

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 27.11.2017
PRONOUNCED ON: 06.12.2017
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1038 of 2001

1.N.Gangadaran

2.J.Rajendran

... Appellants/Defendants

Vs.

K.Rangaiah

... Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 20-04-2001 in A.S.No.8 of 2000 on the files of the District Judge and Appellate authority of Nilgris at Udhagamandalam, reversing the judgment and decree dated 30-11-99 and made in O.S.No.116 of 1997 on the file of the District Munsif, Udhagamandalam.

For Appellants : Mr.Srinath Sridevan

For Respondent : Mr.B.Lenin

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated 20-04-2001 made in A.S.No.8 of 2000, on the file of the District Judge, Nilgris at Udhagamandalam, reversing the judgment and decree dated 30-11-1999 passed in O.S.No.116 of 1997 on the file of the District Munsif Court, Udhagamandalam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4.The case of the plaintiff, in brief, is that the plaintiff is the owner of the property to the extent of 0.30 acre in Survey No.340 in Kil-Kundha Village, Uthagamandalam Taluk. Adjoining to his property one B.J.Raman, S/o Joghee Gowder of Kechigetty was owning some extent in the same Survey number and there was a Naga tree on the boundary dividing the property of the plaintiff and B.J.Raman and in respect of the said Naga tree, dispute arose between the parties and the same was amicably settled and thereby the plaintiff paid a sum of

Rs.33/- to the said Raman, who in turn executed a receipt acknowledging the receipt of the said amount and also giving up his right to the said tree and as and from 10.01.1981, the plaintiff was having control of the said tree and having its exclusive ownership and the plaintiff was also enjoying the said tree. While so, the defendants in connivance together had cut the above said Naga tree on 13.02.1997, without obtaining any cutting permission from the appropriate authority as per the Act and thereby committed theft and misappropriation. The value of the tree, which according to the plaintiff is more than Rs.10,000/- and it is only the first defendant in connivance with the second defendant who had cut the tree and thereby, the first defendant is liable to pay the value of the tree as above stated to the plaintiff and in this connection, the plaintiff had given a complaint to the forest department regarding the above said illegal cutting of the tree and lodged a police complaint in respect of the theft of the tree by the defendants and on account of the influence exercised by the defendants, the police did not take any concrete action with reference to the complaint and hence, the plaintiff sent a notice to the first defendant, narrating the above said facts and claiming the value of the tree and for the same, the first defendant sent a reply containing false allegations and in view of the illegal cutting of the Naga tree by the first defendant in connivance with the second defendant, the plaintiff has sustained loss of Rs.10,000/- and hence, the second defendant also had been added as a party, though no decree can be passed against him as such and it is only the first defendant who is liable to compensate for the illegal cutting of the tree as claimed by the plaintiff and hence, the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the plaintiff has land in S.No.340 of Kil Kundah village as claimed in the plaint and following the dispute between the plaintiff and B.J.Raman as regards the Naga tree standing on the boundary between the land of plaintiff and B.J.Raman, they had agreed for an understanding and accordingly, on 10.01.1981, B.J.Raman had given up his right over the Naga tree by receiving a sum of Rs.33/- from the plaintiff and executed a receipt as claimed in the plaint and the alleged sale of tree by B.J.Raman is not valid in law, as B.J.Raman has no right to sell the same to the plaintiff and hence, the plaintiff's claim of the Naga tree is unacceptable in the eyes of law and it is false to state that the first defendant in connivance with the second defendant has cut the tree as putforth by the plaintiff, without obtaining necessary permission from the appropriate authority as per the Act and the first defendant did not cut the tree as alleged in the plaint and inasmuch as the complaint had been falsely lodged by the

plaintiff with the police and the forest department and on enquiry, as the authorities concerned had not found valid reasons to proceed further in the matter, did not take any action on the same and it is false to state that the first defendant and the second defendant influenced the authorities for not taking action on the complaint lodged by the plaintiff and hence, the first defendant is an unnecessary party to the proceedings and to the notice sent by the plaintiff, reply had been given containing true facts and hence, the suit is not maintainable and liable to be dismissed.

