

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

S.A.No.1765 of 1999
and
C.M.P.No.18813 of 1999

1.Rajarathinam
2.Periasamy

...Appellants/Defendants 1 & 3
Vs.

1.Shanmugasundaram
Ramaswamy Pillai
through his Power Agent
Arunachalam

2.Balasubramanian (died)
3.Dharmalingam
4.R.Boovathi
5.Minor R.Kalaiyaran
6.Minor R.Divya

(Both the minors are rep. by their
mother & Natural Guardian R.Boovathi)

(RR4 to 6 brought on record as LR's of the
deceased 2nd respondent viz. R.Balasubramanian
vide court order dt.14.03.2017 made in
C.M.P.No.18647 to 18649/2003 in S.A.No.1765
of 1999)

..Respondents/Plaintiff/Defendants 2 & 4

Prayer:- The Second Appeal has been filed under Section 100
of C.P.C. against the judgment and decree passed in A.S.No.26 of
1997 dated 08.06.1998 on the file of Additional District Judge,
Nagapattinam, reversing the judgment and decree passed in
O.S.No.205 of 1991 dated 31.08.1995 on the file of District
Munsif Court, Tiruthuraipoondi.

For Appellants : Mr.A.Ilango
For Respondents : Mr.T.Sathiyamoorthy
for M/s.G.M. Mani
Associates for R1
No Appearance for R3
Steps due for R4 to R6

J U D G M E N T

The plaintiff / respondent filed a suit for permanent injunction restraining the defendants and their men and agents from in any way interfering with the plaintiff's possession and enjoyment of the suit property and for directing the defendants to pay a sum of Rs.800/- as damages towards the value of tamarind fruits plucked and taken away by the defendant from the suit property. The unsuccessful defendants 1 & 3, who have lost their case before the First Appellate Court, have filed this second appeal.

2.The appellants herein are the defendants 1 & 3. The first respondent herein is the plaintiff. The respondents 2 & 3 herein are the defendants 2 & 4. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows:

The case of the plaintiff is that, the suit property mentioned in the schedule belonged to plaintiff's father and he and his parents have been in possession and enjoyment of the suit property including the grown up tamarind tree for several years. Originally, the suit property belonged to Inam estate of Sargurunatha Devasthanam and after the abolition of Inam estate, the suit property has been classified as ryotwari land. After the full fledged enquiry, the patta for the suit property was issued in the name of Ponnusamy Pillai, the father of the plaintiff on 12.06.1971. The plaintiff's father, Ponnusamy Pillai had been paying kists to the Government for the suit property. The plaintiff's father Ponnusamy Pillai died on 10.07.1983, leaving behind his son i.e. Plaintiff and two daughters. The plaintiff's wife Saroja, is none other than the daughter of the elder sister of the plaintiff. The plaintiff's father executed two Wills dated 08.12.1981 and 05.05.1982. The plaintiff's wife Saroja, his brother in law Balasundaram and Meenakshi, Mother in law of plaintiff, claimed to be the owners of the properties of the deceased Ponnusamy Pillai on the basis of the alleged Will executed by Ponnusamy Pillai on 08.12.1981. Aggrieved against the claim made by the wife, brother in law, sister and others, the plaintiff filed a suit in O.S.No.72 of 1983, questioning the genuineness of the said two Wills.

4.The suit was dismissed by the Trial Court and after in appeal, the plaintiff obtained decree in A.S.No.114/1985, dated 27.02.1986 and the First Appellate Court rejected the said two Wills claimed against the plaintiff. Thereafter, the plaintiff has been in possession and enjoyment of the suit property.

5.While being so, the defendants, who are the sons of the plaintiff's father's brother claimed right in the tamarind tree in the suit property. Due to personal animosity, the defendants 1 to 4 attempted to pluck tamarind fruits and dismantle the fence and their acts were thwarted by the plaintiff. The defendants have no rights in the tamarind tree situate on the southern side of the suit property to the extent of 70 cents in survey No.1390/4. Aggrieved by the action of the defendants, the plaintiff has filed a suit in O.S.No.205 of 1991 for permanent injunction against the defendants 1 to 4 and the amount of Rs.800/- towards damages for the loss of 200 kilo tamarind fruits.

6.The sum and substance of the written statement filed by the 3rd defendant and adopted by the defendants 1, 2 & 4 are as follows:

The defendants denied the averments made in the plaint that the tamarind tree in survey No.1390/4 to the extent of 70 cents never belonged to the plaintiff's father viz. Ponnusamy Pillai. In fact, the defendants 1 to 4 have been enjoying the tamarind tree since 1944 to the extent of 50 kuzhis. The father of the defendants 1 to 4 claimed the right in the said tamarind tree and filed a suit in O.S.No.72 of 1983 against the plaintiff's father. The said suit was compromised between the father of the defendants and the father of the plaintiff. According to the said compromise, the tamarind tree in question has been allotted to the defendants' family. Accordingly, the defendants 1 to 4 have perfected title in the suit tamarind tree by way of adverse possession and the plaintiff's family never enjoyed the suit tamarind tree in any manner. The plaintiff conducted second marriage while his first wife Saroja is alive and deserted his wife Saroja. Hence, the 3rd defendant questioned the act of the plaintiff and the plaintiff has been on enemical terms with the defendants' family since his second marriage. The plaintiff has claimed the right in the tamarind tree unlawfully. Hence, the plaintiff is not entitled for permanent injunction and any damages for the tamarind fruits in the suit.

