



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.07.2018

Delivered on: 03.08.2018

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No. of 1917 of 1999

- 1.Arunagiri
- 2.Panchatcharam
- 3.Shanmugam
- 4.Elangovan
- 5.Subramaniam
- 6.Narayana Gandhi
- 7.Kanagi Govindan
- 8.Minor Padmavathi
rep. by mother 9th Appellant
Unnamalai Ammal.
- 9.Unnamalai Ammal.

..Appellants/Defendants

Vs

- 1.Subramanian(Deceased)
son of Muniswamy Gounder
46-A Vettavalam Road
Thiruvannamalai Town.
- 2.S.Kannammal
- 3.S.Muthu
- 4.S.Karthikeyan

..Respondents/LRs of the Plaintiffs

(RR 2 to 4 brought on record as LRs of the Deceased sole respondent vide order of this court dated 5.2.2018 and made in CMP.NO.395 to 397/15 in S.A.No.19/7/1999)

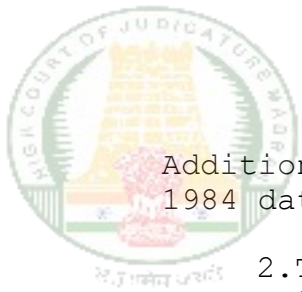
PRAYER:Second Appeal filed under Section 100 of C.P.C, against the Judgment and Decree dated 17.06.1999 and made in A.S.No.136 of 1998 on the file of District Court, Tiruvannamalai, reversing the Judgment and Decree dated 25.08.1998 and made in O.S.No.531 of 1984 on the file of District Munsif Court, Tiruvannamalai.

For Appellants : Ms.A.B.Reehana Begum for
Ms.T.R.Rajaraman

For Respondents : Mr.M. Sriram

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 Principal District Judge, Tiruvannamalai in A.S.No.136 of 1998 dated 17.06.1999, reversing the Judgment and Decree passed by the II



Additional District Munsif, Tiruvannamalai in O.S.No.531 of 1984 dated 25.08.1998.

2.The first respondent herein had filed a suit in O.S.No.531 of 1984 on the file of the II Additional District Munsif, Tiruvannamalai for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The learned II Additional District Munsif, Tiruvannamalai by the Judgment dated 25.08.1998 had dismissed the said suit. Aggrieved by the same, the first respondent herein had filed an appeal in A.S.No.136 of 1998 on the file of the Principle District Judge, Tiruvannamalai. The learned Principle District Judge, Tiruvannamalai by the Judgment dated 17.06.1999 had allowed the said appeal reversing the Judgment and Decree of the trial Court and decreed the suit not only for the relief of permanent junction but also granted the relief of declaration of the title of the plaintiff to the suit property. Feeling aggrieved, the defendants have preferred the present second appeal. During pendency of this second appeal, the first respondent/plaintiff died and his legal representatives have been impleaded as respondents 2 to 4. For the sake of convenience, the parties are referred to as described before the trial Court.

3.The averments made in the Plaint are, in brief, as follows:-

(a)The suit property is a thatched house Bearing Door No.46-A measuring about 888 ½ sq.ft situated in T.S.No.245 of 2005, Vettavalam Road, T.V.Malai town. Originally the plaintiff's mother Thayalnayagi Ammal was the owner of the suit property and also the house situated on the western side of the suit property. A house site was assigned to the plaintiff's mother Thayalnayagi Ammal on 14.04.1970 by the Government measuring about 1777sq.ft., Originally for both the houses, Door Number was assigned as 46. On 01.07.1982 with the consent of their mother, the plaintiff, his brother Pachaiappan and his sister Pachaiammal partitioned the property under a registered partition deed. In this said partition, the western side half portion containing a house was allotted to the share of plaintiff's brother Pachaiappan and the eastern side half portion containing a house was allotted to the plaintiff. The said house is the suit property and a cash of Rs. 500/- was given to the plaintiff's sister Pachaiammal towards her share.

