

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.Nos.586 of 2011 and 167 of 2012

and

M.P.No.1 of 2011 in S.A.No.586 of 2011

1. Saroja (deceased)
(first appellant died and LRs of the deceased first appellant, her husband, and her son also died. There is no legal heirs of the first appellant, vide Memo dated 3.01.2017 and order of this Court, dated 23.01.2017)
 2. Chandrakumari
 3. L.Chandru Appellants 1 to 3 in SA.586 of 2011/ Defendants 5 to 7
 4. Devaki Ammal
 5. Savithri
 6. Santhanam
 7. Gowri
 8. Kokila ... Appellants 4 to 8 in S.A.No.586 of 2011/legal Representation of the deceased Balu Reddiar/3rd Defendant
- Radha Bai Ammal ... Appellant in S.A.No.167 of 2012/ 4th Defendant

Vs.

1. M.Venkatrama Reddiar (since deceased)
 2. K.K.Kumar ... Respondents 1 & 2 /Plaintiff
 3. Radhabhai Ammal ... 3rd Respondents in S.A.No.586 of 2011/4th Defendant
1. M.Venkatrama Reddiar
2. K.K.Kumar ... 1 & 2 Respondents in SA 167/2012/ 3rd Defendant
3. Balu Reddiar (since deceased) ... 3rd Respondent in SA 167 of 2012/3rd Defendant
4. Saroja
5. Chandrakumari
6. L.Chandru ... 4th to 6th Respondents in SA

- 7. Devaki Ammal
- 8. Savithri
- 9. Santhanam
- 10. Gowri
- 11. Kokila

.. 7th to 11th Respondents in S.A.No.167
of 2012/Legal representatives of the
deceased Balu Reddiar/3rd Defendant

Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.09.2009 in A.S.No.484 of 2005 on the file of the Additional District Judge, (Fast Track Court III), Chennai, against the judgment and decree dated 19.10.2004 in O.S.No.8289 of 1992 on the file of the XVI Assistant Judge City Civil Court, Chennai.

For appellants in S.A.No.586 of 2011: Mr.N.Vijaya Baskar

For appellants in S.A.No.167 of 2012: Mr.C.Uma Shankar

For respondents in S.A.No.586 of 2011: R-1 died

Mr.S.J.Sudhakaran for R-2

Mr.C.Uma Shankar for R-3

For respondents in S.A.No.167 of 2012: Mr.N.Vijaya Baskar
for RR-4 to 11

No appearance for R-2
RR-1 and 3 died

JUDGMENT

Aggrieved by the judgment and decree of the first appellate Court in reversing the judgment and decree of the trial Court, the defendants are before this Court.

2. The suit is filed for permanent injunction restraining the defendants from encroaching on the Eastern side of the suit schedule mentioned property. The dispute in question is with regard to 888 Sq.Ft. of land in T.S.No.87 in Alandur Village.

3. The case of the first plaintiff (since deceased) is that he is the absolute owner of the vacant land to an extent of 888 Sq.Ft. in the above mentioned survey number and that a portion of the land in S.No.87 belongs to the defendants. A sketch has been filed showing the extent of the property belonging to the parties. It is further submitted that the land of the first plaintiff abuts the land in T.S.No.88 on the Eastern side. After coming into force of the Estates Abolition Act, the lands were taken and enquiry has been conducted and by order dated 29.11.1960, the Assistant Settlement Officer has granted joint

patta in the name of the first plaintiff and his paternal uncle and also the defendants 1 and 3 and others in the suit. The joint patta was granted on the ground that at the time of enquiry, there was a portion of thatched shed falling within the area of the plaintiff, which was agreed to remove later. But however, in the passage of time, the thatched shed disappeared and it has fallen down. T.S.No.87 became a vacant land. It seems that earlier, the first defendant had no objection for granting joint patta and that the first plaintiff was in possession and enjoyment of the property by paying necessary tax. Since the defendants attempted to interfere with the suit property, the suit was filed.

4. It has been stated by the defendants 1 to 3 that the plaintiff was not the absolute owner of the vacant land and the plaintiff is the owner of the land in T.S.No.88 and not the owner with regard to 888 Sq.Ft., which is in dispute. It is also stated that the defendants are in enjoyment and possession of the suit property and that the suit itself is not maintainable. It is further contended that the suit is barred by limitation.

5. The trial Court, having marked Ex.A-4 being the order of the Assistant Settlement Officer, has given a go-bye to the joint patta given in favour of the plaintiff and the defendants and that ignoring the evidence of D.Ws.1 and 2, who have deposed that the disputed land in question was a vacant land, granted the relief in favour of the defendants by dismissing the suit. Pending suit, the legal representatives of the deceased respondents have been brought on record.