6. The case of the second defendant, in brief, is that the suit is not maintainable either in law or on facts and the plaintiff is not the owner of an extent of 0.30 acre of land in S.No.340 Kil-Kundah village and the claim of the plaintiff that B.J.Raman had sold the Naga tree to the plaintiff for a sum of Rs.33/- by way of a receipt as alleged in the plaint is not true and there was no boundary dispute or any dispute regarding the Naga tree between the plaintiff and B.J.Raman and it is only the second defendant who was having the control of the said tree from 10.01.1981, having exclusive ownership to the same and B.J.Raman had entered into an agreement of sale with the second defendant with reference to his property on 18.11.1980 and accordingly, it is only the second defendant who had been in possession and enjoyment of the said property and hence, the claim of the plaintiff that B.J.Raman had sold the Naga tree to the plaintiff is false and it is false to state that the first defendant in connivance with second defendant had cut the tree as claimed in the plaint. It is only the second defendant who is the owner of the said tree and had cut the same for domestic purpose and not committed any theft or misappropriation with reference to the same, as put forth in the plaint and on the complaint laid by the plaintiff to the police and the forest department, an enquiry was conducted and the defendants had placed the true facts to them and accordingly, the authorities concerned had dropped further action and hence, the plaintiff cannot claim any ownership over the tree and not entitled to claim the value of the tree from the second defendant and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case PWs 1 and 2 were examined. Exs. A1 to A8 were marked. On the side of defendants, Dws 1 to 3 were examined and Exs. B1 to B3 were marked.

8. On a consideration of the oral and documentary evidence and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court was pleased to set-aside the judgment and decree of the trial Court and accordingly, granted the relief in favour of the plaintiff as

determined by it and aggrieved over the same, the present second appeal has come to be laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

(i) Whether an unregistered sale receipt will transfer title to the plaintiff for the undivided half share of a tree of Raman standing in Raman's land, when there is no agreement to sever it?

(ii) Whether the plaintiff can claim title for a tree standing in patta land without claiming title for the whole site in which the tree is standing?

(iii) Whether a tree which is not standing timber but a fruit bearing tree like Naga tree, is not immovable property?

(iv) Whether one of co-owners can sue for recovery of amount jointly due to all co-owners (value of tree in joint property) without admitting the share of other co-owners also and without impleading them either as plaintiff or defendants? And

(v) Whether a joint decree can be passed as against the defendants 1 and 2 when there is no allegation or proof that they jointly cut the trees and removed the logs?

10. The plaintiff claims to be the owner of an extent of 0.30 acres of land in S.No.340 in Kil-Kundha Village, Uthagamandalam Taluk. The said fact itself is disputed by the defendants. With reference to the above case of the plaintiff, the plaintiff has placed only the copy of the sale deed with reference to the above said extent, said to have been acquired by his father, marked as Ex.A1. The defendants have challenged the truth and validity of Ex.A1 and disputed the same. The plaintiff has not placed the original of Ex.A1 for sustaining his claim that he had ownership of an extent of 0.30 acres of land in S.No.340 in Kil-Kundha Village as claimed in the plaint. That apart, as seen from the evidence of the plaintiff, examined as PW1, his father left not only the plaintiff but also three daughters and another son and in such view of the matter, it is found that when the plaintiff has not placed any material that he had been allotted any exclusive ownership of the above said

land by his brother and sisters, by way of partition or otherwise and when the original of Ex.A1 has not been placed and the reasons for not marking the original has also not been properly explained and when the defendants are contesting the truth and validity of Ex.A1 as such, it is found and rightly by the trial Court that the plaintiff has miserably failed to establish that he validly owns an extent of 0.30 acres of land in S.No.340 of land in Kil-Kundha Village.

