

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.368/2017 and CMP.No.8583/2017

1.Rasu @ Vellingiri
2.R.Shanmugam
Karuppusamy (died)
3.Arunachalam
4.K.Rangasamy
5.K.Kalaiappan
6.Muralikumar
7.Valliammal
8.Moorthi
9.Chenni Moopan
10.Krishnan
11.Thannasi

.. Appellants /
Defendants

Versus

P.Arumugam

.. Respondent /
Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 15.11.2016 made in A.S.No.69/2015 on the file of the learned Subordinate Judge, Sathyamangalam, confirming the Decree and Judgment dated 19.06.2014 made in O.S.No.176/2010 on the file of learned District Munsif Court, Sathyamangalam.

For Appellants : Mr.R.Vijayan
For Respondent : Mr.M.Roshan Atiq

JUDGMENT

The defendants, who had lost before the Courts below, are the appellants herein.

2 The respondent / plaintiff filed a suit in O.S.No.176/2010 on the file of the Court of District Munsif Court, Sathyamangalam, Erode District, against the appellants / defendants praying for the relief of permanent injunction restraining the defendants, their subordinates, servants or

agents from disturbing, obstructing or in any manner interfering with their peaceful possession and enjoyment of the suit property admeasuring to an extent of 5014 sq.ft (0.11 ½ cents) in S.No.63/9 (Resurvey No.63/3) of Sathy Taluk, Pungampalli Village, Sathyamangalam Town, Erode District.

3 It is a case of the plaintiff that the suit property was originally a Government poromboke property and it was occupied by his father viz., Palaniappa Aasari and was in possession of the same. He also put up a superstructure and residing their along with his family. Subsequently, on payment of double the market value, the said property was assigned in his favour on 31.01.1978 (Ex.A1). Subsequently, he was also issued with Patta dated 04.10.1993 under Ex.A2 and continue to reside in the property. Subsequently, the partition took place between the family members during 13.04.1999 (Ex.A3) and the suit property was allotted to the plaintiff and ever since, he is in possession and enjoyment of the same and he has also paid statutory levies in respect of the superstructure. The plaintiff would further contend that he has decided to remove the live fence and put up a compound wall and when he started to dig foundation, the defendants proclaiming to be devotees of Sri Sidhi Vinayakar Temple, situated in S.No.63/, had obstructed from doing so and hence, the respondent came forward to file the said suit, wherein the 4th defendant had filed the written statement which was adopted by defendants 1 to 3. Apart from refuting the allegation made in the plaint, the said defendants contended that Vinayaka Temple is situated in S.No.63/3 corresponding to old S.No.71 admeasuring to an extent of 0.50 cents and the lands of the plaintiff's father are lying adjacent to the said land and the father of the plaintiff had encroached upon 13 cents of temple land and by playing fraud, managed to get Patta in his favour and they are also taking steps through revenue authorities to cancel the Patta. It is further contended by the said defendants that in the absence of impleadment of the officials of the HR&CE Department as parties to the suit, the suit is bad for non-joinder of necessary parties and further stated that the plaintiff has approached this Court without clean hands and hence, the suit is liable to be dismissed.

4 The Trial Court on consideration of pleadings has framed the following issues:-

- Whether the plaintiff is in possession and enjoyment of the suit property?
- Whether the plaintiff is entitled for a relief of permanent injunction as prayed for?
- To what other relief the plaintiff is entitled to?

5 During the course of trial, the Advocate Commissioner was appointed and he has also filed the Reports under Ex.C.1 and C.2.

6 During the course of trial, the plaintiff examined himself as PW.1 and marked Exs.A1 to A13 and on behalf of defendants, defendants 4 and 6 were examined themselves as DW1 and DW2 and they have not marked any documents and Ex.X1 to X6 were also marked on third party side.

7 The Trial Court, on appreciation of oral and documentary evidence has found that the case of the plaintiff is probable and therefore, granted the decree as prayed for vide judgment and decree dated 19.06.2014.

8 The defendants aggrieved by decreeing of the suit, filed an appeal in A.S.No.69/2015 on the file of the learned Subordinate Judge at Sathyamangalam. The Lower Appellate Court on perusal of grounds of appeal had formulated the following points for determination:-

- Whether the plaintiff's possession of the suit property is properly proved before Trial Court?
- Whether the Appeal suit is to be allowed?
- Is there any other relief that the plaintiff is entitled to?

