

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2018

PRONOUNCED ON : 14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1255 of 2003

1.Farook Ali
2.Ahamed Ali

...
Vs.

Appellants

1.Natesan
2.Manali Kandasamy
3.Mohan

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 06.03.2003 passed in A.S.No.69 of 2002 on the file of the Principal Subordinate Judge, Mayiladuthurai, confirming the Judgment and Decree dated 21.06.2002 passed in O.S.No.116 of 1997 on the file of the District Munsif, Sirkali.

For Appellants : Mr.A.Muthukumar

For Respondents : Mr. S.Sounthar

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JUDGMENT

Challenge in this second appeal is made to the the Judgement and Decree dated 06.03.2003 passed in A.S.No.69 of 2002 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the Judgment and Decree dated 21.06.2002 passed in O.S.No.116 of 1997 on the file of the District Munsif Court, Sirkali.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Permanent Injunction.

4. The case of the plaintiffs, in brief, is that the first item of the suit properties belongs to the first plaintiff and the same had been purchased by him from Arumuga Mudaliar by way of a registered sale deed dated 09.07.1992 and since then, it is only the first plaintiff, who has been in possession and enjoyment of the said property and accordingly, the first plaintiff, at his own expenses, had also raised Palmyra and Karuvai trees on the bund of the properties and cultivating the same, as such, he has raised 37 Palmyra and two Karuvai trees and the said trees are located on the western and northern bund of the first plaintiff's property and it is only the first plaintiff, who has been enjoying the usufructs of the same and the second item of the suit properties was purchased from Arumuga Mudaliar by the first plaintiff's wife Jayamani by way of a registered sale deed dated 09.07.1992 and enjoying the same absolutely and Jayamani died on 15.06.1994 leaving behind the first plaintiff and the plaintiffs 2 & 3, who are the sons of Jayamani, as her legal heirs and accordingly, the second item of the suit property belongs to the plaintiffs and the plaintiffs have also raised trees at their own expenses on the western bund of the second item of the suit properties, thereby raised 10 Palmyra trees and been enjoying the usufructs of the same and the plaintiffs have filed a rough plan depicting the topography of the suit properties and the trees located thereon and the plaintiffs, even prior to their purchase, had been

enjoying the suit properties under a lease arrangement with Arumuga Mudaliar for more than 60 years and to the West of the suit properties, there is a Kanni and the Kanni starts from the second item of the suit properties and proceeds along the first item of the suit properties and turns to the east and the first defendant claimed that his son viz., the second defendant had purchased the said Kanni with the trees thereon and on that footing, attempted to cut the trees belonging to the plaintiffs on 20.07.1997 and the same had been prevented by the plaintiffs. However, the first defendant claiming that the said Kanni had been acquired by the first defendant and it is only the defendants, who are entitled to the trees standing thereon, again attempted to cut the trees and also threatened the plaintiffs and thereby interfered with the possession and enjoyment of the plaintiffs in respect of the suit properties and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. The defendants, after denying all the averments contained in the plaint as regards the tracing of the title of the suit properties by the plaintiffs and their enjoyment of the same, pleaded that the second defendant by way of a registered sale deed dated 03.07.1992 purchased the Kanni situated to the West and North of the suit properties and accordingly, the defendants had raised Palmyra

and Karuvai trees on the southern and eastern ridge of the Kanni and been enjoying the same and the defendants have also annexed a plan showing the topography of the properties concerned, in fact, the defendants have purchased their property from Arumuga Mudaliar even prior to the purchase of the properties by the plaintiffs from Arumuga mudaliar and the vendor Arumuga Mudaliar, after conveying the Kanni to the second defendant, is not entitled to alienate the Kanni and the trees standing thereon as he had ceased to have any title to the said property, after the sale deed dated 03.07.1992. The plaintiffs had purchased the properties only situated to the eastern and southern side of the property purchased by the second defendant by way of the sale deed dated 03.07.1992. While so, the plaintiffs attempted to encroach into and annexed the portion of the property to an extent of 19 links east -west on the southern side and 14 links south-north on the northern side and in this connection, the defendants have taken steps to initiate appropriate action against the plaintiffs and the plaintiffs are not entitled to any portion of the Kanni and it is false to state that the defendants attempted to cut the trees belonging to the plaintiffs and on the other hand, it is only the plaintiffs, who had attempted to encroach into the portions belonging to the defendants as above stated and hence, the plaintiffs are not entitled to seek and obtain the equitable relief of injunction as prayed for and the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants' DWs1 & 2 were examined and Exs.B1 was marked. Exs.C1 to C4 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to decree the suit as prayed for. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (a) Whether the courts below have not erred in law in ignoring the sale deed dated 03.07.1992 in favour of defendants which is prior to the sale deed dated 09.07.1992 in favour of the plaintiffs especially when the defendants and plaintiffs purchased from a common vendor?

