



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2018

Pronounced on : 19.09.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1572 of 2001

1.Vellikannan (deceased)

2.Perumal

3.Duraikannu

4.Ponni

5.V.Marimuthu

6.G.Mariamammal

7.M.Muthulakshmi

8.V.Jeeva

9.V.Prakash

10.L.Latha

11.S.Kalai

12.K.Banu

13.M.Selvi

14.T.Govindammal

(Appellants 4 to 14 brought on record as

LR's of the deceased 1st appellant vide

order of court dated 07.03.2018 made

in CMP.No.770 to 772/2009 in S.A.No.1572/2001)

... Appellants/Respondents

Vs.

1.Kuppammal

2.Elangi Ammal

3.Selvi Ammal

... Respondents/Plaintiff 2 to 4

Prayer:- Second Appeal filed under Section 100 of C.P.C., to set aside the Common Judgment and decree passed in A.S.Nos.23 of 2000 and A.S.No.30 of 2000 dated 12.04.2000 dismissing the appeal filed by the appellants viz., A.S.No.30 of 2000 and allowing the appeal filed by the respondents viz. A.S.No.23 of 2000 on the file of the Additional District Judge, Tiruvannamalai, modifying the Judgment and Decree in O.S.No.917 of 1991 on the file of the Principal District Munsif, Arni.

For Appellants : Mr.M.Venkatakrishnan

For Respondents : Mr.S.Thirunavukkarasu



J U D G M E N T

This second appeal has been filed by the defendants against the judgment and decree passed by the Additional District Judge, Tiruvannamalai in A.S.No.23 of 2000 and A.S.No.30 of 2000 dated 12.04.2000.

2. One Chinnakuzhandhai Ammal had filed a suit in O.S.No.917 of 1991 on the file of the District Munsif, Arni, to declare her title over the suit property and to restrain the defendants by means of permanent injunction from interfering with her peaceful possession and enjoyment of the suit property. During pendency of the said suit, the said Chinnakuzhandhai Ammal died and hence her legal representatives have been impleaded as plaintiff Nos.2 to 4. The learned District Munsif by the judgment dated 29.04.1997 has decreed the suit partly. He granted decree for declaration of plaintiff's title in respect of the land situated in S.No.27/5 measuring about 24 cents. He also granted decree for permanent injunction restraining the defendants from interfering with the plaintiff's enjoyment in respect of the trees situated on the A-C line as mentioned in Exs.C4 and C5. However, he dismissed the suit in respect of the trees situated on A-B line as mentioned in Ex.C4 and C5. He directed the parties to bear their respective costs.

3. The plaintiffs have filed an appeal in A.S.No.23 of 2000 on the file of the Additional District Judge, Tiruvannamalai, as against the disallowed portion of the prayer in the suit. The defendants have filed an appeal in A.S.No.30 of 2000 on the file of the Additional District Judge, Tiruvannamalai as against the decree granted in favour of the plaintiffs. The learned Additional District Judge, Tiruvannamalai by the common judgment dated 12.04.2000 has allowed the appeal in A.S.No.23 of 2000 without costs and decreed the suit as prayed for without costs. However, she dismissed the appeal in A.S.No.30 of 2000 without costs which was filed by the defendants. Feeling aggrieved, the defendants have filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the amended plaint, in brief, are as follows:

The first plaintiff viz., Chinnakuzhandhai Ammal is the absolute owner of the suit property. She had purchased the same under a registered sale deed dated 25.03.1958. In the suit property, there are more than 40 palmyrah trees and the first plaintiff is in possession and enjoyment of the said trees. The first plaintiff had perfected title even by adverse possession by long and continuous possession for many years. The defendants



are owners of the neighbouring land and they have no right or title over the land or the trees in the suit property. About two years ago, at the instance of the first plaintiff's daughter (third plaintiff), the Officer of the Survey Department had measured the lands of the first plaintiff and the defendants and demarcated the boundaries. It was then found that all the palmyrah trees are within the limits of the first plaintiff's land. The defendants were present at the time of measurement and accepted the correctness of the measurement, but subsequently, the defendants threatened to enter into the suit property and cut the palmyrah trees. Hence the first plaintiff was constrained to file the above suit for the aforesaid reliefs. During pendency of the suit, the first plaintiff died and her legal representatives have been impleaded as plaintiff Nos.2 to 4.

