the plaintiffs are unable to produce reliable evidence to establish that they are in possession and enjoyment of the entire suit property as pleaded by them. As it is found that the plaintiffs are in possession and enjoyment of the extent covered in survey No 262/21 alone, as rightly argued by the defendants counsel, inasmuch as there is no indication in the documents filed by them to show that they co-relate even to the extent comprised in survey No.262/10 also and when the plaintiffs have not established prima facie title over the entire extent of the suit

property as described in the plaint and when the defendants have not been shown to have interfered with the plaintiffs possession and enjoyment in respect of extent enjoyed by the plaintiffs comprised in survey 262/21, as rightly argued by the defendants, the plaintiffs have laid the suit with false particulars to lay unjust claim over the entire suit property without any basis. Resultantly, it could be seen that inasmuch the plaintiffs have failed to establish any legal title, possession and enjoyment of the entire suit property, I hold that there is no cause of action for the suit and accordingly, it could be seen that the lower appellate court has rightly disbelieved the case of the plaintiffs and dismissed their lis.

At the end, I hold that no substantial question of law is involved in this second appeal. Accordingly, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.11.2016

Index : Yes/No
Internet:Yes/No
sms

To

1.The Principal District Court,
Namakkal.

2.The District Munsif,
Paramathi.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No. 90 of 2011
and
M.P.No.1 of 2011

02.11.2016

Pre -delievery judgment
in S. A.No. 90 of 2011
and
M.P.No.1 of 2011

To

The Hon'ble Mr.Justice T.Ravindran

Respectfully submitted
sms
(P.A.to the Hon'ble Judges)