(b) The plaintiff's brother Pachiappan had sold his share to the plaintiff, who in turn, sold to one Mr.Singaravelu. The said Singaravelu, in turn, sold the same to the second defendant herein. Thereafter, Door No.46 was retained for the western side. Door No.46/A was given to the house situated on the eastern side and the said house is the suit property. From the date of partition the respective parties have been in possession and enjoyment of their shares by paying house tax,



etc. The defendants who are not having any right over the suit property prevented the plaintiff from repairing the house and hence the plaintiff was constrained to file the above suit for the relief of permanent injunction. The first defendant is the father of the defendants 2 & 3. During pendency of the suit, the first defendant died and hence, the defendants 4 to 10 were impleaded as his legal representatives.

4.The averments made in the written statement filed by the first defendant and adopted by the defendants 2 & 3 are, in brief, as follows:-

(a) The allegations that the eastern side was assigned to the plaintiffs mother Thayalnayagi Ammal by the Government and subsequently, the plaintiff and his brother and sister had partitioned the suit property and in the said partition, the suit property was allotted to the plaintiffs share and from the date of the said partition, the plaintiff has been in possession and enjoyment of the suit property by paying sales tax, etc., are all false. The plaintiff is not residing in the suit property. The suit property is the vacant site for the past 10 years and hence the question that the plaintiff was attempting to repair the house and the same was prevented by the defendants does not arise. The plaintiff has neither title nor in possession of the suit property.

(b) The suit property originally belonged to one Pakiri Padayatchi. The said Pakiri Padayatchi had sold the same to one Sundara samiyar on 14.02.1942. Subsequently, the said Pakiri Padayatchi had purchased the suit property and other properties from Sundara samiyar under the Sale Deed dated 29.08.1944. Pakiri Padayatchi died prior to the commencement of Hindu Succession Act, 1956, leaving behind his widow Pattu Ammal as the successor for his properties. The said Pattu Ammal had sold the suit property to the first defendant on 05.06.1968. Hence the first defendant had become owner of the suit property. The said Pattu Ammal had executed a lease deed on 07.06.1968 in favour of the first defendant in respect of the suit property. The first defendant, from the date of purchase has been in absolute, open and hostile possession of the suit property and thereby preferred his title by adverse portion. So, the plaintiff has no title to the suit property. He should have filed a suit for declaration of title and without the same, the suit is not maintainable. Therefore, the defendants prayed to dismiss the above suit.

5.Based on the afore said pleadings, the learned District Munsif has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined two more witnesses as P.Ws 2 & 3. He has marked Ex. A1 to A20 as exhibits. On the side of the defendants, the second defendant was examined as DW1. They have marked Ex.B1 to B11 as Exhibits.



6.The learned District Munsif, after considering the materials placed before her found that the suit property and the house situated on the western side were originally belonged to one Pakiri Padayatchi and after his death, his wife Pattu Ammal had sold the eastern portion i.e., suit property to the first defendant under Ex.B2 dated 05.06.1968 and as such, the plaintiff's mother Thayalnayagi Ammal could not have acquired any title by virtue of Ex.A1 patta. Accordingly, she dismissed the plaintiff's suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No. 136 of 1998 on the file of the Principle District Judge, Tiruvannamalai. The learned Principle District Judge, has allowed the said appeal reversing the judgment and decree of the trial Court and decreed the suit not only for the relief of permanent injunction but also granted decree declaring that the plaintiff is the absolute owner of the property. Feeling aggrieved, the defendants have preferred the present second appeal.

7.At the time of admitting the second appeal, this Court has formulated the following substantial questions of law.

(1.) When the plaintiff has filed a suit for claiming a relief of permanent injunction alone, is the learned District Judge right in decreeing the suit for declaration and injunction?

(2.) Whether the learned District Judge right in relying on Ex.A1 patta to prove the title of the plaintiff ignoring the Ex.B1 & B2 documents of title produced by the defendants?