(b) Whether the courts below have not erred in law in failing to consider that the common vendor of the plaintiffs and defendants had no right or title to convey 18 cents are any part thereof to the plaintiffs which was earlier sold to the defendants?

(c) Whether the courts below have not erred in law in failing to consider that a joint patta (patta No.570) had been issued in favour of the plaintiffs and defendants?"

9. From the materials placed on record, it is found and also admitted that the properties, to which, the plaintiffs claim title as well as the property, to which, the defendants claim title originally belonged to Arumuga Mudaliar. Now, according to the plaintiffs, they had acquired title to the suit properties viz., the items 1 & 2 as described in the plaint from Arumuga Mudaliar by way of two sale deeds dated 09.07.1992 and the above said sale deeds have been marked as Exs.A1 & A2. On a perusal of the description of the properties given in Exs.A1 & A2 as well as in the plaint, it is found that the above said properties are located to the north of northern irrigation channel, to south and east of the Kanni belonging to the second defendant Ahamed Ali and to the West of the Nanjai lands belonging to Kandasamy and Muthusamy. Now, according to the plaintiffs, by way of Ex.A1, they had acquired an extent of 1 acre and 48 1/3 cents and by way of Ex.A2, they had acquired 0.50 cents of land in Survey No.127/1J. It is also noted that the second defendant had acquired an extent of 0.18 cents of land in survey No.127/1J by way of a sale deed dated 03.07.1992 marked as Ex.B1 and the said property is Kanni and from Ex.B1, it is found that the Kanni portion purchased by the

second defendant is located to the north of northern irrigation channel, to the west and north of the lands of Arumuga Mudaliar under the enjoyment of the first plaintiff Natesan, to the east of the Nanjai lands belonging to Mariamman temple and K.P.R.Jafarulla and to the south of Nanjai lands belonging to K.P.R.Jafarulla and Vasanthi ammal and the said Kanni measures 0.18 cents. As above noted, it is seen that the defendants had purchased the property, prior to the acquisition of the properties by the plaintiffs by way of Exs.A1 & A2.

10. From the pleadings set out by the respective parties and also the materials placed on record, it is found that as far as the properties purchased by the plaintiffs by way of Exs.A1 & A2 and the property purchased by the second defendant under Ex.B1 are not in issue, as such, between them. The issue is only with reference to the trees standing on the bund. In this connection, the surveyors had visited the properties involved in the matter and filed his report and plan and the Courts below had proceeded to rely upon only Exs.C1 & C2 and the Courts below have not taken into consideration Exs.C3 & C4 for the reasons mentioned by them. The Courts below have rightly not considered Exs.C3 & C4 on account of the proceedings of contempt initiated against the surveyor, who had prepared the said reports. Now, coming to Exs.C1 & C2, it is found that the properties of the parties, on measurement by the surveyor, the defendants' property is found to be