11. According to the plaintiff, one B.J.Raman examined as DW3 was owning the adjoining lands in S.No.340 and there was a Naga tree in the boundary of their respective lands and there had been a dispute as regards the Naga tree standing between the plaintiff's land and the DW3's land and thereafter, DW3 had received a sum of Rs.33/- from the plaintiff and gave up his right in respect of the Naga tree to the plaintiff by way of the receipt marked as Ex.A2 and thus, according to the plaintiff, he claims ownership over the subject Naga tree.

12. However, the above case of the plaintiff is also stoutly disputed by the defendants. According to the defendants, DW3 has no valid right over the said subject Naga tree for conveying the same to plaintiff under Ex.A2. Despite the above said defence put forth by the defendants, there is no valid material placed on the part of the plaintiff to hold that DW3 had a valid title to the subject Naga tree to entitle him to convey the same to the plaintiff by way of Ex.A2. In this connection, a perusal of Ex.A2 would go to show that there is no reference at all contained therein as to how DW3 had claimed title to the Naga tree under the said document. That apart, it has not been mentioned in Ex.A2 that the said Naga tree was standing at that relevant point of time in the boundary line between the lands of the plaintiff and the lands of DW3. As found earlier, the plaintiff has miserably failed to establish that he owns the lands in S.No.340 as claimed in the plaint and that apart, the copy of sale deed marked as Ex.A1, does not mention any existence of Naga tree in the said land. Therefore, when Ex.A1 does not confer any valid title to the plaintiff to an extent of 0.30 acres of land in S.No.340 and when Ex.A1 is silent about the existence of Naga tree in the said land and when there is no material placed on the part of the plaintiff to hold that DW3 had a valid title over the subject Naga tree, particularly, on the date of Ex.A2 and when Ex.A2 does not contain any reference, as to in respect of which Naga tree or in respect of which survey number on which the said Naga tree was standing etc., merely from Ex.A2, it cannot be safely concluded that the said receipt had come to be executed between the parties concerned in respect of Naga tree standing in the boundary of the lands of the plaintiff in S.No.340 and the alleged lands of DW3 in the said Survey Number. No doubt, DW3

has admitted the execution of Ex.A2 in favour of the plaintiff and however, as rightly argued, DW3 has not been shown to be legally entitled to the subject Naga tree on the date of Ex.A2 and when Ex.A2 does not reflect as to whether actually the subject Naga tree was standing at that point of time, as that whether, it is standing in the boundary between the plaintiff's land and DW3's land or in some other land, purely on the basis of Ex.A2 alone, as rightly determined by the trial Court, the plaintiff cannot claim legal entitlement to the subject Naga tree as projected by him.

13. In this connection, DW3 would claim that as per Ex.A2, he had only conveyed the right of Naga tree standing in Ottakodu garden. However, as discussed above, there is no material placed to hold that DW3 had ownership over the Ottakodu garden and it has also not been established that the Naga tree mentioned in Ex.A2, actually was standing in Ottakodu garden, as there is no reference in Ex.A2 that the Naga tree mentioned therein was located in Ottakodu garden. In such view of this matter, it is found that when the plaintiff has miserably failed to establish that DW2 was the owner of Ottakodu garden and also the owner of any Naga tree standing thereon and further, the plaintiff has also failed to establish that Ottakodu garden is located adjacent to his alleged land in S.No.340 and further, when there is no material to hold that the subject Naga tree was standing on the boundary between the plaintiff's alleged land in S.No.340 and DW3's alleged properties in Ottakadu garden, it is seen that based on Ex.A2, when the said document does not contain any details as to the ownership of the land or the Naga tree of the parties concerned therein, it is seen that the claim of the plaintiff that he has exclusive ownership of the subject Naga tree as such, had been rightly discountenanced by the trial Court.

