

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.02.2018

PRONOUNCED ON:09.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1355 of 2003

Govindasamy

...

Appellant

Vs.

1.Mani

2.Krishnamoorthi

3.Sukkarani

4.Rasappan

5.Rani

6.Jamuna

7.Jothi

8.Chandran

9.Annammal

10.Venkatesan

11.Jothi

...

Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.03.2003 made in A.S.No.14 of 2002 on the file of Sub Court at Gudiyatham, Vellore District confirming the judgment and decree dated 27.09.2002 made in O.S.No.313 of 1985 on the file of the District Munsif Court at Gudiyatham, Vellore District.

For Appellant : Mr.Perumal
for M/s.T.Dhanyakumar

For Respondents : Mr.J.Kamaraj

J U D G M E N T

This second appeal is directed against the judgment and decree dated 31.03.2003 passed in A.S.No.14 of 2002 on the file of Subordinate Court, Gudiyatham, confirming the judgment and decree dated 27.09.2002 passed in O.S.No.313 of 1985 on the file of the District Munsif Court, Gudiyatham.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that he and his predecessors had been in open, continuous possession and enjoyment of the suit property for several decades and thereby perfected title to the same by adverse possession also and accordingly, the Government of Tamilnadu had also granted patta in respect of the suit property in favour of the plaintiff and the Government had also granted patta to other persons in respect of the portions located on the eastern and western side of the suit property and accordingly, the plaintiff is residing in the suit property by putting up a thatched house and also using as a cattle shed in a portion of the suit property, by paying house tax etc., and the defendants have no right or title to the suit property and on the other hand, the defendants attempted to interfere with the plaintiff's possession and enjoyment of the suit property and hence the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is false to state that the plaintiff has prescribed the title to the suit property by way of adverse possession, on account of long, continuous enjoyment and it is false to state that the Government has granted patta in favour of the plaintiff and also granted patta in respect of the portions to other persons on the eastern and western side of the suit property and that the defendants have no title, possession and enjoyment of the suit property. On the other hand, the defendants acquired title to the suit property, by way of a registered sale deed dated 20.04.1911 and accordingly been in possession and enjoyment of the same and the suit property being the patta lands of the defendants, Government is not entitled to grant patta in respect of the same to the plaintiff and others and it

is false to state that the plaintiff has put up a thatched house in the suit property and residing therein and also using the same as a cattle shed and on the other hand, it is only the defendants who are in possession and enjoyment of the suit property and the suit has been laid by the plaintiff without any cause of action and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A10 were marked. On the side of the defendants, D.Ws.1 and 2 were examined. Exs.B1 to B4 were 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 dismiss the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

"Whether the plaintiff who is found to be in possession, even though he does not have title, can be forcibly evicted by the defendant without taking request to law?"

9. The plaintiff claims that the suit property belonged to him. However, in the plaint, the plaintiff has not clearly averred as to from whom he had acquired title to the suit property. The plaintiff has not clearly averred that the suit property is a Poramboke property and belonging to the Government. The plaint proceeds as if, the plaintiff has perfected his title to the suit property, by way of long, continuous possession and enjoyment of the same for several years and thereby prescribed the title to the suit property, by way of adverse possession. However, as rightly determined by the Courts below and as well as argued by the counsel for the defendants, the plea of adverse possession can only be used as a shield and not as a sword. In such view of the matter, the plaintiff's claim of title to the suit property on the plea of adverse possession by laying a suit is found to be not maintainable as such. If, according to the plaintiff, he is entitled to raise the plea of adverse possession, implidely thereby, it is found that he has admitted the title of the defendants in respect of the suit property. However, as regards the plea of adverse possession, absolutely there is no acceptable and reliable materials placed by the plaintiff to uphold his above claim. The Courts below have rightly determined that the plaintiff has miserably failed to establish the plea of adverse possession projected by him for claiming

title to the suit property. The Courts below have rightly analysed the Revenue documents projected by the plaintiff commencing from Ex.A1 patta and accordingly proceed to hold that by way of the said documents, the plaintiff cannot be declared to have derived title to the suit property by way of adverse possession.

10.At the foremost, the plaintiff has to establish as to the entitlement of the Government to grant patta in respect of the suit property, when it is found that the defendants had acquired title to the suit property, by way of a registered sale deed dated 20.04.1911 and accordingly exercising ownership over the suit property and other properties by effecting various other transactions which could be evidenced from Exs.B2 to B4. Thus the claim of the plaintiff that patta had been granted in his favour by the Government, in respect of the suit property recognizing his possession and enjoyment as such cannot be accepted in any manner, particularly when the entitlement of the Government to issue patta in respect of the suit property, as such, has not been established.

11.From the documents placed by the plaintiff, to some extent, we can hold that the plaintiff is in possession and enjoyment of the suit property. However, on the basis of the said documents, we cannot conclude that the plaintiff has a valid title to the suit property. As rightly argued, patta documents or revenue documents cannot be made equivalent to the title deeds as such and therefore, based on the revenue records projected by the plaintiff, we cannot safely conclude that he has a valid title to the suit property as such.

12.As rightly determined by the Courts below, when the defendants have established to be having title to the suit property based on the documents projected by them and accordingly the defendants being the owners of the suit properties as projected by them in the written statement, it is found that the plaintiff cannot be permitted to maintain the suit for permanent injunction as against the true owner of the suit property. The plaintiff has not placed any material to establish that the defendants attempted to disturb his possession and enjoyment of the suit property illegally and in such view of the matter, as rightly determined by the Courts below, the plaintiff being only a trespasser in respect of the suit property, is not entitled to seek the relief of permanent injunction as against the true owner of the suit property.

13.In the light of the above discussions, it is found that the Courts below were justified in rejecting the reliefs sought for by the plaintiff, on the footing that the plaintiff has failed to establish the valid title, possession and enjoyment of

the suit property and also noting that the plaintiff is not entitled to seek the relief sought for as against the true owner of the suit property. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendants.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sub Judge,
The Sub Court at Gudiyatham,
Vellore District .
- 2.The District Munsif,
The District Munsif Court at Gudiyatham,
Vellore District.
- 3.The Section Officer,
VR Section,
High Court.

+1cc to Mr.Mr.J.Kamaraj, Advocate, S.R.No.17958
+1cc to Mr.M/s.T.Dhanyakumar, Advocate, S.R.No.18271

S.A.No.1355 of 2003

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