intact, it is thus seen that the property purchased by the defendants by way of Ex.B1 measuring 0.18 cents is available on ground as per the boundaries described in the said document. However, it is seen that the properties purchased by the plaintiffs by way of Exs.A1 & A2 are not available on ground, as such. By way of Exs.A1 & A2, the plaintiffs claim that they had purchased totally an extent of 1 Acre 98 1/3 cents from their vendor Arumuga Mudaliar. However, as per Exs.C1 & C2, it is found that on ground, within the boundaries recited in Exs.A1 & A2, on measurement only an extent of 1.86 cents is available. It is thus found that there is a shortage of 12 ½ than the extent contained in Exs.A1 & A2 and it is thus seen that the plaintiffs had not been actually conveyed the extent of 1 acre 98 1/3 cents by the vendor by way of Exs.A1 & A2. Be that as it may, as further seen from Exs.C1 & C2, the Kanni portion purchased by the second defendant is found to be not in use and the surveyor, on measurement of the properties of the parties concerned, noted that there is a ridge measuring 2 feet in width in between the property belonging to the defendants and the properties belonging to the plaintiffs i.e. in between the Kanni portion and the Nanjai lands of the plaintiffs. Further, the surveyor has also noted that the trees are available in the above said ridge portion as well as in the Kanni portion as well as in the Nanjai lands of the plaintiffs. Thus, it has been noted by the surveyor that three Palmyra saplings noted in serial Nos.16, 31 and 32 are available in the Nanjai lands of the plaintiffs and Palmyra saplings

noted in serial Nos.24, 26, 30, 35, 36, 37 and 39 are available in the Kanni portion of the defendants and the remaining 27 palmyra saplings are available in the 2 feet ridge and further, as per the report and plan of the surveyor, the trees noted in serial Nos.21, & 25 are available in the 2 feet ridge, accordingly, it is seen that as rightly held by the Courts below, the trees are available in abundance only on the western and northern ridge adjoining the plaintiffs' land and on the other hand, there is no tree available on the western end of the Kanni portion and further, the witnesses examined by the defendants viz., DWs1 & 2 have also not mentioned about the trees standing on the western end of the Kanni and when it is further noted that the Kanni portion is not put in use and when there is no contra material to the above said factual position, it is found that inasmuch as the defendants have not raised any trees in the portions belonging to them and on the other hand, only some trees are available only on the eastern portion of the Kanni and the other trees, as above seen, are mostly available only in the 2 feet ridge and in the Nanjai lands of the plaintiffs and when it is further noted that even prior to the purchase of the property by the defendants by way of Ex.B1, the lands belonging to Arumuga Mudaliar, were under, the supervision and management of the first plaintiff as his lessee, it is thus found that, as rightly determined by the Courts below, on probabilities the trees available on ground, as noted by the surveyor in his report and plan had been only raised by the plaintiffs and not by the defendants. Further that

the lands of Arumuga Mudaliar had been under the management and supervision of the first plaintiff could also be seen from the letter marked as Ex.A3, where from also, it could be seen that it is only the first plaintiff or for the matter, the plaintiffs, who had been in possession and enjoyment of the properties belonging to them even prior to their purchase and also subsequent to their purchase and accordingly, put them in use by raising trees and it is thus found that as per the recitals found in the respective sale deeds, particularly, the recitals found in Ex.B1, when the second defendant had been conveyed the Kanni portion measuring 18 cents by giving clear boundaries and when from Ex.B1, it is noted that the said 18 cents is located to the west and north of the lands of Arumuga Mudaliar under the supervision and enjoyment of the first plaintiff and when it is further seen that by way of Exs.A1 & A2, the plaintiffs had subsequently acquired the properties from Arumuga Mudaliar and as seen from the boundaries recitals contained in Exs.A1 & A2, the properties had been conveyed to the plaintiffs to the east and south of the Kanni portion sold to the second defendant, it is found that as held by the Courts below, as the 2 feet ridge is situated to the east and south of the Kanni portion, it is found that the trees standing thereon had been raised only by the plaintiffs and accordingly, it is found that it is only the plaintiffs, who have ownership over the same and the defendants cannot be allowed to raise any claim of ownership over the trees lying to that of the eastern portion of the Kanni i.e. on the 2 feet ridge portion as

noted by the surveyor. In such view of the matter, the contention put forth by the defendants that the plaintiffs, having not purchased the actual extent conveyed under Exs.A1 & A2, are attempting to interfere with their possession and enjoyment of the property acquired by way of Ex.B1 cannot be countenanced. As rightly determined by the Courts below, if that be so, when as per the averments contained in the written statement, the plaintiffs are alleged to have encroached into the portions belonging to the defendants, till date, no material has been placed by the defendants to show as to what further steps they had taken with reference to the same. On the other hand, when it is found that the plaintiffs had been enjoying the portions inclusive of the 2 feet ridge lying to the east and south of the Kanni portion, as rightly found by the Courts below, the plaintiffs are entitled to obtain the relief of permanent injunction restraining the defendants from interfering with their possession and enjoyment of the trees standing in their properties.