14. In this matter, materials had been placed to show that DW3 was owning lands in S.No.340 and an agreement of sale had been entered into between him and the second defendant with reference to the conveyance of the said land and subsequently i.e., much after the institution of the suit, the said lands had been sold by DW3 in favour of the second defendant and the sale agreement and the sale deed have come to be marked as Exs.B1 and B2. However, from the evidence of DW3 and the second defendant examined as DW2, it is found that the lands comprised under Exs.B1 and B2 relate to Celatic garden and it has not been shown by any acceptable material that the said land was adjoining the plaintiff's alleged land in S.No.340 and the said subject Naga tree was standing between the boundary land between the plaintiff's land in S.No.340 and the lands comprised under Exs.B1 and B2. Therefore, it is seen that by projecting a document without any details as regards the location of the

subject Naga tree and the ownership of the same and also when there is no material to hold that any dispute as such had arisen between the plaintiff and DW3 as regards the subject Naga tree as claimed in the plaint prior to Ex.A2, it is found that the case of the plaintiff that he has ownership of the subject Naga tree only on the basis of Ex.A2 is untenable and not acceptable in any manner.

15. The plaintiff has valued the Naga tree as per Ex.A2, at Rs.66/- Thus, according to the plaintiff, he had paid a sum of Rs.33/- to DW3 and obtained exclusive ownership of the Naga tree. However, the plaintiff has claimed the value of the said Naga tree in the plaint at Rs.10,000/- and it has not been explained on what basis the plaintiff had valued the Naga tree as stated in plaint. In this connection, the plaintiff has admitted that he has not taken any steps to ascertain the value of the Naga tree that had been alleged to have been cut by defendants and in this connection, the plaintiff has also not endeavored to examine any forest officials to explain that the value of the cut Naga tree is Rs.10,000/- as stated in the plaint and therefore, when according to the plaintiff, the value of the subject Naga tree was only Rs.66/- at the time of Ex.A2, to claim that the same would fetch the value of Rs.10,000/- on the date of the suit as such cannot be accepted readily without any reliable material pointing to the same.

16. The basic facts on which the plaintiff lays the suit claim against the defendants is that the first defendant in connivance with the second defendant had cut the Naga tree illegally without any authority and thereby, according to the plaintiff, the defendants are liable to compensate him by paying the suit amount with interest. However, it is found that there is no material at all placed on the part of the plaintiff to hold that either the first defendant or the second defendant or the defendants both together had connived to cut the Naga tree as claimed in the plaint. Though the plaintiff would claim that he had lodged the police complaint against the defendants and also preferred the complaint with the forest officials against the defendants with reference to the cutting of Naga tree, it is found that the plaintiff has not established as to what further action has been taken by the concerned authorities as against the defendants with reference to his case of the illegal cutting of subject Naga tree by the defendants. On the other hand, it is found that apart from marking the police acknowledgment Ex.A3 and a copy of the internal communication between the various forest officials marked as Ex.A4., no other material at all has been placed by the plaintiff that either of the authorities concerned above stated had taken any action against the defendants for the alleged illegal cutting of the subject Naga tree. If really the plaintiff had ownership over the said Naga