9 The Lower Appellate Court found the fact that the father of the plaintiff was granted assignment under Ex.A1 dated 31.01.1978 and was also granted Patta under Ex.A2 and it was also not seriously disputed by the defendants as to the possession of the Patta in respect of the said property.

10 The Lower Appellate Court had further found that the defendants though contended that the land in question belongs to Vinayaka Temple, have not produced any particulars and no documentary evidence has also been filed to substantiate their claim and therefore, found that the findings recorded by the Trial Court are sustainable and hence, dismissed the appeal suit vide impugned judgment dated 15.11.2016. The defendants aggrieved by the dismissal of the appeal suit by the Lower Appellate Court and confirming the judgment and decree passed by the Trial Court, had filed the Second Appeal.

11 In memorandum of grounds of appeal, the following substantial questions of law are raised by the appellants:-

- On the available facts and circumstances of the case, whether the Learned Judge is right in granting a decree for injunction when the title of the Plaintiff and his predecessors has been disputed?
- Whether the Learned Judge is right in decreeing the suit for injunction in the absence of the State of Tamil Nadu, which is the paramount title holder in view of the fact that the lands have been classified as poromboke lands?

- Whether the Learned Judge is right in granting a Decree on the basis of a Patta which has been obtained by illegal means and for which, proceedings for cancellation are pending?

12 The learned counsel for appellants / defendants would vehemently contend that the part of the suit property has been encroached by the father of the plaintiff which belongs to Vinayaka Temple and he was granted Patta under Ex.A2. The revenue authority taken into consideration of the said fact and the defendants also approached concerned officials to cancel the Patta and would further contend that though the title to the suit property has been seriously disputed, he has not chosen to amend the plaint seeking the relief of declaration of title and other consequential relief and as such, the findings recorded by the Courts below, are per se unsustainable on facts and in law and prays for interference.

13 Per contra, the learned counsel appearing for Caveator / plaintiff would contend that the Lower Appellate Court has recorded the findings to the effect that though some portion of the land belong to Vinayaka Temple, but no documentary evidence has been let in that regard. Since, the findings as to the possession of the respondent / plaintiff is concurrent in nature, this Court in exercise of Section 100 of C.P.C may not interfere with the same and he prays for dismissal of the Second Appeal with Cost.

14 This Court heard the rival submissions and also perused the materials placed before it.

15 The Courts below had recorded the concurrent findings that the plaintiff's father has been granted with Assignment Order under Ex.A1 and according to the respondent / plaintiff after partition, his father became the owner of the property and also obtained Patta under Ex.A2 and also started paying statutory levies as evidenced under Exs.A3,A4,A5,A8 and A9.

16 It is contended by the learned counsel for appellants/defendants that the part of the suit property belongs to Vinayaka Temple has been used by the worshipers, but no sufficient evidence has been let in to that effect. It is the submission of the learned counsel appearing for the appellants/defendants that they have also approached the officials of HR&CE department as well as Revenue officials with regard to the claim of the respondent/plaintiff over the suit land and therefore, liberty may be granted to them to pursue the said remedy. If the appellants/defendants wants to pursue the remedy, it is always open to them to do so in accordance with law. This Court has not expressed any opinion in that regard.

17 The Courts below had recorded concurrent findings that the respondent/plaintiff is in possession of the property and in the considered opinion of this Court, the said findings came to be reached based upon proper consideration of pleadings and appreciation of oral and documentary evidences.

18 Therefore, no substantial questions of law arise for consideration in the Second Appeal and the grounds raised, have already been considered and answered by the Courts below.

19 In the result, the Second Appeal is dismissed at the admission stage itself, confirming the judgments and decrees passed by the Courts below. Consequently, the connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Sathyamangalam, Erode.

2.The District Munsif,
Sathyamangalam, Erode.

+ 1 cc to Mr.R.Vijayan, Advocate sR.41231

+ 1 cc to Mr.Roshan, Atiq, Advocate Sr.41666

SA.No.368/2017

KGK(CO)
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