



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.07.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.(MD)No.624 of 2014

1.Thangavel @ Mukandi

2.S.Chellapandi

... Appellants/ Appellants/
Defendants

Vs.

1.S.Ramiah Thevar

2.Muthupandi

... Respondents/Respondents/
Plaintiffs

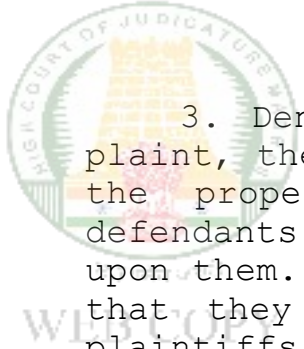
Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree of the learned Principal Subordinate Judge, Tirunelveli in A.S.No.77 of 2013, dated 09.04.2014, confirming the Judgement and Decree of the learned II- Additional District Munsif, Tirunelveli, in O.S.No.590 of 2009, dated 12.07.2013.

For appellants : Mr.V.Kannan
For respondents : Mr.I.Velpradeep

JUDGMENT

The defendants, who had lost before both the Courts below, have preferred this appeal. The suit has been filed by the plaintiffs against the defendants for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession of the suit property.

2.The suit property, according to the plaintiffs, has been belonging to them ancestrally. The plaintiffs are also having a house in the said property. Besides the house, the plaintiffs are also having a garden land in the suit property. The Plaintiffs have also produced Natham Nilavari Thitta Thuya Chitta for the suit property. It is also claimed that they are paying the building tax. The defendants, having no manner of right, title and interest in the suit property, tried to interfere with the peaceful possession of the plaintiffs. Hence, the suit was filed for bare injunction.



3. Denying the facts leading to the cause of action in the plaint, the defendants have claimed that they are the co-owners of the property and hence, injunction cannot be granted. The defendants have also mentioned as to how the property devolved upon them. The defendants have insisted in their written statement that they are contemplating to take legal action against the plaintiffs. However, no action has been taken further.

4. Both the Trial Court as well as the Appellate Court have held that the plaintiffs have proved their possession and thus, decreed the suit.

5. Aggrieved by the same, the above appeal has been filed and at the time of admission, notice was issued to the respondents. The plaintiffs, who have bounden duty to prove their possession, have filed Ex.A.1, which is a chitta in respect of Patta No.672 standing in the name of the plaintiffs. Ex.A.2 is the two House Tax receipts in the name of the second plaintiff. Ex.A3 is a rough sketch. Ex.A4 is the three House Tax receipts in the name of the second plaintiff. Ex.A.5 is the Water Tax Receipt. The other documents filed by the plaintiffs are Electricity Bill and Othi deed executed by the plaintiffs in favour of the defendants' father. There is also a Othi discharge receipt executed by the father of the defendants in favour of the plaintiffs under Ex.A.8.

6. Disbelieving the above documents, the defendants have produced Ex.B.1 - chalan for the payment of money to the Panchayat Union Office, Manoor and Exs.B2 and B3 - petitions given by the first defendant to the Tahsildhar, Tirunelveli for change of patta.

7. The plaintiffs have contended that the suit property devolved upon them ancestrally and they are having a house bearing Door No.6/88 in the suit property and they have been in possession and enjoyment of the same. On the part of the defendants, they claimed that they are in joint possession of the suit property, along with the plaintiffs. The contention of the defendants that they are in joint possession shows that they have admitted the possession of the plaintiffs. It was specifically mentioned in paragraph No.10 of the Written Statement that the defendants' father was demanding the plaintiffs and other to agree for an amicable partition and separate possession of the suit property, which the plaintiffs have evaded deliberately.

8. In the above facts, it has to be considered as to whether the plaintiffs have proved their possession in the suit property. Though it is disputed by the defendants about the measurement of the suit property, there is no scrap of paper produced by them to substantiate the same. When the defendants claimed their right over the suit property through joint possession, the same has to be established in the manner known to law.



9. Being suit for bare injunction, the Court is only to assess the documents available before it to decide the case. The document filed on behalf of the plaintiffs, Ex.A.1 - patta has not been disputed. The plaintiffs have also filed the Property Tax receipts, Electricity bill receipt, etc., to prove their possession. Ex.A.7 is a Othi deed and Ex.A.8 is the discharge receipt for the same. The said Othi deed was in favour of the defendants' father. If the Othi deed was not discharged, it is understandable that the defendants can be said to be in joint possession of the property. However, as the Othi deed has been discharged and the plaintiffs have produced various documents to prove their possession. The contention of the defendants cannot be accepted. As per Ex.A.7 and Ex.A.8, the title of the plaintiffs has been accepted, as the property was given only in Othi to the defendants' father and therefore, the contention that the cloud has cast upon the title, is also unacceptable.

10. In the light of the above discussions, as the plaintiffs have established their possession over the suit property, the Courts below have rightly granted the decree for permanent injunction. In the absence of any question of law arising out of the said decision, the Second Appeal cannot be entertained and the same is liable to be rejected.

11. In the result, this second appeal fails and the same is, accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Tirunelveli District, Tirunelveli.
2. The II-Additional District Munsif,
Tirunelveli District, Tirunelveli.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.KANNAN, Advocate, SR No. 68149.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate, SR No. 68525.

DSS/MSA

AE/MR-KKR/SAR1/21.08.2017/3P/6C