tree validly and if really the defendants had illegally cut the Naga tree as claimed by the plaintiff, as rightly argued, either of the officials above stated would have taken appropriate action against the defendants with reference to the same. However, till date no action what so ever had been taken against the defendants in connection with same. In this connection, according to the second defendant, the Naga tree which was standing in the lands belonging to him, purchased by way of Exs.B1 and B2, only had been cut and it is only the second defendant who had cut the same and accordingly as per the case of the second defendant, in connection with the complaint lodged by the plaintiff, an enquiry had been conducted and accordingly, in the said enquiry, he had reported about the cutting of the tree standing on his lands for domestic purpose and accordingly, the officials concerned also accepted the same and dropped further action and therefore, it is seen that, when the plaintiff has not placed any material as such to hold that any concrete action had been initiated by either the police or the forest officials against the defendants and on the other hand, it is found that no action had been taken on the complaint preferred by the plaintiff, all these facts cumulatively seen would only go to show that inasmuch as the plaintiff has no valid ownership over the subject Naga tree and further, as neither the first defendant nor second defendant had illegally cut the Naga tree belonging to the plaintiff as such and on the other hand, the Naga tree which had been cut, had been standing only on the lands of the second defendant and accordingly, he had cut the same for domestic purpose and had also reported the same to the officials concerned, it is found that neither the police nor the forest officials had proceeded on the complaint lodged by the plaintiff and hence, it has be held that as no prima- facie materials had been placed by the plaintiff to warrant any further action on the alleged complaint given by him to the officials concerned, it is seen that the officials had accordingly closed the same and thereby, dropped further action. Further as rightly found by the trial Court the case of the plaintiff has also to fail that inasmuch as it is seen that the plaintiff during the course of his evidence has only testified that the subject Naga tree had been cut by Vijayakumar, Subramani and Maadhan and also testified that he had, in the police complaint, not mentioned the names of the above said persons. Further in Ex.A4 it is only alleged that one Kangan had cut the subject Naga tree and all the above facts also cumulatively seen would go to show that inasmuch as the subject Naga tree had not been cut by the defendant as putforth by the plaintiff and as further, the plaintiff does not have any valid ownership over the subject Naga tree accordingly, it is found that the plaintiff has given inconsistent versions in the plaint as well as in the evidence as regards the persons who had cut the subject Naga tree. Accordingly, it is seen that none of the

officials above referred to had proceeded further in the matter and resultantly dropped further action. In such view of this matter, the case of the plaintiff that the first defendant or the second defendant or both colluded together as the case may be, cut the subject Naga tree cannot be accepted in any manner. Particularly, the plaintiff has failed to establish the basic fact that he has valid ownership of the subject Naga tree by way of any acceptable material. In such view of this matter, it is found that the trial Court has accordingly considered all the aspects in the right perspective both factual and legally and accordingly, discountenanced the claim of the plaintiff.

17. Inasmuch as the plaintiff has no valid title to the subject Naga tree and also the defendants had also not cut the said Naga tree, it is seen that the plaintiff is not able to fasten the liability for cutting the said Naga tree in specific manner, either on the first defendant or the second defendant. He would at one stage claim that the first defendant had cut the Naga tree and at another stage would claim that the first defendant in connivance with the second defendant cut the Naga tree and at another stage, states that no decree be passed against the second defendant for the suit claim and during the course of his evidence also he has admitted that he had not claimed any relief against the second defendant and to cap it all, he has not placed any material to hold that it is only the first defendant who had cut the subject Naga tree. Such being the position, it is seen that the plaintiff without any basis or material has come forward with the false claim that the subject Naga tree belongs to him and that it had been illegally cut by the defendants and in the light of the above position, it is seen that the plaintiff is not entitled to obtain the suit claim from the defendants in any manner.

18. In the light of the above discussions, the substantial questions of law formulated in this second appeal as regards whether the subject Naga tree is a movable property or an immovable property or whether the plaintiff is entitled to claim the ownership of the subject Naga tree without claiming the ownership of the site on which it was standing and whether the unregistered sale receipt would by itself confer valid ownership of subject Naga tree on the plaintiff, are all, in my considered opinion, not relevant as such for the determination of the issues involved in this matter. When it is found that the plaintiff has failed to establish that he has a valid ownership over the subject Naga tree and further his alleged vendor also had a valid ownership over the same for conveying a valid title in respect of the same to the plaintiff under Ex.A2, accordingly, it is further noted that inasmuch the plaintiff has miserably failed to establish that he owns any land in S.No.340 and also failed to establish that the subject Naga tree was

standing in the boundary line between his lands and the lands of DW3, the question as to whether the plaintiff has to implead all the co-owners of alleged land of the plaintiff as such also does not arise and particularly, when it is found that the plaintiff has miserably failed to establish that he has a valid title to an extent of land in S.No.340 at Kil-Kundha Village and when the plaintiff has miserably failed to establish that the defendants had illegally cut the subject Naga tree and entitled to recover the suit amount from them as claimed by the plaintiff, the question whether the decree can be passed jointly against the defendants etc., also does not arise for consideration as such, when it is found that the plaintiff has miserably failed to establish the cause of action for enabling him to institute the present suit against the defendants as such.

