

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2017

PRONOUNCED ON : 21.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.132 of 2011
& MP.No.1 of 2011

1.Jayaraman(deceased)
2.Nagammal
3.Jayalakshmi
4.Rajakumari
5.Kasthuri
6.Rajeswari
7.Revathi
8.Murugan
9.Thanasekaran

...Appellants/Plaintiffs

Vs.

1.Palanivel
2.Pannerselvam

..Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 29.11.2008 made in A.S.No.123 of 2003 on the file of the learned Additional District Judge(Fast Track Court) Ariyalur, confirming the Judgment and Decree dated 22.07.1993 made in O.S.No.26 of 1985 on the file of the District Munsif Court, Jayankondam.

For Appellants : Mr.C.R.Krishnamoorthy

For Respondents : Mr.M.V.Krishnan

JUDGMENT

Challenge in this second appeal is made by the plaintiffs against the Judgment and decree dated 29.11.2008 made in A.S.No.123 of 2003 on the file of the Additional District Court (Fast Track Court) Ariyalur, confirming the Judgment and Decree dated 22.07.1993 made in O.S.No.26 of 1985 on the file of the District Munsif Court, Jayankondam.

2.The suit has been laid by the plaintiffs for declaration and possession.

3.The suit property is stated to be an extent of 27 cents in S.No.154/10. According to the plaintiffs, the suit property is their ancestral property. The plaintiffs claim title to the suit property through Chinnathambi Padayachi, who is the paternal grandfather of the first plaintiff. However, in the plaint, it has not been detailed as to how Chinnathambi Padayachi had acquired title to the suit property. Further, as per the plaint averments, it is found that only based upon the patta said to have been issued in favour of Chinnathambi Padayachi in respect of the suit property, the plaintiffs have laid the suit seeking necessary reliefs alleging that the defendants are interfering with their possession and enjoyment in respect of the suit property without authority.

4.Per contra, the defendants claim title through Ponnusamy Padayachi and his brother Rengasamy Padayachi and as seen from the defence put forth by the defendants, it is found that the defendants claim title to the suit property based upon 6 title deeds marked as Ex.B5 to B10. It is the further case of the defendants though in the above said title deeds the survey number has been given as 154/6, actually according to the defendants, they are in the possession and enjoyment of the suit property measuring to an extent of 27 cents in S.No.154/10 and further according to them, the survey number has been wrongly given in their title deeds and so reasoning they have also sought for necessary declaration in their written statement by way of counter claim.

5.It is the case of the defendants that it is only the plaintiffs, who are in the possession and enjoyment of the property situated in S.No.154/6. With reference to the same, it is found that the plaintiffs had issued the notice to the defendants under Ex.B1, wherein, they had claimed title to the properties situated in S.No.154/6 and S.No.154/5. To the above said notice, it is found that the defendants have sent a reply marked as Ex.B2, wherein, they have clearly averred that they do not claim any title to the property situated in S.No.154/6.

6.It is the case of the defendants, as adverted to earlier, though in their title deeds S.No.154/6 has been mentioned, actually they owned only the property i.e., the suit property situated in S.No.154/10. As adverted to earlier, the plaintiffs lay a claim to the suit property only on the basis of the patta said to have been issued in the name of Ponnusamy i.e., the father of the first plaintiff and the husband of the second plaintiff. During the course of trial, it is also found that the copy of the resettlement register has also been marked as Ex.A14, wherein, the name of Chinnathambi Padayachi has been mentioned in respect of the suit property.

7.The courts below have on the basis of the evidence adduced by the respective parties, particularly, pursuant to the inspection of the properties of the parties concerned by the Advocate Commissioner and on the basis of the report and plan submitted by the Advocate Commissioner marked as Exs.C3 and C4, it is found that the courts below have analysed the location of the properties to which the respective parties claim title and accordingly, the trial court in particular has on a comparison of the boundary recitals given in the title deeds of the defendants and also the boundary descriptions given in the Commissioner's report marked as Ex.C3 and also on the basis of the evidence adduced by the respective parties found that though the title deeds of the defendants referred only to S.No.154/6, however, the boundary recitals contained therein, vis-a-vis the boundaries recitals of the location of the properties found in Ex.C3 would only go to show that it is only the suit property, which had been dealt with or acquired by the defendants under Exs.B5 to B10. Accordingly, the courts below have found acceptance to the case of the defendants that it is only the suit property which had been dealt with under the title deeds marked as Exs.B5 to B10.

8.That apart, it is also found by the courts below that even during the years 1904 and 1912, the suit property had been dealt with by Ponnusamy Padayachi and Rengasamy Padayachi mortgaging the same to various persons, which could be evidenced from Exs.B31 and 30 respectively. That apart as rightly found by the courts below on a perusal of Ex.A14, it is found that the corresponding old survey number for S.No.154/10 is 244/8. Therefore, it could be seen that only the suit property situated in S.No.244/8 had been dealt with under Exs.B30 and 31 by the predecessors in title of the defendants and accordingly, it is found that they had also transferred the title to the suit property under the various documents marked as Exs.B5 to B10.

9.As seen above, only on the basis of the patta, the plaintiffs have laid a claim to the suit property. However, when it is found that the plaintiffs are unable to explain as to how their predecessor in title namely Chinnathambi Padayachi had title or acquired title to the suit property as such barring Ex.A14 and A1, it could be seen that the courts below have rightly disbelieved the above said documents and found that even prior to the same, the suit property had been dealt with only by the predecessors in title of the defendants, however, by giving the wrong survey number. In any event, the old survey number had been mentioned in Exs.B30 and 31 and in such view of the matter, it could be seen that it is only the suit property which had been transacted under Exs.B5 to 10.

10.The courts below have rightly found that the location of the suit property could be determined only on the basis of the boundary recitals contained in the documents and in such view of the matter on a comparison of the Commissioner's report with the

title deeds and the other evidence have rightly found that the defendants only have title to the suit property under the various title deeds above referred to and the plaintiffs are not having title and possession in respect of the suit property.

11.The above findings and conclusions of the trial court for upholding the defendants case and also the counter claim sought for by the defendants and for rejecting the plaintiffs case are found to be reasonable and perfect both factually as well as legally. No exception could be taken to the same.

12.At the end, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
(Fast Track Court) Ariyalur.

2.The District Munsif,
Jayankondam

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

+1cc to Mr.Krishnan, Advocate, S.R.No.11430

+1cc to Mr.C.R. Krishnamoorthy, Advocate, S.R.No.11376

KJI(CO)
EU 16.3.17

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