

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2017

PRONOUNCED ON : 06.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.604 of 2011
and CMP.No.5684 of 2004

G.C.Nanjan

.. Appellant

Vs.

1.N.C.Raman

2.N.S.Chandran

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against decree and judgment dated 11.07.2001 in A.S.No.26 of 2000 on the file of District Court, Nilgiris at Udthagamandalam, modifying the decree and judgement dated 31.08.2000 in O.S.No.245 of 1999 on the file of District Munsif Court, Udagamandalam.

For Appellant : Mr. U.Karunakaran
For Respondent : Mr.A.L.Gandhimathi

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the Judgement and decree dated 11.07.2001 made in A.S.No.26 of 2000 on the file

of the District Judge, Nilgiri at Udagamandalam modifying the Judgement and Decree dated 31.08.2000 made in O.S.No.245 of 1999 on the file of the District Munsif Court, Udthagamandalam.

2. The second appeal has been admitted on the following substantial question of law :

(a) Whether the judgment and decree of the Courts below are based upon the perverse findings and also misdirected against the evidence on record while rejecting the plaintiff's case?

3. The suit has been laid by the plaintiff for permanent injunction.

4. The plaintiff and the defendants are brothers. It has also been admitted that there are two other brothers to the plaintiff in addition to defendants 1 and 2 and all of them are the sons of Sevanna Gowder, since deceased. It is also admitted that the suit property is a Government revenue land. Now according to the plaintiff, he had encroached upon the suit property and he is in possession and enjoyment of the same and in recognition of his possession, according to the plaintiff, he has been issued 'B' Memo and in such circumstances, the defendants, who have no authority as per law,

attempted to interfere with the possession and enjoyment of the plaintiff in respect of the suit property and hence, the plaintiff has been necessitated to lay the suit for permanent injunction.

5. Per contra, it is the case of the defendants that the plaintiff is not in the possession and enjoyment of the suit property as an encroacher, as putforth in the plaint. On the other hand, it is stated that their father Sevaana Gowder had encroached into the Government property in R.S.No.386/1, to an extent of 1.00 acres of Nanjanadu Village during the year 1937 and been in continuous possession and enjoyment of the above said land, his encroachment has been recognized by the Government and further, according to the defendants, during the year 1995, Sevaana Gowder had effected an oral partition of the above said extent of land and allotted 20 cents each to his sons and thus, according to the defendants, each of the sons have been in possession and enjoyment of 0.20 acres in the above said survey number and therefore, according to them, the case of the plaintiff that he is in possession and enjoyment of an extent of 0.60 acres in S.No.386/1 is false and hence, the suit is liable to be dismissed.

6. The trial Court disbelieving the case of the plaintiff, rejected the same. Aggrieved over the same, the plaintiff preferred the first appeal. The

first appellate Court also concurred with the Judgment of the trial Court in all aspects, however, proceeded to hold that inasmuch as it had been admitted by the defendants that the plaintiff is entitled to possession and enjoyment of 20 cents in S.No.386/1, modified the Judgment and decree of the trial Court by holding that the suit filed by the plaintiff is dismissed and that the plaintiff is entitled for 20 cents alone in S.No.386/1 and that the plaintiff is at liberty to file a fresh suit to identify the property. Aggrieved over the above said Judgment and Decree of the first appellate Court as well as the trial Court, the plaintiff has preferred this second appeal.

7. As adverted to earlier, the defendants have challenged the case of the plaintiff that he is in possession and enjoyment of the suit property as described in the plaint. To establish his case, the plaintiff has marked three documents as Exs.A1 to A3. Admittedly, Ex.A3 has come into existence after the institution of the suit and therefore, Ex.A3 cannot be accepted. Ex.A1 is a certificate issued by the Village Administrative Officer on 15.07.1999 stating that the plaintiff is in occupation of an extent of 0.60 acres in S.No.386/1. However, in Ex.A1, the boundaries within which the said extent of 0.60 acres in S.No.386/1 are located have not been mentioned. Ex.A1 has been seriously impugned by the defendants. Despite the above position, the plaintiff has not taken the initiative to establish the authenticity of Ex.A1 by examining the

author of the document namely, the Village Administrative Officer. Further, it is found that the suit has been instituted by the plaintiff on 26.07.1999. Just 10 days prior to the institution of the suit, it appears that the plaintiff has obtained the certificate marked as Ex.A1 from the Village Administrative Officer on 15.07.1999. When Ex.A1 is found to be not correlated to the suit property as described in the plaint, when Ex.A1 has been seriously challenged by the defendants and Ex.A1 has come into existence just prior to the filing of the suit, merely on the production of Ex.A1, as rightly found by the court below, it cannot be safely concluded that the suit property, as described in the plaint, is in the possession and enjoyment of the plaintiff.