19. In the light of the above position and as rightly determined by the trial Court, the plaintiff has miserably failed to establish that he has a valid title to the subject Naga tree and valid title over the alleged lands on which the subject Naga tree was said to be standing and failed to establish that the defendants had illegally cut the subject Naga tree and failed to establish that the value of the tree is Rs.10,000/- and also failed to establish that he has a valid cause of action to institute the suit against the defendants and thus, it is seen that the trial Court has rightly negatived the reliefs sought for by the plaintiff and the first appellate Court without considering the issues involved in the matter, in the right perspective, either on factual aspects or on legal aspects, had without giving acceptable and convincing reasons set-aside the well considered judgment and decree of the trial Court and in such view of the matter, the judgment and decree of the first appellate Court cannot be sustained any further and liable to be set-aside. Accordingly, the substantial questions of law formulated in this second appeal are answered.

20. In conclusion, the judgment and decree dated 20-04-2001 passed in A.S.No.8 of 2000 are set-aside and the judgment and decree dated 30-11-99, passed in O.S.No.116 of 1997 are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

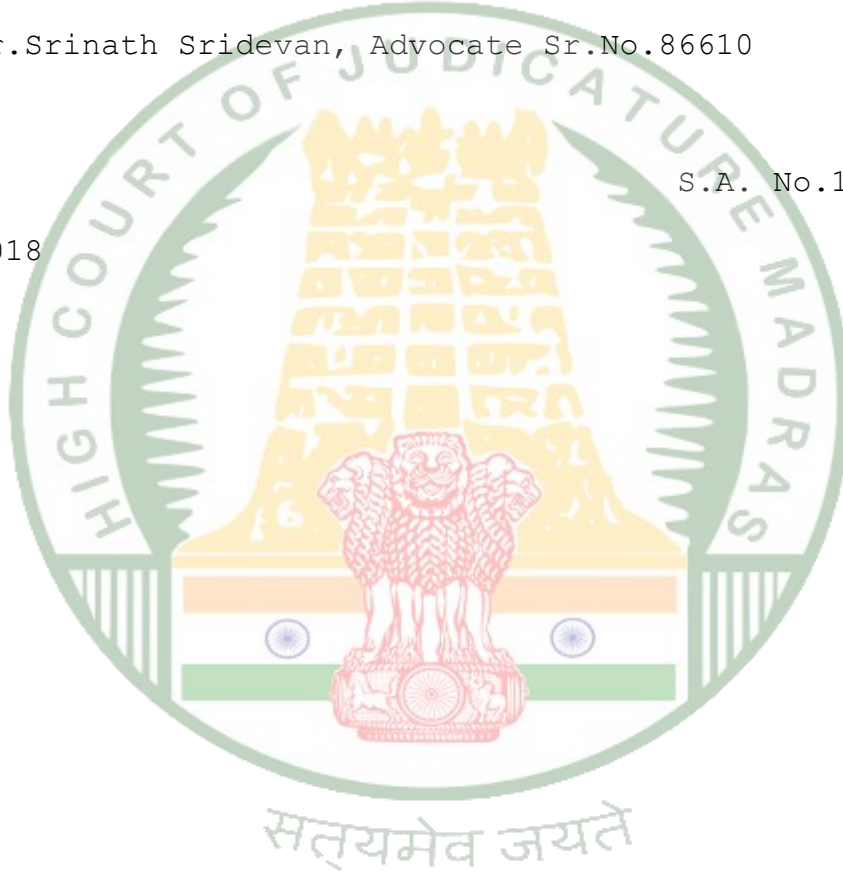
1. The District Judge and Appellate Authority,
Nilgiris at Udhagamandalam.
2. The District Munsif, Udhagamandalam.

Copy to: The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1cc to Mr. Srinath Sridevan, Advocate Sr.No.86610

S.A. No.1038 of 2001

VD(CO)
sm:13.2.2018



WEB COPY