11. On a reading of the Judgement rendered by the first appellate Court, it is found that the first appellate Court had accepted the plaintiffs' case based upon the materials submitted by the plaintiffs during the course of the trial proceedings. However, it is noted that the plaintiffs had preferred an application in I.A.No.118 of 2002 for the reception of the additional evidence in support of their case. It is found that notice has been given to the defendants in the said application and as per the

record of proceedings of the first appellate Court, it is found that the defendants has made an endorsement that the document projected by way of the additional evidence may be received subject to proof and relevancy. Accordingly, it is seen that the first appellate Court has embarked upon a discussion on the above said document in the course of its judgment and also found that the same also buttresses the claim of the first plaintiff that he has been in the occupation and enjoyment of the lands of Arumuga Mudaliar as the cultivating tenant thereof. As above seen, the first appellate Court has accepted the plaintiffs' case in toto on the strength of the available materials placed by the plaintiffs during the trial proceedings and it has also taken into consideration the additional document as no resistance had been offered by the defendants with reference to the receipt of the same subject to proof and relevancy and accordingly, discussing the same, finding that the said document also buttresses the plaintiffs' case and finally in toto, the first appellate Court finding no reason to interfere with the judgement and decree of the trial Court, accordingly, dismissed the appeal preferred by the defendants. It is thus found that the first appellate Court has not based its reasonings and conclusions for upholding the plaintiff's case mainly upon the additional evidence projected by the plaintiffs. On the other hand, the first appellate Court has drawn support from the said document also in coming to the conclusion that the plaintiffs have made out a case about the ownership of the trees in dispute and accordingly, dismissed the

appeal preferred by the defendants. In such view of the matter, in my considered opinion, the arguments put forth by the defendants' counsel that the first appellate Court had erred in dismissing the appeal preferred by the defendants mainly based upon the additional evidence as such cannot be countenanced. Similarly, the arguments put forth by the defendants' counsel that the first appellate Court should have adhered to the principles adumbrated under Order 41 Rules 28 & 29 CPC and enabled the parties to let in oral evidence with reference to the additional document, in my view, on the facts and circumstance of the present case would not be necessary as such. When the defendants have given their nod for the reception of the additional evidence subject to proof and relevancy and when the first appellate Court has considered the same, however not relied upon the said document in isolation to uphold the plaintiffs' case and on the other hand, finding that the plaintiffs have established their case on the materials already placed before the trial Court, in such view of the matter, it is found that the first appellate Court's judgement cannot be said to be vitiated for failure to adhere to the principles of law outlined under Order 41 Rules 28 & 29 CPC and in such view of the matter, the decisions relied upon by the defendants' counsel reported in **2015 (5) CTC 78 (Kaliyammal Vs. Ganapathi)** and **(2018) 1 MLJ 846 (Anandan (deceased) and others Vs. Kannaiyan and others)** would not be applicable to the case at hand.

