

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.01.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.300 of 1997

1.T.S.Padmavathy (Deceased)

2.M.Deivasikhamani

3.D.Ponnaiya

4.D.Rajeswari

5.D.Rani Vettri Selvam

6.D.Samynathan

7.D.Devajahawar

(Appellants 2 to 7 brought on record
as legal heirs of the deceased sole
appellant vide order dated 26.10.2016
made in C.M.P.No.11023 to 11025 of 2016
in S.A.No.300 of 1997)

..Appellants

/vs/

1.R.Elumalai (Died)

2.Saraswathy Ammal

3.E.Harikrishnan

4.E.Vinayagamurthy

5.Dhanalakshmi

6.Kalaivani

..Respondents

(Respondents 3 to 6 brought on record as legal heirs of the deceased first respondent vide order dated 22.12.2016 made in C.M.P.Nos.950 to 951 of 2010 in S.A.No.300 of 1997)

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure against the Judgment and Decree dated 03.10.1996 passed in A.S.No.237 of 1995 by the learned II Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 15.09.1994 passed in O.S.No.9881 of 1990 by the learned VII Additional Judge, City Civil Court, Chennai.

For Appellants :Mr.V.J.Latha

For Respondents :Mr.D.Ravichandran
3 to 6

JUDGMENT

This second appeal has been filed against the Judgment and Decree dated 03.10.1996 in A.S.No.237 of 1995 passed by the learned II Additional Judge, City Civil Court, Chennai confirming the Judgment and Decree dated 15.09.1994 in O.S.No.9881 of 1990 passed by the learned VII Additional Judge, City Civil Court, Chennai.

2.The legal heirs of the plaintiff are the appellants herein. The

suit in O.S.No.9881 of 1990, filed by the original plaintiff for declaration and delivery of possession, was dismissed by the trial Court and the same was confirmed by the first appellate Court. Aggrieved by the concurrent finding rendered by both the Courts below the present second appeal has been filed.

3.The brief facts, which led to the filing of this second appeal, are as follows:

(i)Originally, the suit property was owned by one Puliur Janakiram Pillai as Inam property. From him, one Muniammal obtained patta and was in possession of the property till 14.06.1961. From the said Muniammal, the plaintiff, purchased 3538 sq.ft. of land in Pymas No.357. Since the said Muniammal sold all her holdings including Inam land, she did not participate in the enquiry conducted under the Inam Abolition Act. The plaintiff was unaware of the settlement proceedings initiated by the Settlement Officer. Hence, she did not apply for patta in her name. Later, as per the instructions of the Assistant Settlement Officer, the plaintiff applied for patta for the lands purchased from Muniammal but, the same was rejected on 12.08.1967 and on revision, the Assistant Settlement Officer passed an order in favour of the plaintiff on 10.03.1974. The defendants,

earlier encroached 140 sq.ft. of land. Therefore, the plaintiff filed a suit in O.S.No.5180 of 1984 but, the same was dismissed. As against the said order, an appeal was preferred by the plaintiff, which was also dismissed. Taking advantage of that, the defendants encroached the land of the plaintiff and tried to put up constructions. Hence, the suit.

(ii)The defendants contested the claim of the plaintiff by filling written statement wherein, they have stated that the suit land is a poromboke land. Earlier, the second defendant, after levelling the lands, put up three thatched houses and had been in enjoyment of the same for a long time. The previous suit in O.S.No.5180 of 1984 was dismissed and it operates as res judicata against the present suit. The suit land is not the Inam land and no enquiry was conducted under the Inam Abolition Act. The plaintiff's husband, who was working as Surveyor in the Government department, taking advantage of his position, fabricated the documents to get the suit lands from the defendants. The defendants are in continuous enjoyment of the suit land for more than 20 years and therefore, they have perfected title by prescription. The original plaintiff ought to have sought relief of possessory right in the earlier suit itself. Having failed to seek the said relief in the earlier suit, the present suit is

barred on the ground of constructive res judicata.

(iii)Based on the pleadings, the trial Court framed nine issues and examined three witness viz., P.W.1 to P.W.3 and marked Exs.A.1 to A.35 on behalf of the plaintiff and examined three witness viz., D.W.1 to D.W.3 and marked Exs.B.1 to B.20 on behalf of the defendants. On appreciating the evidence let in by the respective parties, the trial Court dismissed the suit on the ground that the plaintiff did not produce the original sale deed dated 14.06.1961 executed by Muniammal in favour of her and she produced only a certified copy of the sale deed as Ex.A.3 whose original is marked as Ex.A.1 in L.A.O.P.No.35 of 1988 and the same has not been testified by any of the witness to the document. Further, the property described in Ex.A.3 does not co-relate with the description of the property mentioned in the suit schedule. For the said reasons, the trial Court held that the plaintiff had failed to prove her possession and the suit is hit by the principles of res judicata and under Order 2 Rule 2 of the Code of Civil Procedure. The first appellate Court, confirmed the appeal filed by the plaintiff by reiterating the finding of the trial Court regarding res judicata. Further, the first appellate Court has gone into the positive evidence let in by the defenedants regarding possession of the suit property since 1972. Aggrieved over

the same, the present second appeal has been preferred raising the following substantial questions of law:

"1. Whether the lower Courts are right in holding that under Act 26 of 1948 any person who are not in possession of the property has been granted patta with the provisions or otherwise?