8.Heard. Ms.A.B. Reehana Begum for Mr.T.R.Rajaraman, the learned counsel for the appellants and Mr.M.Sriram, the learned Counsel for the respondents.

9. Question Nos. (1) & (2):-

The learned Counsel for the appellants has submitted that the First Appellate Court erred in reversing the well considered Judgment of the trial Court. She further submitted that the First Appellate Court failed to consider that Ex.B1 dated 29.08.1944 is more than 50 years old document and as per Section 90 of the Indian Evidence Act, 1872, it has to be presumed that the said document is a genuine one. She further submitted that the Appellate Court failed to consider that in view of Exs.B1 & B2, the plaintiff's mother Thayalnayagi Ammal could not have acquired any title under Ex.A1 Patta. She further submitted that the First Appellate Court has failed to consider that the plaintiff while examining himself as PW1 has admitted in his evidence that even before filing of the suit, the house was demolished and as such he could not have been in possession of the suit property on the date of filing of the suit. She further submitted that even though the plaintiff has not asked for any relief of declaration, the First



Appellate Court has granted decree for declaration of title also. She further submitted that the plaintiff has failed to prove his title and possession over the suit property and therefore, she prays to allow this second appeal and set aside the judgment and decree passed by the First Appellate Court and dismiss the suit.

10. Per contra, the learned Counsel for the respondent has submitted that originally the suit property and the portion situated on the western side was the Government Porambokku Land and the Government assigned the said land to the plaintiff's mother Thayalnayagi Ammal under Ex.A1 patta dated 14.04.1970. He further submitted that Ex.A1 patta was issued under Revenue Standings Orders and challenging the said order, the defendants have not preferred any appeal before the Competent Authority and therefore, the defendants cannot question the validity of Ex.A1 Patta before the Civil Court. He further submitted that in Ex.B1 Sale Deed, it has been stated that one Pakiri Padayatchi had purchased the suit property on 29.08.1944 from one Sundaravelu Samiyar. It is also stated that the said Sundaravelu Samiyar purchased the suit property through the Sale Deed dated 14.02.1942 said to have been executed by the said Pakiri Padayatchi. But the defendants have not produced any evidence to show that how the said Pakiri Padayatchi originally got title over the suit property and taking into consideration of all the aforesaid facts, the first Appellate Court has rightly rejected the case of the defendants and decreed the plaintiffs suit.

11. He further submitted that in the written statement, the defendants have pleaded adverse possession and that itself would show that they have admitted that the original owner is the plaintiff and his predecessors in title. He further submitted that the defendants are not entitled to take the plea of ownership through documents and also plea of adverse possession and, therefore he prayed to dismiss the second appeal.

12. As per the plaint schedule, the suit property is the thatched house bearing Door No.40A, measuring about 880½ sq.ft situated in T.S.No.245/5 at Tiruvannamalai town. Further it is stated that the said T.S.No.245/5 contains 1777sq.ft out of which, the suit property comprising of 880½ sq.ft situated on the eastern side.

13. According to the plaintiff, on 14.04.1970, as per Ex.A1 Patta, the Government had assigned the entire land situated in T.S.245/05 measuring about 1777sq.ft in favour of his mother Thayal Nayagi Ammal and by virtue of the said assignment (Ex.A1), the said Thayalnayagi Ammal became the absolute owner of the property of the entire 1777sq.ft. His further case is that, with the consent of his mother Thayalnayagi Ammal, they have partitioned the said property under the registered partitioned deed dated 01.7.1982.(Ex.A2)



and in the said partition, the suit property was allotted to him and the western portion was allotted to his brother Pachiappan. His further case is that, from the date of the said partition, he has been in possession and enjoyment of the suit property and the defendants are not having any right over the suit property.

14. The case of the defendants is that the entire extent of 1777 sq.ft originally belonged one Pakiri Padayatchi by virtue of Ex.B1 Sale Deed dated 29.08.1944 and after his death, his wife Pattu Ammal had sold half of the property, vide Ex.B2 dated 05.06.1968 in favour of the first defendant and the said property is the suit property and from the date of purchase, the first defendant has been in possession of the suit property.