5. The averments made in the written statement filed by the second defendant and adopted by the defendants 1 and 3 are, in brief, as follows:

The defendants are brothers and they have divided their properties. In the said partition, the western portion was allotted to the third defendant, middle portion was allotted to the first defendant and eastern portion was allotted to the second defendant. These lands were purchased long back by the parents of the defendants and they were in possession and enjoyment of the same for several decades and perfected title by adverse possession also. The defendants' father had sown palmyrah nuts after purchase of lands throughout the boundaries of their lands and on the ridges. There are about 400 palmyrah trees. The plaintiffs' land in question is adjacent and north of first defendant's land. The plaintiff's land is lower in level and the land of the defendants is higher in level. The northern ridges of the defendant's lands are firm with fully grown up palmyrah trees of several years and they are of the same growth as the other palmyrah trees on the ridges of the defendants lands. There are no full grown up palmyrah trees on the ridges of the plaintiff's land either in their northern or eastern ridges of their land. Further, no trees at all on the southern portion of the plaintiff's land. The palmyrah trees are in the enjoyment and possession of the defendants and they had prescribed title by adverse possession also to the respective trees. The plaintiffs have not enjoyed the palmyrah trees at any point of time. The defendants are disputing the title of the ridges concerned, on which 24 palmyrah trees are situated. The said ridge absolutely belongs to the defendants. The allegation that the defendants were present at the time of survey measurement and have accepted the correctness of it are all false. The defendants do not know the extent and survey Number of the plaintiffs' lands and the correctness of measurement or about the survey made. Therefore, the defendants prayed to



dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the third plaintiff was examined as PW1 and they have marked Exs.A1 to A4 as exhibits. On the side of the defendants, first defendant was examined as DW1 and two more witnesses were examined as DW2 and DW3. They have marked Exs.B.1 to B.13 as exhibits. The Advocate Commissioner was examined as CW1 and his reports and sketches were marked as Exs.C1 to C5.

7. The learned District Munsif, after considering the materials placed before him found that the land situated in S.No.27/5 measuring about 24 cents belongs to the plaintiffs. Accordingly, he decreed the suit for declaration of the title in respect of the aforesaid land. So far as the palmyrah trees are concerned, the learned District Munsif has granted permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the trees lying on the A-C line as mentioned in Exs.C4 and C5. He has not granted decree in respect of the trees lying on the A-B line as mentioned in Exs.C4 and C5. Aggrieved by the same, the plaintiffs have filed an appeal in A.S.No.23 of 2000 and the defendants have filed an appeal in A.S.No.30 of 2000 on the file of the Additional District Judge, Tiruvannamalai. The learned Additional District Judge, Tiruvannamalai by the common judgment has allowed the appeal in A.S.No.23 of 2000 which was filed by the plaintiffs and decreed the suit fully. However, she dismissed the appeal in A.S.No.30 of 2000 which was filed by the defendants. Aggrieved by the same, the defendants have preferred the present second appeal.

8. At the time of admitting the second appeal, this court has formulated the following substantial questions of law:

"(a) Whether the suit filed by the plaintiff for declaration of title and for permanent injunction is maintainable without a prayer for recovery of possession, especially when the courts below have found that the defendant is in possession?

(b) Whether the lower appellate court is right in holding that though the appellants are in possession of the disputed trees, they are not entitled to continue to be in possession on the ground that the appellants have encroached upon the plaintiff/respondent's land?"

9. Heard Mr.M.Venkatakrishnan, learned counsel for the appellants and Mr.S.Thirunavukkarasu, learned counsel for the



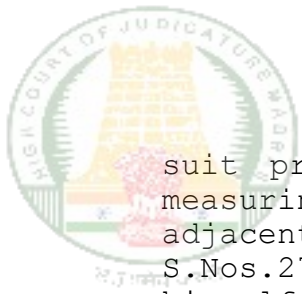
respondents.

10. Substantial Questions of law (a) and (b):

Learned counsel for the appellants/defendants has submitted that the first appellate court erred in reversing the well considered judgment of the trial court especially when the trial court has clearly found that the trees situated on the A-B line of the Commissioner's plan absolutely belonged to the defendants. He further submitted that the first appellate court having found that the defendants have encroached upon the plaintiffs land marked as A-C line in Exs.C4 and C5, it ought to have dismissed the suit on the ground that the plaintiffs have not filed a suit for recovery of possession. He further submitted that the first appellate court ought to have found that the trees found in A-C line also belong to the defendants. He further submitted that the physical features of the property would show that the plaintiffs land is situated 2½ feet lower level than the land of the defendants' and in such a case, it has to be presumed that the trees found on the A-C line and A-B line are in the possession of the defendants only, but the courts below failed to consider the aforesaid facts and therefore, he prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and dismiss the suit in toto.

