

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.04.2018

PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1701 of 2004

Chellan ... Appellant/Plaintiff

Vs.

1. Gopal
2. Sankar ... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Additional District and Sessions Judge (Fast Track Court), Kallakurichi dated 28.11.2003 made in A.S.No.249 of 2002 reversing the judgment and decree dated 15.03.2001 made in O.S.No.400 of 1997 on the file of the Second Additional District Munsif, Kallakurichi.

For Appellant : Mr. R.Balasubramanian

For Respondents: Mrs. Mythili Suresh

JUDGMENT

This second appeal is directed against the judgment and decree dated 28.11.2003, passed in A.S.No.249 of 2002, on the file of the Additional District and Sessions Judge (Fast Track Court), Kallakurichi, reversing the judgment and decree dated 15.03.2001, passed in O.S.No.400 of 1997, on the file of the Second Additional District Munsif Court, Kallakurichi.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property described in the plaint schedule belong to the plaintiff ancestrally and the same is in his possession and enjoyment and accordingly, recognising the same, patta had been

granted in favour of the plaintiff on 28.07.95 and accordingly, the plaintiff and his predecessors in title have been enjoying the suit property for more than fifty years and thereby prescribed title to the same by way of adverse possession. The defendants 1 and 2 have no right, possession and enjoyment of the suit property and the defendants, being the pangalis to the plaintiff, on account of the family dispute, attempted to interfere with the plaintiff's possession and enjoyment of the suit property by raising foundation in the suit property without any basis and hence, according to the plaintiff, he 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. It is false to state that the suit property is the ancestral property of the plaintiff and in his possession and enjoyment and that the patta had been granted in favour of the plaintiff in respect of the suit property. The suit property has not been properly described. The plaintiff has not given any measurements for the suit property and it is false to state that the defendants attempted to lay a foundation in the suit property without any legal entitlement. Further, according to the defendants, the property situated to the south of the plaintiff's house and vacant site belongs to the first defendant by purchase from the lawful owner Chinnathambi under a registered sale deed dated 05.01.1966 and accordingly, the defendants 1 and 2 are in possession and enjoyment of the said property measuring 10 yards east west and 9 yards north south with a house and vacant site in their own right and also prescribed title to the same, on account of the long enjoyment by way of adverse possession also and the plaintiff cannot make any valid claim in respect of the suit property and the defendants on obtaining the sanction, for putting up construction in the property acquired by them as abovestated, also laid a foundation and the plaintiff is not entitled to interfere with the same and hence, according to the defendants, the plaintiff has not come to the Court with clean hands and the suit, without any cause of action, is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined, Ex.A1 was marked. On the side of the defendants, DW1 was examined, Exs.B1 to B13 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. The first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has

been laid.

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

1. Whether or not the appellant is entitled to 1/3 share and respondents 1 and 2 are entitled to 2/3 share of the ancestral property comprised of 30' on the East to West and 36' on the north to south?

2. Whether or not the Government have rightly granted patta in respect of 1/3rd share or the ancestral property in favour of the appellant herein under Ex.A1 and for the rest of the 2/3 share in favour of respondents 1 and 2 under Ex.B2?

9. The suit has been laid simplicitor by the plaintiff for permanent injunction in respect of the suit property on the footing that the suit property is in his possession and enjoyment and according to the plaintiff, the suit property belongs to him ancestrally. However, the plaintiff has not averred in the plaint as to how he traces his title to the suit property ancestrally. All that he would state is that the suit property belongs to him ancestrally and further, according to the plaintiff, recognising his possession and enjoyment in respect of the suit property, patta had been granted in his favour and the same has come to be marked as Ex.A1. Other than Ex.A1, there is no other material placed by the plaintiff to show his title, possession and enjoyment of the suit property. As described in the plaint, the suit property is stated to be located in Natham survey number 321/28, 00.04.0 ares within specific boundaries. This is all the plaintiff has described the suit property in the plaint. As rightly put forth, the measurements of the abovesaid suit property have not been detailed in the plaint.

10. Thus, it is found that a very vague description of the suit property has been given in the plaint. The only document relied upon by the plaintiff marked as Ex.A1 does not detail as to whether the property described therein is located in the suit survey number within the boundaries as described in the plaint.