15. The plaintiff has claimed title over the suit property through his mother Thayal Nayaki Ammal. The defendants are claiming title over the suit property through Pattu Ammal who is wife of Pakiri Padayatchi. The evidence of the PW1 would show that his mother Thayalnayaki Ammal is one of the daughters of the said Pakiri Padayatchi and Pattu Ammal.

16. Ex.B1 is the registered Sale Deed dated 29.08.1944 said to have been executed by one Sundaravelu Samiyar in favour of the said Pakiri Padayatchi. In the said document, it is stated that the properties situated in T.S.No.245/5 measuring about 1777sq.ft were sold to the said Pakiri Padayatchi. Boundaries also given in the said document. The boundaries mentioned in the said document are tallied with the boundaries given in the plaint schedule. It is also stated that a house was there, but Door number not assigned.

17. Ex.B2 is the Sale Deed dated 05.06.1968 said to have been executed by the wife of Pakiri Padyatchi namely Pattu Ammal in favour of the first defendant. A perusal of the said document would show that out of 1777sq.ft which was purchased by her husband Pakiri Padayatchi under Exhibit B1, she sold 888 ½ sq.ft on the eastern side and she retained western half. The said eastern portion is the suit property. In Ex.B2 itself, it is clearly stated that there was a thatched house, bearing Door No.46. Assessment number also mentioned as 47. So, it is clear from Ex.B1 & B2, that the suit property and the property situated on the western side were originally belonged to Pakiri Padayatchi and after his death, his wife Pattu Ammal had sold the eastern portion (suit property) vide Ex.B2 on 05.06.1968 itself to the first defendant.

18. It is seen from Ex.B3 (Lease deed) that after execution of Ex.B2, within two days that is on 07.06.1968 itself, the said Pattu Ammal took the suit property for the lease from the first defendant. Exhibit B8 would show that on 25.04.1972, the first defendant had issued a lawyer's notice to the plaintiff, his brother pachaiappan, his mother Thayal Nayaki and his maternal grand mother Pattu Ammal. In the said



notice, the first defendant has stated that he had purchased the suit property on 05.06.1968 from the said Pattu Ammal and subsequently on 07.06.1968, the suit property was leased out to the said Pattu Ammal for a period of eleven months and after expiry of the said lease period, the said Pattu Ammal had handed over the possession of the suit property on 06.05.1969 and thereafter he had demolished the house. In the said notice, he also stated that he came to know that the aforesaid persons have planned to construct a wall in the suit property and hence he called upon those persons not to make any attempt to trespass into his property.

19. The notice which was sent by the first defendant to the plaintiff by Registered post returned as "refused". The returned registered letter(cover) was marked as Ex.B9. Though, the plaintiff has stated in his evidence that no such letter came to him, as per Section 27 of the General Clauses Act until contrarily proved, it has to be presumed that the letter which was sent by Registered post served on the addressee. Further, the said endorsement "refused" has been made by the public servant (post man). In the absence of any evidence that the post man has made such false endorsement, it has to be presumed that he has tendered the said registered letter to the plaintiff and he refused to receive the same and hence he returned the said letter as refused. It is also to be pointed out that Exs. B10 & B11 would show that, the plaintiff's mother Thayalnayagi Ammal and grand mother Pattu Ammal have received the said lawyer's notice. But they have not sent any reply notice denying the allegations made in Ex.B8 notice. So, it has to be presumed that the averments made in the said notice, have not been disputed by the plaintiff, his mother and grand mother.

