

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.No.179 of 2008

1.Y.S.Bardhan
2.Y.S.Narayanan
3.Y.B.Thiagarajan
4.Y.S.Jayaraj
5.Jayalakshmi
6.Malathy
7.Prema
8.Manjula
9.Yuvaraj

...Appellants/Defendants

Vs.

1.K.Raju
2.K.Murthy
3.Y.D.Bhiman
4.Muthu
5.Meenakshi
6.Krishnamurthy
7.Malathy
8.Matheswaran

...Respondents/Plaintiffs

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the decree and judgment dt.20/12/07 in A.S.No.51/04 on the file of Sub Court, Uthagamandalam reversing the decree and judgment in O.S.No.41 of 2002 dt.4/6/04 on the file of District Munsif, Coonoor.

For Appellants : Mr.R.Subramanian

For Respondents: Mr.T.T.Ravichandran for R1 & R2

RR3 to 8 : Given up

JUDGMENT

Defendants 2, 3, 6 & 7 and the legal representatives of deceased first defendant in O.S.No.41 of 2002 on the file of District Munsif Court, Coonoor, have come forward with the present Appeal challenging the judgment and decree of the first Appellate Court in A.S.No.51 of 2004, by which the first Appellate Court has passed a decree of injunction against them not to interfere with the plaintiffs' peaceful possession of the suit property. Parties would be referred to by their rank before the trial Court.

2. The scope of this Appeal falls within a narrow compass, and hence, facts are stated to the extent required:

- The suit property is stated to have an extent of 1.36 acres comprised in old Survey No.250 in Yedapalli Village. There is some discrepancy in this area, as the defendants would contend that it has an extent of only 1.17 acres.
- This property, according to the plaintiffs, originally belonged to one Mr.Joghee Gowder. He had four sons and they are Nanjan, Kullan, Mada and Bellan, and the demise of Joghee Gowder, his aforesaid four sons became entitled to the said property in equal shares. While Nanjan and Kullan have left behind their respective heirs, both Mada and Bellan died without any issues. While so, on 13.10.1902, under Ex.A1, Nanjan had sold his share of 34 cents to his brother Kulan. Plaintiffs' claim under Kulan.
- According to the plaintiffs, the defendants 1 to 3 are strangers to the family and they threatened their possession asserting some right over the same. In the suit, the plaintiff's claim right to an extent of 29 cents in old re-survey No.250 B correlated to re-survey No.165/3 and have laid the suit for permanent injunction and for other reliefs.

3. Defendants 4 and 5 are descendants of Nanjan's branch, but, so far as this case is concerned, they remained exparte even before the trial Court. In the written statement filed by the contesting defendants 1 to 3, they contend that the total extent of land available in Old Survey No.250/B was only 1.17 acres. They claimed right over 16.5 cents in re-survey No.165/4 and traced their title under four sale deeds which are exhibited in the trial side as Exts.B-6 to B-9, all of which were executed by Nanjan's son Dhonnan in their favour, and dated between April, 1964 and May, 1968.

4.1 The dispute went for trial, and both sides have produced oral and documentary evidence. On appreciating the evidence, the trial Court came to the conclusion that the plaintiffs have not established that they have title and possession of the property described within the four boundaries of the property, in relation to which, they seek the relief. This decree was challenged by the plaintiffs in A.S.No.51 of 2004 before the Sub-Court, Nilgiris.

4.2. The first Appellate Court has considered the evidence on record as to the exact property over which the plaintiffs asserted right. Whereas, the plaintiffs claim title and possession in respect of the property in S.No.165/3, the defendants claim title and possession over re-survey No.165/4. The first Appellate Court thought it fit to grant the decree of injunction, vis-a-vis the suit property in R.S.No.165/3. In granting this decree, the first Appellate Court has also proceeded to enter another finding that neither side are in occupation of re-survey No.165/1, which finding it bases on a report of the Tahsildar which is available on record as Ext.B-1.

5. This Appeal is admitted on the following substantial questions of law:-

a) Whether in law has not the lower appellate Court failed to see that Ex.A1 is inadmissible in evidence as the original was not produced and further there are no boundaries in Ex.A1 and hence, it has no evidentiary value vide 1998 MLJ 502 ?

b) Whether in law has not the lower appellate Court omitted to see that Ex.B2 clearly shows that the plaintiffs were not in possession and consequently the suit for injunction has to be dismissed as rightly held by the trial Court ?

6.1 Heard, both sides. It is seen from the oral evidence on record that it confines the right claimed by both side to the specific extent in under re-survey nos.165/3 and 165/4 respectively. It also emerges from the submissions made by the counsel appearing for the parties hereto that there appears to be a confusion as to the exact location of the plots covered under these Survey numbers in the entire field area in S.F.No.165. No survey plan was made available by anyone of the parties to assist this Court in ascertaining the fact if the defendants are keen to interfere with the plaintiffs' claim they are in possession of the property in S.No.165/3.

6.2. Further, in the context of Ext. A-1, the only contention raised is that the original copy is not produced. But, there is no case that the document itself is invalid. So far as the second substantial question of law is concerned, it

again is a document, where, the Tahsildar has actually directed the parties to go for a Civil Suit. Therefore, in substance, it does not decide any of the rights of the parties, and the Tahsildar cannot be faulted as he adopted the appropriate course open to him.

7. This is a case, where there is certain degree of confusion as to the identity of the respective properties over which parties claim their right, title and possession, and this can be conveniently decided only in a substantial suit for declaration of title or may be for demarcation of property. Therefore, this cannot be decided in a Second Appeal in a Suit for injunction, and necessarily parties are relegated to approach appropriate Court for establishing the respective title and entitlement to possession, if they are so desirous.

8. In the result, this Second Appeal is dismissed but subject to an order of a post decreetal status quo under Order XXXIX, Rule 2 of the Code of Civil Procedure for a period of six months, to facilitate the parties to approach the appropriate Court seeking larger relief as indicated above, if any of them are desirous. No costs.

tsg

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Judge, Uthagamandalam.
2. The District Munsif, Coonoor.

Copy to:-

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+1cc to Mr.R.Subramanian Advocate, SR.No.77156

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Kak (05/04/2019)