IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.8.2017

Pronounced on:16.08.2017

Coram

The Hon'ble Dr.Justice G.Jayachandran

Second Appeal No.872 of 2000

E.A.Raju .. Appellant/Appellant/Plaintiff

/versus/

1.Murugan
2.Thamban @ Karumalai Gounder
3.Dharman
4.Pappal
5.Alamelu
6.Kasthuri
7. Sivakami @ Sivayal
.. Respondents/Respondents/Defendants 2 to 8

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.8.1998 made in A.S.No.13 of 1998 on the file of the Sub Court, Bhavani, confirming the judgment and decree dated 7.8.1997 made in O.S.No.741 of 1991 on the file of the Additional District Munsif Court, Bhavani.

For Appellant :Ms.Zeenath Begam for Mr.A.L.Ramamoorthy

For Respondents:Mr.S.Kaithamalaikumaran for R1 to R7

J U D G M E N T

The suit is filed for declaration of title and permanent injunction. The case of the plaintiff is that the suit property, which is measuring to an extent of 6 cents, consists of tiled shed and vacant land, which is in possession and enjoyment of the plaintiff for the past 30 years. The defendants, who have no right, title or interest over the suit property, attempted to trespass into the land on 25.11.1991. Hence, the suit.

2.The plaint schedule describes the suit property is land and building, which are measuring to an extent of 6 cents in Natham S.No.604/1 Ennamangalam Village, Bhavani Taluk, Anthiyur Sub Registration, Erode Registration District.

3.The said suit was resisted by the defendants on the ground that the suit property, which is measuring to an extent of 6 cents of land and a house bearing D.No.47, is a joint family property and the plaintiff has never been enjoyment in the thatched house for the past 30 years as claimed by him. Further, there was no attempt on 25.11.1991 to trespass into the said land as alleged by the plaintiff. The defendants are the residence of Door No.69 for the past 50 years. On the north of their house, they have put up a structure for cooking and when the defendants tried to put up foundation for constructing of the house, the plaintiff and his family members quarreled with the defendants' family members leading to a police complaint. As far as the suit property is concerned, 6 cents of land is jointly owned by the plaintiff, defendants and their junior paternal uncle Karumalai @ Thamba gounder. While so, declaration and injunction in respect of the joint family property are not maintainable. They cannot be order of any injunction against the co-owner. The Advocate Commissioner, who has inspected the disputed property, has noted that the portion of the land, where the plaintiff claims to have thatched house, has been fallen down to earth and nothing survives in the suit.

4. The trial Court, based on the pleadings, has framed the following issues:

1.Whether the plaintiff is entitled for declaratory relief?

2.Whether the plaintiff is entitled for permanent injunction along with costs of the suit?

3.Whether there is a cause of action for the suit?

4.What are the other relief?

5. To substantiate his case, the plaintiff himself was examined as PW1 and he has marked 8 exhibits viz., Exs.A1 to A8. On behalf of the defendants, 4 witnesses were examined and 3 exhibits were marked. The Advocate Commissioner's report and sketch were marked as Exs.C1 and C2.

6. The trial Court, after appreciating the evidence let in by the plaintiff as well as the defendants, has found that the plaintiff, who claims title and possession, has bound to prove his case. In this case, in his attempt to prove the title and possession, the plaintiff himself was examined as PW1 and marked 8 exhibits, which are all the tax receipts to the house bearing D.No.47 issued in the name of the plaintiff. However, on perusal of the tax receipts, it is disclosed that though the Door Number is consistently mentioned as 47, there is an discrepancy in the ward number. In some of the receipts, the ward number is shown as 3, whereas the other receipts the ward number is shown as 2 and in few receipts, the ward number

is not mentioned. While so, the plaintiff has failed to produce any other document to substantiate that the receipts were issued by the local authorities, which are pertaining to the suit property. When the plaintiff has failed to trace his title and prove his continuous possession of the property, considering the report of the Advocate Commissioner, the trial Court has held that, the plaintiff has failed to prove his possession of the building bearing Door No.47. Therefore, in the absence of the evidence regarding possession and title, the plaintiff is not entitled to the relief sought for.

7. The lower appellate Court has confirmed the finding of the trial Court. The appellate Court has pointed out the discrepancy in the claim made by the plaintiff regarding the nature of the structure on the suit land and the finding of the Advocate Commissioner. Furthermore, emphasising the point that the plaintiff has not produced any document to show his title. Tax receipts with inconsistent information can not be basis to grant declaration and possession. Suffering the concurrent finding at the hands of the Courts below, the Second Appeal is preferred.

8. At the time of admission, this Court has formulated the following Substantial Questions of Law for consideration:

> "1. Whether the property tax receipts will not be sufficient evidence to prove possession of a house property?
>
> 2.Whether a report of an Advocate Commissioner can be relied upon to hold that the appellant was not in possession of the suit property?"

9. In so far as the first substantial question of law is concerned, the property tax receipts are marked as Exs.A1 to A8, on perusal, it indicates that the payment of tax in respect of house property bearing Door No.47. No doubt, these receipts are issued in the name of the plaintiff. Tax receipts cannot be evidence for possession. It is only prove of paying tax for the property and existence of the property which is liable to be taxed. It is the duty of the plaintiff to prove that the tax receipts relied by him relate to the suit property. For the said purpose, there is no evidence to co-relate the exhibits A1 to A8 to that of the suit property as described in the plaint. For that purpose, the report of the Advocate Commissioner becomes relevant. During the inspection, the Advocate Commissioner has found certain structures and those structures, which are identified and marked in his sketch. While the defendants' house is identified and marked as 'C' in this sketch, a dilapidated structure has been identified as 'A' in which, No.IV-3/69A is written on the Door. The roof on the southern portion that the building has fallen down, open to sky and certain articles and photos meant for worshiping were found in it. Another construction marked in "Red" colour has been identified as

Karumalai gounder's house by the defendants' counsel. No doubt, it is proved by the plaintiff that at the time of Advocate Commissioner's inspection, the plaintiff was not present. However, the Advocate Commissioner's report has never been objected by the plaintiff. Therefore, at this point of time, the appellant cannot take exception to the Commissioner's report on the ground that he has not mentioned in his report, where the structure bearing Door number 47 is located.

10. It is the duty of the plaintiff to prove his case with the relevant documents and evidence. The tax receipts are neither proof of title nor proof of possession. Therefore, in the absence of evidence, the trial Court has rightly disbelieved the case of the plaintiff and the same has been confirmed by the lower appellate Court. The questions of law framed, at the time of admission, on perusal of the records, are found to be unsustainable. Hence, the Second Appeal is liable to be dismissed.

11. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Bhavani

2.The Additional District Munsif, Bhavani.

3.The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.A.L.Ramamoorthy, Advocate SR.No.59123
+1cc to Mr.A.K.Kumaresamy, Advocate SR.No.59006

S.A.No.872 of 2000

RSK(CO)
GN(15/09/2017)