11. Learned counsel for the respondents has submitted that the DW1 has admitted in his evidence that the plaintiff is entitled for the lands situated in S.No.27/5, measuring about 24 cents. He further submitted that the Commissioner's report and his evidence clearly show that the palmyrah trees which are situated on the A-C line and A-B line would come within the aforesaid 24 cents and as such, the plaintiff is entitled not only for 24 cents of land but also the trees which are lying on the aforesaid lines. He further submitted that before the first appellate court, the defendants have not claimed any right over the plaintiffs' 24 cents and that being so, it cannot be said that the defendants have encroached the plaintiffs' land and therefore, the plaintiff is entitled for the relief of declaration and for permanent injunction. He further submitted that the first appellate court, taking into consideration of all the aforesaid facts, has rightly allowed the plaintiffs' appeal and dismissed the defendants' appeal and in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

12. Originally, the first plaintiff viz., Chinnakulandai Ammal had filed a suit in O.S.No.917 of 1991 for the relief of declaration of her title over the suit property and for permanent injunction to restrain the defendants from disturbing her peaceful possession and enjoyment of the suit property. The



suit property is situated in S.No.27/5 of Athipakkam village measuring about 24 cents. The defendants' lands are situated adjacent to the plaintiff's land and their lands are situated in S.Nos.27/3, 27/6 and 27/7. The first defendant while examining himself as DW1 has admitted in his evidence that he is not having any objection as to the plaintiff's entitlement of 24 cents situated in S.No.27/5. But he is claiming right only with regard to palmyrah trees which are standing on the A-C and A-B lines as mentioned in Exs.C4 and C5 (Commissioner's plan and Surveyor's plan).

13. The Commissioner has stated in his report and also in his evidence that the aforesaid trees are coming within the boundary of the plaintiff's land and as such, the plaintiff is entitled for the aforesaid trees also.

14. The plaintiffs have claimed that they are enjoying the fruits of the aforesaid palmyrah trees; whereas the defendants claimed that they are enjoying the fruits of the aforesaid palmyrah trees. As already pointed out that the aforesaid trees come within the boundary of the plaintiff's land and as such, she is entitled to the aforesaid trees also.

15. In the Commissioner's plan, the trees which are situated on A-C line have been marked on the side of the plaintiff's land, but the trees which are situated on the A-B line have been marked on the side of the defendants land. In the Commissioner's report, the Commissioner has stated that the trees which are situated on the lines of A-C and A-B are coming within the boundary of the plaintiff's land. He has reiterated the same in his evidence also. In his cross examination, he has stated that the trees which are situated in A-B line which appears to be came in S.No.27/6, but on measurement, actually they are coming within the plaintiff's land. Therefore, the defendants cannot claim any right over the said trees.

16. The surveyor has mentioned in his plan (Ex.C5) that the defendants have encroached a portion of the plaintiff's land. The surveyor is not entitled to say, who is in possession of the property. He can measure the land and fix the boundary and assist the Advocate Commissioner, but he cannot say who is in possession of the property. It is also not the case of the defendants that they have encroached the plaintiff's land. On the contrary, as already pointed out that the DW1 has categorically stated in his evidence that he is not having any dispute with regard to the fact that the plaintiff is entitled for 24 cents in S.No.27/5. As per the Commissioner's report and evidence that the trees which are situated on A-C and A-B lines are coming within the boundary of the plaintiff's land. When the plaintiff is entitled to the aforesaid 24 cents, she is entitled to the aforesaid tress also, because those trees come



only within the boundaries of the aforesaid 24 cents. Hence the plaintiffs need not have asked for recovery of possession. Therefore, the first appellate court's finding that the plaintiff is entitled for declaration and permanent injunction including palmyrah trees is perfectly correct. The said finding does not require any interference. Accordingly the substantial questions of law are answered.

17. It is also to be pointed out that the trial court has partly decreed the suit granting decree for the land measuring about 24 cents and also in respect of trees which are situated on the A-C line. However, it has dismissed the suit in respect of the trees situated on the A-B line. The plaintiff has filed an appeal in A.S.No.23 of 2000 against the dismissal of the suit in respect of the trees which are situated on the A-B line. Likewise, the defendants also filed an appeal in A.S.No.30 of 2000 granting the decree in respect of the trees which are situated on the A-C line. The first appellate court by the common judgment dated 12.04.2000 has allowed the appeal which was filed by the plaintiffs and dismissed the appeal which was filed by the defendants. The defendants have filed a single second appeal against the decrees passed in both the appeals. The defendants ought to have filed separate second appeals against the decrees passed in the first appeals. Instead of filing separate second appeals, a common second appeal has been filed and only one court fee has been paid. On this ground also, the second appeal is not maintainable.

18. In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

gv

To

1. The Additional District Judge,
Tiruvannamalai.
2. The Principal District Munsif,
Arni.
3. The Section Officer,
V.R.Section,
High Court, Madras.



+1cc to M/s.S.Hemalatha, Advocate SR.No.65673

+1cc to Mr.P.Seshadri, Advocate SR.No.65273

S.A.No.1572 of 2001

GMV (23/10/2018)