

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.393/2017 & CMP.No.9207/2017

1.Chinnathambi@Dhanasu
2.S.Subramanian
3.M.Subramanian (Died)
4.Murugan
5.Gangadurai
6.Dhayalan
7.Panneerselvam
8.Sulochana
9.Anandababu

.. Appellants/Appellants/Defendants 1 to 7
& LRS of 3rd Defendants

Versus

Kaliyamurthy ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 26.10.2016 passed in AS.No.13 of 2015 on the file of the II Additional Subordinate Judge of Cuddalore confirming the judgment and decree dated 09.07.2014 passed in O.S.No.286 of 2009 and on the file of the Additional District Munsif Court, Cuddalore.

For Appellants : Mr.R.Gururaj

JUDGMENT

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

2. The suit filed by the respondent/plaintiff came to be decreed by the Trial Court and on appeal, the Lower Appellate Court has also dismissed the said appeal, hence this Second Appeal.

3. The facts necessary for the disposal of this Second Appeal are as follows:-

[a] The plaintiff has filed the suit in OS.No.286/2009 on the file of the Court of Additional District Munsif, Cuddalore and would state among other things that he is the owner of the property admeasuring to an extent of 0.40 cents in new S.No.30/2, old S.No.349/3A in Vazhi Sodhanaipalayam Village, Cuddalore and the property was originally belonged to his father viz., Thangavel Padayachi and he was in possession and enjoyment of the suit property for more than 30 years and he died in the year 1965. After his demise the plaintiff's mother viz., Dhanabakiam Ammal, succeeded to the said estate and she was in possession and enjoyment of the same. The plaintiff is the sole legal heir to succeed to the said property and after the demise of his mother, he is in possession and enjoyment of the property even till the date and the family of the plaintiff has been in possession and enjoyment of the property for more than 90 years. The plaintiff would further aver that the suit mentioned property is classified as Pattai Poromboke property in new S.No.30/2-old S.No.349/3A. He was also in possession of the allocated property in S.Nos.30/4, 30/5, 30/7 and 30/8 which lie adjacent to the suit property and the plaintiff has raised Cashew Trees in the said property.

[b] The plaintiff would further state that on 12.07.2009, the defendants who are utter strangers, without any right in respect of the suit property, made an attempt to trespass into the suit property and also cut down the Cashew trees under the guise of building a temple and it was resisted by the plaintiff and he was threatened with dire consequence. The plaintiff lodged a complaint before the jurisdictional police station and it failed to invoke any proper response and therefore, came forward to file the suit for permanent injunction restraining the defendants, their men or agents and any persons interfering in the peaceful possession and enjoyment of the suit property.

[c] The 2nd defendant filed the written statement which was adopted by defendants 1,3 to 7 and apart from denying the averments made in the plaint, it is contended that the total extent of the suit property is 0.95 cents and out of the said extent one Manivel, S/o Manickkam had been in possession and enjoyment, admeasuring to an extent of 0.40 cents and started raising Kattuvagai Cashew Trees in the suit property and from Manickkam, the 2nd defendant had purchased the suit property under a registered Sale Deed dated 29.08.1996 (Ex.B5) and ever since then, he is in possession and enjoyment of the property. The 2nd defendant would also contend that the suit property is clearly demarcated from the remaining extent in the suit survey number

by a channel which runs from North towards South and then takes a turn toward East and then turns towards South and joins by the Northern side of Ramapuram. The temple of the family Deity of the defendant namely Periyandavar temple also exists in the suit property and the plaintiff has started denying the access of the said property. The 2nd defendant also took a stand that the plaintiff cannot seek for permanent injunction and trespass into the said property and therefore, prays for dismissal of the suit.

4. The Trial Court on a consideration of pleadings had framed the following issues:

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

5. The plaintiff examined himself as P.W.1 and one Mr.Sivathambi examined as P.W.2 and marked Exs.A1 to A46. The 2nd defendant examined himself as DW.1 and 3rd defendant as DW.2, 6th defendant as D.W.3, 7th defendant as DW.4 and one Malaiyaperumal as DW.5 and Exs.B1 to B14 were marked.

6. The Trial Court on a consideration and appreciation of oral and documentary evidences had decreed the suit as prayed for vide judgment and decree dated 09.07.2014 and the defendants, aggrieved by the same, filed an appeal in A.S.No.33/2015 on the file of the Court of learned II Additional Subordinate Judge, Cuddalore.

7. The Lower Appellate Court on consideration of materials had formulated the following points for determination:

- Whether the appeal is to be allowed or not?