8. Ex.A2 is a 'B' memo which according to the plaintiff has been issued in recognition of possession and enjoyment of the suit property as claimed in the plaint. In Ex.A2, only the Survey number has been mentioned and it is not helpful to determine as to whether the extent of 0.60 acres, as described in the plaint, is in the possession and enjoyment of the plaintiff and in recognition of the said extent, the said 'B' memo had been issued in favour of the plaintiff. Further, the plaintiff examined as P.W.1 during the cross examination has admitted that he has encroached into the suit property only on 16.06.1999. However, Ex.A2 has come to be issued on 19.03.1999. It has not been explained by the plaintiff as to how come Ex.A2 had come to be

issued much prior to the encroachment of the suit property by the plaintiff on 16.06.1999. Further the plaintiff in his plaint, has not specifically mentioned as to on what date and from which year, he had encroached into the suit property and been in possession and enjoyment of the same. Therefore, it could be seen that the courts below have rightly not relied upon Ex.A2 and consequently, rejected the plaintiff's claim.

9. Barring Exs.A1 to A3, there is no other material placed by the plaintiff to hold that he is in possession and enjoyment of the suit property as described in the plaint, and therefore, no exception could be taken to the finding of the Courts below holding that the plaintiff's case that he is in possession and enjoyment of the extent of 0.60 acres in S.No.386/1 as claimed in the plaint is false.

10. As seen earlier, according to the defendants, it is their father deceased Sevanna Gowder, who had encroached to an extent of 1.00 acres in S.No.386/1 during the year 1937 and accordingly, he had been in possession and enjoyment of the said extent. It is further pleaded that he had effected an oral partition of the said extent and allotted 20 cents each to his 5 sons. With reference to the above case of the defendants, D.W.1/ first defendant had tendered evidence. Further, the defendants had also examined their uncle

as D.W.2 who had also testified about his brother Sevanna Gowder possessing 1 acre of land in S.No.386/1 and that after his death, his sons are in possession and enjoyment of the same. D.W.3, who is a neighbour has also deposed supporting the case of the defendants and he would also state that only their father Sevanna Gowder was in possession and enjoyment and subsequent to his death, his sons are in possession and enjoyment of the extent in suit survey number. One of the brothers of the plaintiff and defendants has been examined as D.W.4 and he has also deposed about each son being in possession of 20 cents in the suit survey number. The other witness examined as D.W.5 has also deposed about the sons of Sevanna Gowder being in enjoyment of 20 cents each in the suit survey number.

11. Considering the above evidence of D.W.1 to 5 cumulatively, the first Appellate Court found that resultantly the defendants had admitted that the plaintiff is entitled to be in possession and enjoyment of 20 cents in S.No.386/1 and accordingly, the First Appellate Court has modified the Judgment and Decree of the Trial Court by holding that the plaintiff is entitled to 20 cents alone in S.No.386/1 and the plaintiff has to work out his remedy with reference to his claim by instituting a fresh suit, if needed. In my considered opinion, the above approach of the First Appellate Court cannot be said to be misdirected against evidence on record or erroneous either factually

or legally.

T.RAVINDRAN,J

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12. In the light of the above decision, no exception can be taken to the Judgment and decree of the Courts below for rejecting the plaintiff's case and therefore, conclude that the Judgment and decree of the courts below are based upon the evidence on record and cannot be termed as erroneous or perverse. The substantial question of law formulated in the second appeal is, therefore, answered against the plaintiff and in favour of the defendants.

13. In conclusion, the second appeal fails and accordingly dismissed.
No costs. Consequently, connected miscellaneous petition if any is closed.

06.01.2017

Index : Yes/No

Internet:Yes/No

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To

1.The District Court,
Nilgiris at Udhagamandalam.

2.The District Munsif Court,
Udagamandalam.

Pre-delivery order in
S.A.No.604 of 2011

and CMP.No.5684 of 2004

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