6. Aggrieved by the judgment and decree of the trial Court, First Appeal has been filed by the plaintiffs and the first appellate Court came to the conclusion that on a perusal of Ex.A-4 and other records, a joint patta has been given to all the persons who are parties to the suit and that two witnesses, namely D.Ws.1 and 2 have admitted that the suit property is vacant and the same has been used as a pathway along with the appellants. The lower appellate Court, after carefully examining Ex.A-4 (order of the Assistant Settlement Officer) and extracting the portion of Ex.A-4 in paragraph 11 of its judgment, held that joint patta had been granted in favour of all the parties to the suit and held further that the order passed by the Assistant Settlement Officer has not been challenged by either side and that the defendants, who are none other than the successors of the parties to Ex.A-4, cannot dispute the title of the first plaintiff and they are estopped from denying the title to the first plaintiff. It was further held by the lower appellate Court that the suit for declaration is not necessary and the suit for permanent injunction itself is sufficient and it is maintainable in law. The lower appellate

Court proceeds further to hold that after coming into force of the Estates Abolition Act, the villages were taken over by the Government and the persons who were in occupation, were given Ryotwari patta and those pattas prove their possession and also prove the title to the property against all the persons, except the Government. The lower appellate Court further held that Ex.A-4 supports the case of the plaintiff. The first appellate Court interfered with the judgment of the trial Court and allowed the First Appeal (Appeal Suit) by setting aside the judgment and decree of the trial Court.

7. The only substantial question of that has to be considered in this Second Appeal is as to whether mere suit for permanent injunction is maintainable in law, when the joint patta was issued as early as on 29.11.1960 under Ex.A-4 as per the provisions of the Estate Abolition Act.

8. In this Second Appeal, it is contended by learned counsel for the appellants that the extent of 6,000 Sq.Ft. in S.No.88 is not in dispute, as it belongs to the defendants. With regard to the extent of 3,000 Sq.Ft. in S.No.87, it was purchased from Krishna Reddiar by Lakshmi Ammal and another 3,000 Sq.Ft. vests with Munusamy Reddiar. It is further submitted that Krishnasamy Reddiar left behind three sons, namely Loganatha Reddiar, Balu Reddiar and Munusamy Reddiar. It is further contended that since the property belongs to the plaintiffs and the defendants in the suit and that they are joint pattadars, the relief sought for by the plaintiffs that there is a trespass, is not maintainable and that the plaintiffs should have sought for the relief of declaration of his title and the consequential relief.

9. Mr.Uma Shankar, learned counsel appearing for the appellant in S.A.No.167 of 2012, who is the third respondent in S.A.No.586 of 2011, reiterated the above submissions and contended that the entire issue revolves around 888 Sq.Ft. mentioned by the other appellants and the relief sought for is based on Ex.A-4. He would submit that all the properties belong to the relatives of the parties and after abolition of Zamindari property, the persons in possession have been given patta. He further submitted that orders have been passed by the Assistant Settlement Officer based on the documents produced by the parties, who appeared before him pursuant to the notice issued and that even though the survey number was initially granted, after Town Survey, it has been re-numbered as T.S.Nos.87 and 88 and joint patta had been issued to the parties. He further submitted that when joint patta has been given and the area has not been demarcated either by metes and bounds or by partition among parties, they are in full enjoyment of the properties without earmarking their portion of the land. Mr.Uma Shankar, learned counsel further contended that there was a hut in the land and the same was said to have been used both by the

plaintiffs and the defendants and after passage of time, the hut fell down and the lane, namely the extent of 888 Sq.Ft. has been demarcated as a passage, and that the plaintiffs and the defendants have been enjoying the said passage. During the pendency of the suit, the property had been sold to one K.K.Kumar, who is the second plaintiff, i.e. the second respondent in both these Second Appeals and he has purchased the property 'lis-pendens'. He further submitted that even assuming for the sake of argument without admitting that the title is with the plaintiffs by virtue of Ex.A-4, there was joint possession with the plaintiffs and the defendants. Admittedly, there is no suit for declaration and hence, the suit for bare injunction itself is not maintainable. He submitted that the land now is used as a passage and as could be seen from paragraph 6 of the trial Court judgment, during the pendency of the litigation, the property has been purchased by the second plaintiff. As there is no partition by metes and bounds and that there is no title or document to show that the plaintiffs are the owner of the property, the plaintiffs would not be entitled to any relief. He further submitted that in Ex.A-12 itself (legal notice, dated 21.10.1989), the plaintiffs have stated about the shares of the co-owners. The suit was filed on 15.09.1992. The assessment order clearly states that the plaintiffs and the defendants are joint owners, and there cannot be any estoppel against the co-owners of the property and that the plaintiffs cannot seek any relief against the co-owners, even though the second plaintiff has purchased the property from one of the co-owners. Unless and until the property is partitioned or the suit for declaration is sought for, the relief claimed by the second plaintiff who is the second respondent in both the appeals, is not maintainable and the suit will have to be dismissed.