7.The Trial Court after framing the issues and on a perusal of the entire records, decreed the suit in respect of land admeasuring 160 kuzhis and granted permanent injunction in favour of the plaintiff. However rejected the relief of injunction in respect of land admeasuring 50 kuzhis together with tamarind tree situated on the southern side of the suit property and dismissed the suit without costs.

8.As against the Trial Court judgment, the plaintiff preferred an appeal before the First Appellate Court in A.S.No.26 of 1997. The First Appellate Court, after re-

appreciating the entire records, allowed the appeal thereby, setting aside the judgment and decree of the Trial Court and granted decree for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the entire suit property and also directed the defendants to pay Rs.800/- to the plaintiff towards damages for plucking the fruits of tamarind. As against the reversal judgment, the defendants 1 & 3 have filed the present second appeal.

9.This Court vide its order dated 25.11.1999, ordered Notice of Motion returnable by 22.12.1999 and the matter was directed to be posted on 10.01.2000. However, till date the second appeal has not been admitted.

10.At the time of arguments the learned counsel appearing for the appellants raised the following substantial questions of law:

1.Whether the suit is maintainable for bare injunction without declaratory relief of declaration of title?

2.Is it not the suit barred by resjudicata in view of the judgment and decree passed in A.S.No.9 of 1954 dated 30.11.1954 under Ex.B1?

3.Is the suit is maintainable when the respondent 1 / plaintiff admitted that he removed the tamarind tree allotted to him under Ex.B1?

4.Is it not the appellant prescribed title by way of prescription?

11.The learned counsel appearing for the appellants would submit that there was a dispute with regard to the suit property in the year 1950 itself. The defendants filed a suit as against the plaintiff's father in O.S.No.4 of 1953 and the same was dismissed. As against the dismissal, the defendants preferred an appeal in A.S.No.9 of 1954 and the same was decreed based on the compromise memo filed by the plaintiff's father and the defendants' father. The said decree was filed before the Trial Court and the same has been marked as Ex.B1.

12.Apart from the above, the suit properties are the joint family properties and the same were enjoyed by both the plaintiff's father and the defendants' father. The defendants' family enjoyed the land admeasuring 50 kuzhis right from the year 1954 with the consent of the plaintiff and his father. The First Appellate Court, without considering the above aspect and without perusing Ex.B1, granted decree in favour of the

plaintiff, which is unsustainable one and hence the judgment of the First Appellate Court needs to be interfered by allowing the second appeal.

13.The learned counsel appearing for the respondent / plaintiff would submit that originally the entire suit property belonged to Devasthanam and under the Inam Abolition Act, the entire property was vested with the Government. After which, the plaintiff's father made a claim before the Settlement Tahsildar (Inam Abolition Act) and after full fledged enquiry, the Settlement Tahsildar granted patta in favour of the plaintiff's father and the same has been marked as Ex.A5. The respondent / plaintiff has also filed O.S.No.72 of 1983, questioning the genuineness of the said two Wills, alleged to have been executed by the plaintiff's father in favour of the plaintiff's sister family and after an elaborate trial, the First Appellate Court held in favour of the plaintiff and rejected the Will granted in favour of the plaintiff's sister. In view of the above, the suit property was allotted in favour of the plaintiff and the same was confirmed by the competent Civil Court in the proceedings in O.S.No.72 of 1983 and in A.S.No.114 of 1985. In view of the above, in order to wreck vengeance against the plaintiff, the defendants i.e. pangalis claimed the land and tamarind trees and interfered with the land belonging to the plaintiff and the same is unsustainable one. The First Appellate Court, after perusing the entire records, granted decree in favour of the respondent / plaintiff and the same need not be interfered with in the second appeal.

14.Heard the arguments advanced on either side and perused the materials placed on record.

15.On a perusal of the entire findings of the Trial Court as well as the First Appellate Court and the documents filed by the plaintiff as well as defendants, the facts are as follows; The plaintiff's father and the defendants' father were brothers. The plaintiff's father is the elder brother of the defendants' father. Originally, the suit property belonged to Sargurunatha Devasthanam and after the Inam Abolition Act the entire property was vested with the Government. After which, the plaintiff's father made a claim before the Settlement Tahsildar, appointed under the Inam Act. After the full fledged enquiry, the Settlement Tahsildar, granted patta in favour of the plaintiff's father in Survey No.1390/4 to the extent of 70 cents on 12.06.1971. After the patta granted by the Settlement Tahsildar, the plaintiff's father fenced the entire 70 cents and constructed a small house to reside and put up a cattle shed on the southern side and planted tamarind trees and other trees on the south west. The said tamarind tree is the subject matter of the present suit.