20. The plaintiff has stated in para 5 of the plaint that with a view to put up a new roof over his house described in the plaint schedule, removed the old roof as it was leaking and was putting up the new roof with manjan grass about two weeks ago, the defendants prevented him from putting up new roof. But while examining himself as PW1 he has stated that before filing of the suit, the defendants have demolished the house and only after such demolition, he has filed the suit. As already pointed out that in Ex.B8 notice itself the first defendant has stated that the house was demolished one and half years ago. The said notice was issued on 25.04.1972 itself. Denying the said allegation, neither the plaintiff nor his mother and grand mother have sent any reply. Exhibit A2 [partition deed dated 01.07.1982 executed between the plaintiff, his brother and his sister] also shows that on the date of execution of the said document, there was no house in the suit property. In the said document it is stated that the plaintiff and his brother have partitioned only vacant site. If really there was a house in the suit property on the date of Ex.A2, the said fact would have been mentioned in that document. So, it is clear that even on the date of Ex.A2 that



is on 01.07.1982 itself, there was no house in the suit property.

21. By suppressing the said fact, the plaintiff has filed the above suit, as if there was a house on the date of filing of the suit and he was in a possession of the said house. From Ex.B1, it is clear that the suit property and the property situated on the western side were purchased by the plaintiff's maternal grand father Pakiri Padayatchi on 29.08.1944 itself. After his death, his wife Pattu Ammal had sold the eastern portion alone (suit property) to the first defendant through Ex.B2 Sale Deed dated 05.06.1968 and thereafter, within two days that is on 07.06.1968 the said Pattu Ammal took the suit property for lease vide Ex.B3 for eleven months and after expiry of the said lease period, the first defendant took possession of the suit property from the said Pattu Ammal and demolished the house.

22. The fact remains so, the plaintiff's mother Thayalnayagi Ammal got assignment order on 14.04.1970 in respect of the entire extent of 1777sq.ft. Since already the said property was sold to the said Pakiri Padayatchi by virtue of Ex.B1 Sale Deed, Ex.A1 would not confer any title on Thayalnayagi Ammal. So, the plaintiff cannot claim any right over the suit property based on Ex.A1. The trial Court after taking into consideration of all the aforesaid facts has rightly dismissed the suit. But, the first Appellate Court without appreciating the evidence properly reversed the findings of the trial Court.

23. It is true that the defendants have taken a plea of adverse possession and also claimed title through the documents. But during trial, they claimed title only on the basis of Ex.B2 Sale Deed. Further, since the plaintiff has filed the suit claiming right over the suit property, the burden is upon him to prove title and also possession. Therefore merely because, the defendants have taken a plea of adverse possession in their written statement, the plaintiff cannot get decree in his favour, unless he established his case by adducing satisfactory evidence. In this case, the plaintiff failed to prove his case.

24. It is also to be pointed out that the plaintiff himself has not asked the relief of declaration of title. The defendants have taken a specific plea in their written statement that without seeking prayer for declaration of title, the suit is not maintainable for bare injunction. But the first appellate Court without taking into consideration the said pleadings, it has mechanically granted decree declaring the title of the plaintiff and also granted permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession of the suit property. As already pointed out that even as per the own admission of the plaintiff, even before filing of the



suit, the house was demolished. But the first Appellate Court has granted relief in favour of the plaintiff as if he was in possession of the suit property on the date of filing of the suit property. When there was a serious dispute with regard to the title, the plaintiff ought to have filed a suit for declaration of his title. But he has filed the suit for bare injunction alone and the said suit has to be dismissed on this ground alone. Further, the plaintiff has not only failed to prove title over the suit property, but also failed to prove his possession of the suit property. Therefore, the Judgment and Decree of the first Appellate Court are liable to be set aside. Accordingly, these substantial questions of law are answered.

25. In the result, the second appeal is allowed. The Judgment and decree passed by the first Appellate Court are set aside and the Judgment and decree passed by the trial Court are restored. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ggi

To

1. The II Principal District Judge, Tiruvannamalai.
2. The II Additional District Munsif, Tiruvannamalai

Copy to: This Section Officer,
Vr Section, High Court, Madras.

+ 1 cc to Mr. M. Sriram Advocate Sr.54379

S.A.No. of 1917 of 1999

PA(CO)
EU(03/12/2018)