10. Learned counsel for the second plaintiff/second respondent in both the Second Appeals, submitted that there is no need to file a suit for declaration, as one of the co-owners has sold the property to him and unless and otherwise there is a dispute with regard to the title, the question of declaration does not arise. He also submitted that the question of partition does not arise, as he is not a family member. However, learned counsel for the second plaintiff further submitted that being one of the co-owners, as he has stepped into the shoes of the first plaintiff-Venkatrama Reddiar (since deceased), he is also entitled to a portion of the property in an extent of 888 Sq.Ft. and that the lower appellate Court was right in setting aside the judgment and decree of the trial Court and granting permanent injunction.

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. From the arguments of the learned counsel for the parties, it is very clear that the person who sold the property to the second plaintiff, has a right to sell the property to the extent of his share, even though the area has not been demarcated by metes and bounds. At the most, the second plaintiff would step into the shoes of one of the co-owners and he has no right to contend that the property has been trespassed. Being the joint owners of the property, all the parties are entitled to enter into the common area, unless and otherwise it is demarcated as mentioned supra.

13. Similarly, I find much force in the contention of the second plaintiff that he cannot maintain the suit for partition, as he is not one of the family members and that as it is an admitted fact that Venkatarama Reddiar has sold the property to the second plaintiff, there is no need to seek for declaration in the civil Court. However, it is open for the second plaintiff to seek appropriate relief insofar as the share in the extent of the property in which he became one of the co-owners, as the same has been sold by the first plaintiff-Venkatarama Reddiar to him. It is not in dispute that the said 888 Sq.Ft. has been used as a passage to enter the respective lands and it cannot be used for any construction purpose. Though the second plaintiff has purchased adjacent property, as it has been disputed by the appellant in S.A.No.586 of 2011, this Court cannot go into the said question, as the said issue is not the subject matter before this Court.

14. Similarly, this Court is of the view that the rights that are available to the second plaintiff being a co-owner in the disputed property in the present suit, cannot be brushed aside, as the property has been purchased from the first plaintiff-Venkatarama Reddiar by the second plaintiff. Since the prayer sought for in the suit is not maintainable, by no stretch of imagination, it can be construed as trespass. Hence, this Court is interfering with the impugned judgment and decree of the first appellate Court and hold that the plaintiff is not entitled to the relief sought for in the suit, as the defendants who are the appellants herein, and the second plaintiff who has purchased the property from the first plaintiff/Venkatarama Reddiar, are joint owners of the property.

15. Similarly, the relief if any available to the second plaintiff insofar as his extent of the property purchased by him is concerned, the alleged purchase made by him from the first plaintiff-Venkatarama Reddiar, cannot be taken away. After conclusion of the arguments, it has been brought to the attention of this Court by the learned counsel for the appellants in S.A.No.586 of 2011 that the second plaintiff has already initiated a suit contending that he has been duped and the property has been sold to him. As the issue is not before

this Court, and when the matter is sub-judice, this Court is not rendering any finding on the said issue raised by the learned counsel for the appellants in S.A.No.586 of 2011.

16. While holding that the plaintiffs are not entitled to the relief sought for in the suit, this Court makes it very clear that the second plaintiff is one of the co-owners of the property having purchased the land and however, a finding on this score in the suit will not prejudice any one of the parties, much less the appellants (defendants), who are questioning the purchase of the adjacent property itself, and the second plaintiff who is questioning the same, is said to have filed a civil suit. The substantial question of law is answered accordingly.

17. Hence, the Second Appeals are allowed. With regard to the dispute of the title of the second plaintiff, it is open for the defendants to approach the appropriate forum/authority/Court, in accordance with law. No costs. The Miscellaneous Petition is closed.

11.04.2017

This Petition/Appeal having been posted this day on 21/07/2017 for being mentioned impursuance of the order of this Court dated 11/04/2017 and made herein in the presence of Mr.N.Vijaya Baskar, Counsel for the appellants in SA.No.586/2011 and of RR4 to R11 in SA.No.167/2012 and of Mr.C.Uma Shankar Counsel for the appellants in SA.No.167/2012, and of Mr.SJ.Sudhakaran for Respondent 2 of Mr.C.Umashankar for Respondent 3 in SA.No.586/2011, wherein, eventhough notice being served on R2 in SA.No.167/2012, he either appeared in person or engaged an advocate, and this Court made the following order:

This matter is listed today under the caption "for being mentioned"

2. Heard the learned counsel on either side.

3. This Court makes it very clear that it is open to the respondents to approach the appropriate forum, in accordance with law.

4. Except for the above observation, the remaining portion of the Judgment dated 11.04.2017 in the Second Appeal shall stand unaltered.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The Additional District Judge, Fast Track Court-III, Chennai.
2. The XVI Judge, City Civil Court, Chennai.
3. The Record Keeper, V.R. Section, High Court, Madras.

+1cc to Mr.S.J.Sudhakaran, Advocate, S.R.No.51758

+1cc to Mr.N.Vijaya Baskar, Advocate, S.R.No.51580

S.A.Nos.586 of 2011 & 167 of 2012

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