16.The appellants raised a claim based on the Ex.B1 i.e. there was a suit in O.S.No.4 of 1953 between the plaintiff's father and the defendants' father. However, based on the compromise memo filed by them, the suit properties were allotted in favour of the plaintiff's father and the defendants' father. The entire claim made by the defendants in A.S.No.9 of 1954 was the land admeasuring 50 kuzhis allotted in favour of the defendants.

17.On a perusal of Ex.B1, there is no description with regard to the allotment of 50 kuzhis in favour of the defendants' father. In the absence of description of the property in Ex.B1, this court is unable to arrive at a conclusion as to how the disputed property was allotted in favour of the defendants' father in A.S.No.9 of 1954 and based on the compromise memo filed by the brothers namely the defendants' father and the plaintiff's father. The defendants did not establish that he had title by way of adverse possession by long enjoyment of the suit properties with the consent of the plaintiff and his father.

18.Further, in the present case, initially the plaintiff claimed title through Ex.A1, the Judgment in A.S.No.114 of 1985, whereas the defendants claimed title in the suit property by way of adverse possession. However, the defendants cannot claim adverse possession unless they admit the title in favour of the plaintiff.

19.In view of the said position, the claim of adverse possession against the plaintiff is unsustainable one and there is no proof to show that the defendants hold a long standing possession in the suit properties. In the absence of any materials to prove that the defendants are in possession of the suit properties for a long time with the knowledge of the plaintiff and his father, the defendants are not entitled to claim adverse possession. The plaintiff is having prescriptive title over the suit property, by virtue of patta. Unless, contra evidence is available to prove that the plaintiff is not having prescriptive title over the suit property, this court need not direct the plaintiff to file a suit for declaration of title. Since the plaintiff has prescribed title through the settlement officer, he is entitled for injunction against the defendants.

20.For the foregoing reasons, I do not find any error or infirmity in the judgment and decree passed by the First Appellate Court and the substantial questions of law are answered against the appellants.

21.In the result, the second appeal is dismissed and the judgment and decree passed in A.S.No.26 of 1997 dated 08.06.1998 on the file of Additional District Court, Nagapattinam is confirmed. Consequently, connected CMP is closed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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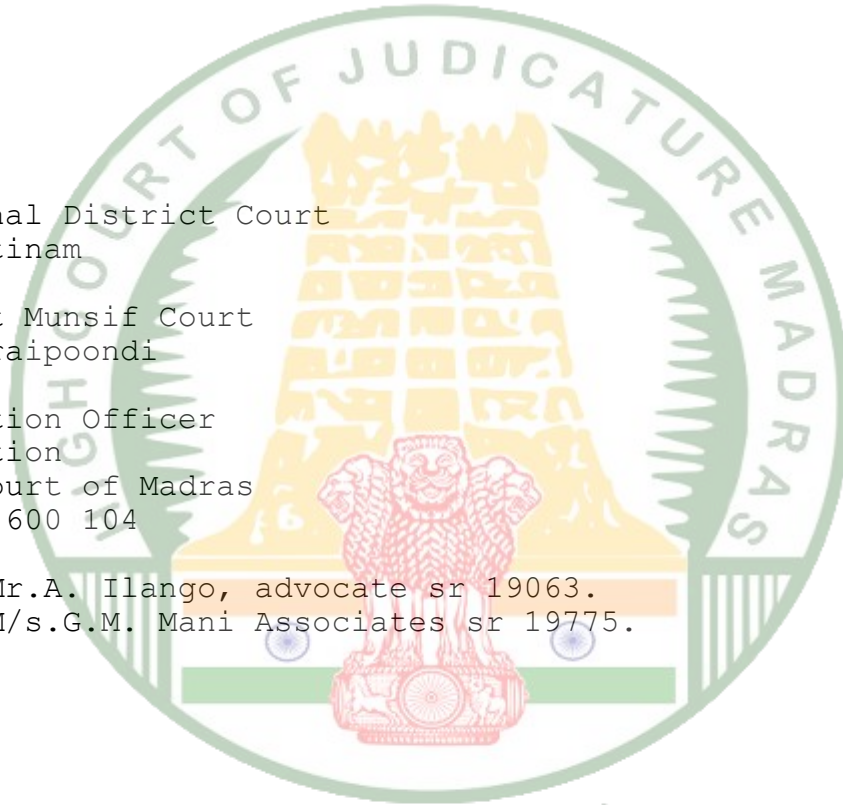
1.Additional District Court
Nagapattinam

2.District Munsif Court
Tiruthuraipoondi

3.The Section Officer
V.R.Section
High Court of Madras
Chennai 600 104

+1 CC to Mr.A. Ilango, advocate sr 19063.

+1 CC to M/s.G.M. Mani Associates sr 19775.



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S.A. No.1765 of 1999

SP(17/04/2018)

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