12. The defendants' counsel also contended that the suit laid by the plaintiffs without seeking the relief of declaration and only claiming the relief of permanent injunction is not maintainable, particularly, when the defendants have thrown a challenge to the claim of the plaintiffs as regards the subject matter of the suit. However, the above contention does not merit acceptance. As above seen, as far as the acquisition of the properties by the respective parties under their sale deeds, there is no dispute as such. It is found that the property acquired by the defendants is available on ground, the defendants thus cannot be allowed to lay any claim to the portions lying to the east and south of Kanni and when the plaintiffs are found to have acquired the properties to the east and south of the Kanni portion, as rightly determined by the Courts below, the trees standing thereon only belong to the plaintiffs, particularly, when there is no material to hold that the defendants had raised the trees standing thereon and coupled with the fact that the Kanni portion belonging to the defendants is found to be not in use and also the defendants have not placed any contra material with reference to the factual position as above noted by the surveyor. In such view of the matter, there is no need for the plaintiffs to seek the relief of declaration as such and hence, it is seen that the suit laid by the plaintiffs cannot be negated on the footing that they have not sought for the relief of declaration. In such view of the matter, the decision reported in **2007 (4) CTC 70 (Chinna Nachiappan**

and another Vs. PL.Lakshmanan) is found to be not applicable to the facts and circumstances of the present case.

13. The counsel for the defendants contended that the first plaintiff on the footing that he has been the caretaker of the properties belonging to Arumuga Mudaliar prior to the sale deeds of the respective parties cannot lay any claim of title to the properties of his master and in such view of the matter, it is argued that the role of the first plaintiff claiming to be the lessee of Arumug Mudaliar prior to his purchase of the properties under Exs.A1 & A2 would not confer on him any title to the properties as such and in this connection, reliance is placed upon the decision reported in **(2012) 6 Supreme Court Cases 430 (A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by its President and anothers)**. However, as rightly put forth, the principles of law outlined in the above said decision is not in dispute. The plaintiffs have not sought for the claim made in the suit mainly based upon the footing that the first plaintiff had been earlier the lessee of Arumuga mudaliar. On the other hand, their case is mainly based upon Exs.A1 and A2 and accordingly, they had sought for the relief claimed in the suit. When, in the light of the above discussions, it is found that it is only the plaintiffs, who had planted, reared and enjoyed the trees standing to the east and south of the Kanni portion and when it is found that the plaintiffs had not

rested their case solely based upon their claim of lessees under Arumuga Mudaliar prior to Exs.A1 & A2 or as well as prior to Ex.B1, it is seen that the abovesaid decision is not applicable to the case at hand.

14. The counsel for the defendants also lastly contended that the plaintiffs cannot be allowed to obtain the relief of permanent injunction as against the true owner i.e. the defendants. However, the plaintiffs are not claiming the relief of permanent injunction as against the true owner and on the other hand, according to the plaintiffs, the defendants without any right, title or interest are attempting to interfere with their possession and enjoyment of the trees standing in their properties. Accordingly, as above discussed, when the defendants are not entitled to lay any claim of right to the east and south of their Kanni portion and when the trees, the subject matter are available only to the east and south of the Kanni portion and when there is no material to hold that the same had been planted, reared and enjoyed by the defendants and on the other hand, it is found that the plaintiffs are in possession and enjoyment of the same, there is no question of the defendants having the ownership of the 2 feet ridge, where the subject matter viz., the trees are standing and in such view of the matter, the contention that the plaintiffs are seeking the relief of permanent injunction as against the true owner is not found to be applicable to the case at hand and in such view of the matter, the decision reported in **1962 (1) MLJ 383 (Alagi Alamelu Achi Vs. Ponniah Mudaliar)** is inapplicable to the case at hand.

15. In the light of the above said reasons, the Courts below are found to have considered all the materials placed on record in the right perspective and rightly found that the plaintiffs are laying the claim to the properties both by way of Exs.A1 & A2 and not laying any claim to the property acquired by way of Ex.B1 and accordingly finding that the plaintiffs having established by the preponderance of probabilities that it is only they, who had planted, reared and enjoyed the trees involved in the matter and further noting that the defendants have failed to establish any claim of title, possession and enjoyment in the portion lying to the east and south of their property acquired under Ex.B1, accordingly, correctly found that the plaintiffs are entitled to obtain the relief of permanent injunction as prayed for. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiffs and against the defendants.

In conclusion, the second appeal fails and accordingly, is, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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14.03.2018

To

- 1.The Principal Subordinate Court, Mayiladuthurai.
- 2.The District Munsif Court, Sirkali.
3. The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1255 of 2003**

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