2. Whether the suit is barred by Order 2 Rule 2 CPC as held by the Courts below?

3. Whether the suit is barred by resjudicata in view of the judgment and decree in O.S.No.5180 of 1984 on the file of the City Civil Court, Madras?"

4. At the time of admission, this Court has formulated the following substantial question of law for consideration:

"Whether the defendants/respondents are not entitled to resist the claim of possession by the plaintiff, when the Government has granted patta in their

favour?"

5.The learned counsel for the appellants contended that the appellants, having purchased the suit property from Muniammal through sale deed Ex.A.3, the Government is not a necessary party to the suit and the earlier suit in O.S.No.5180 of 1984 was filed only in respect of 140 sq.ft. of land. Therefore, it will not operate as res judicata. The Courts below, ought not to have disbelieved the order dated 11.05.1973, which is marked as Ex.A.6, passed by the Settlement Officer in favour of the plaintiff and the permanent land register, which is marked as Ex.A.7 and relied upon the defendants' document Ex.B.4 dated 31.07.1987 and the subsequent documents, which stand in the name of the defendants and held that the defendants are in possession of the suit property.

6.The learned counsel for the appellants further contended that though the defendants had not pleaded adverse possession, the Courts below have held that the defendants have perfected title by adverse possession for a continuous period of more than twelve years, which is contrary to law and therefore, it deserves interference.

7.Per contra, learned counsel for the respondents submitted

that the appellants have not proved the title and possession over the suit property and the document, which stands in the name of the plaintiff, was obtained by undue influence of the plaintiff's husband and the same was issued without proper enquiry and therefore, the trial Court rightly disbelieved the document.

8.The learned counsel for the respondents further submitted that the plaintiff has not placed any evidence to prove the possessory right and title over the property and the earlier proceedings between the plaintiff and the defendants has also been held against the plaintiff and it acts as res judicata. Therefore, the second appeal has to be dismissed.

9.The plaintiff, who claimed possessory title to the suit property, must make specific pleadings with all particulars and sufficient cause of action for the suit. On a perusal of the documents, it is seen that in the present case, none of the above said ingredients is available or found in the pleadings. Hence, there is no reason to interfere with the well considered judgments of the Courts below.

10. It is useful to refer to the decision of the Hon'ble Supreme Court in ***Maria Margarida Sequeira Fernandes and others Vs.***

Erasmo Jack De Sequeira (Dead) through Legal heirs (2012) 5

Supreme Court Cases 370, wherein it has been held thus:

"Possession of the past is one thing and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former. Wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession. The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive;

(a)who is or are the owner or owners of the property;

(b)title of the property;

(c)who is in possession of the title documents;

(d)identity of the claimant or claimants to possession;

(e)the date of entry into possession;

(f)how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;

(g)in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;

(h)If taken on rent, licence fee or lease- then insist on rent deed, licence deed or lease deed;

(i)who are the persons in

possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc;

(j)subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(k)basis of his claim that not to deliver possession but continue in possession.

Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine the pleadings and documents".

11.From the above said decision it is clear that if the pleading of the plaintiff does not satisfy the conditions enumerated, the Court

must insist on documentary proof in support of the pleadings.

12. In the case on hand, the plaintiff claimed possessory title to the suit property, however, she could not establish the genuineness of Ex.A.3 through which she claims title. Neither the document nor oral evidence produced by the plaintiff to establish that she is in possession of the entire extent of the suit schedule property is proved. Both the Courts below have rejected those evidences as unreliable and obtained by undue influence.

13. The earlier proceedings in O.S.No.5180 of 1984 is in respect of 140 sq.ft. and it is a suit for delivery of possession and mesne profits. The plaintiff failed to seek the relief in respect to title and possession in the earlier suit, which she ought and might to have pleaded and prayed. Therefore the suit is barred under Order 2 Rule 2 of the Code of Civil Procedure from filing the present suit, which is for larger extent based on the very same documents Ex.A.3 and Ex.A.7.

14. Even if assuming the earlier proceeding would not act as res judicata, dehors of the earlier proceedings, the plaintiff in this case, has failed to establish possession over the suit property and therefore,

the suit claim is bound to fail.

15.It is necessary to point here that Courts have held that the suit property in entirety is classified as Government Poromboke and this suit filed for declaration of title based on possession but not joined the necessary party namely, the Government. The Courts below, after due consideration of the evidence let in by the parties, have rightly concluded that the plaintiff has not established the possession over the suit property to claim title, based on possession. Therefore, this Court finds no ground to interfere with the well considered judgments of the Courts below.

16.Hence, this Second Appeal is dismissed and the judgment and decree of the first appellate Court in A.S.No.237 of 1995, dated 03.10.1996, is confirmed. There is no order as to costs.

5.01.2017

Index:Yes/No
Internet:Yes/No
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To

1.The Registrar,

City Civil Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

Dr.G.JAYACHANDRAN,J.

cla

**Judgment made in
S.A.No.300 of 1997**

5.01.2017

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