8. The Lower Appellate Court has taken into consideration the oral testimonies of P.Ws.1 to 4 as well as the admission made by the defendants DW.1/2nd defendant, DW.2/3rd defendant, DW.3/6th defendant, and DW.4/7th defendant, wherein they have conceded the plea of the plaintiff, as to his possession and enjoyment of the suit property, that the suit property is in possession and enjoyment of the plaintiff's family for more than 40 years and it is also evidenced from Exs.A2 to A4 and A36 to A38 as well as Exs.B12 and B14.

9. The Lower Appellate Court has taken into consideration of the said aspect and dismissed the appeal vide impugned judgment and decree dated 26.10.2016 and thereby, confirming the judgment and decree passed by the Trial Court in favour of the respondent/plaintiff. The appellants/defendants, aggrieved by the dismissal of the appeal by the Lower Appellate Court, has filed the present Second Appeal.

10. In the memorandum of grounds of Second Appeal, the following substantial questions of law are raised:

- Did not the lower courts commit grave error in failing to see that a suit for bare injunction without seeking efficacious reliefs was not maintainable?
- Were not the lower courts at gross error in failing to see that a suit for permanent injunction was not maintainable in respect of poramboke property?
- Did not the lower courts commit grave error in failing to see that there are temples in the suit property and hence no relief can be granted to the plaintiff?
- Did not the courts below commit grave error in failing to take note of the advocate / Commissioner's report?
- Are not judgments and decrees of the lower courts perverse?

11. Mr.R.Gururaj, learned counsel appearing for the appellants/defendants would contend that it is a admitted case of the respondent/plaintiff that it is a Pattai Poromboke. In respect of Pattai Poromboke, except the Government, nobody can claim any possessory right and despite the specific plea has been raised, the Courts below did not formulate any issues or points for determination. The Courts below without appreciating the said material aspect has erroneously upheld the claim made by the respondent/plaintiff and prays for intereference.

12. This Court has considered the submission made by the learned counsel appearing for the appellants/defendants and also perused the impugned judgment passed by the Courts below.

13. The appellants/defendants would concede that the property which was purchased under Ex.B5 dated 29.08.1995 also lies within the survey number in which the plaintiff's property is located. It is the categorical evidence of the plaintiff that originally the property was owned by his father and he was issued with a notice under provision of the Tamil Nadu Land Encroachment Act, 1905 and after his demise, the appellant's mother succeeded to the said estate and after his mother, he is in possession and enjoyment of the said property and also paid statutory levies and on account of interference of the defendants, he has also lodged a police complaint and since, it has failed to invoke any kind of response, he filed the suit.

14. The defendants 2, 3, 6 and 7 examined themselves as Dws.1, 2, 3 and 4 and they have admitted in their evidence that the plaintiff / respondent is in possession of 0.40 cents and D.W.2 has also admitted that he has no objection for granting decree in favour of the respondent/plaintiff and there is no issue or dispute between him and the plaintiff. D.W.3 has also conceded that the plaintiff is in possession and enjoyment of 0.60 cents of land. DW4 in his evidence, admit that the plaintiff is cultivating the said land and DW.5 would also concede that Exs.A1 to A4 are issued to father of the respondent/plaintiff and the Adangal extract marked as Exs.A36 to 38 also stand in the name of respondent / plaintiff and in the Adangal extract, it has been stated that the respondent / plaintiff is raising the Cashew Trees.

15. The primordial submission made by the learned counsel appearing for the appellants/defendants is that since it is classified as Pattai Poromboke, decree for permanent injunction would not to have been granted in favour of the respondent / plaintiff and therefore, the facts remains that the property purchased by the defendants under Ex.B5 also lies under Pattai Poromboke, and the revenue levies in the form of Tax receipts as well as Adangal stands in the name of respondent / plaintiff and the defendants 2, 3, 6 and 7 were examined themselves as DWs.1 to 4 and also concede to the fact.

16. The admission is the best form of evidence since the above said defendants have conceded the facts and possession of the plaintiff in respect of the said property and DW.2/3rd defendant, in his evidence has conceded that he has no objection in granting decree in favour of the plaintiff and there is no issue/difference of opinion between them.

17. This Court is of the considered view that the findings recorded by the Courts below are based upon proper appreciation of oral and documentary evidence and there is no perversity attached to the said findings. There is no substantial question of law arises for consideration in the Second Appeal.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Subordinate Judge,
Cuddalore.
2. The Additional District Munsif
Cuddalore.

Copy to:

The Section Officer
VR Section, High Court,
Madras.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.44852

RSK(CO)
CS/17/07/17

SA.No.393/2017