11. Be that as it may, from the evidence adduced by the parties in the matter, it is found that the plaintiff's grandfather is Sadaiyan and he had three sons, namely, Chinnapaiyan alias Chinnathambi, Maasaali and Saman. It is further noted that the first defendant Gopal is the son of Maasaali and the second defendant is the son of the first defendant and it is further noted that the plaintiff is the son of Saman. It is found that Sadaiyan owns some property and in

the same his three sons are equally entitled to 1/3 share and it is also found that the first defendant has purchased the property belonging to Chinnapaiyan and the abovesaid sale deed has come to be marked as Ex.B1. Thus, it is found that in the ancestral property belonging to the parties concerned, the first defendant owns 2/3 share and the plaintiff's father owns 1/3 share and accordingly, it is found that at the most the plaintiff would be entitled to only 1/3 share in the ancestral property belonging to the parties concerned and not more than that. However, in the plaint, the plaintiff has given the suit property as covering an extent of 00.04.0 ares without actually giving the actual measurements of the same. The evidence adduced in the matter would go to show that the total extent of the property belonging to the parties concerned measures east west 30 feet and north south 27 feet and according to the defendants, as seen from the evidence of DW1, they being entitled to 2/3 share in the ancestral property, claim right to an extent of the said property measuring 18 feet north south and 30 feet east west. Further, according to DW1, the plaintiff is entitled only to 9 feet north south and 30 feet east west and further, according to DW1, the plaintiff's property is situated to the north of the property belonging to the defendants. It is the specific assertion of DW1 that they are not disturbing the plaintiff's possession and enjoyment of the northern 9x30 feet extent of property and accordingly, it is found that, of the ancestral property belonging to the parties concerned, the plaintiff, at the most, would be entitled to 9 feet north south and 30 feet east west in the suit survey number and not more than that. In this connection, the plaintiff also during the course of his cross examination has admitted that he has not measured the extent of the property owned by him and further, according to him, till date he has not measured the property, particularly, the suit property with the assistance of the surveyor and has also admitted that he has not given the measurements of the suit property and according to the plaintiff, he has laid the suit based on his possession and enjoyment. However, as above seen, when the plaintiff has not come forward with a clear case as to how he had derived the property ancestrally other than vaguely stating that the property belongs to him ancestrally and on the other hand, when the materials placed on record, the evidence of DW1 and the other documents, the parties own ancestral property measuring 30 feet east west and 27 feet north south, in which, the plaintiff is entitled to 1/3 share and the defendants are found to be owning 2/3 share and accordingly, as far as the defendants are concerned, they are not in anyway interfering with the possession and enjoyment of the plaintiff's property measuring north south 9 feet and east west 30 feet located on the north side, as rightly put forth, the plaintiff, without giving the proper description of the suit property and also without properly describing the source of title to the suit property,

seems to have laid the suit on very vague particulars and accordingly, unable to place acceptable and reliable materials other than by marking Ex.A1 patta. When Ex.A1 patta is not shown to have been granted in favour of the plaintiff by considering the measurements of the ancestral property to which the plaintiff is actually entitled to and further, the property described in Ex.A1 patta is not shown to be correlating to the suit property as described in the plaint schedule, it is seen that with a vague description of the suit property, the plaintiff cannot be granted the equitable relief of permanent injunction without he establishing his case of valid possession and enjoyment of the suit property as such.

12. In the light of the above discussions, though it is found that the plaintiff is entitled to 1/3 share in the ancestral property and the defendants are entitled to 2/3 share in the ancestral property and when the plaintiff has not come forward with a clear case by giving the proper description of the suit property particularly giving the measurements of the same so as to identify the suit property, as such and further, on the basis of Ex.A1 patta, the plaintiff has failed to correlate his 1/3 share, to which he is actually entitled to in the ancestral property, as such and when the plaintiff, also during the course of his evidence, is unable to identify the extent of the ancestral property to which he is actually entitled to, it is seen that the first appellate Court is justified in negating the reliefs sought for by the plaintiff, particularly, on the failure of the plaintiff to properly describe and identify the property, to which, he is actually entitled to and such being the position, no interference is called for in the judgment and decree of the first appellate Court rejecting the plaintiff's lis. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

13. Other than Ex.A1 patta, the plaintiff has not placed any material to hold that he is in possession and enjoyment of the suit property as described in the plaint schedule. Though it is found that the plaintiff is entitled to 1/3 share in the ancestral property, when the said extent of property to which the plaintiff is entitled to has not been properly described in the plaint schedule and also disclosed during the course of his evidence and when there is no valid material placed to show that the suit property as such is in the possession and enjoyment of the plaintiff, the plaintiff cannot be declared to be in the settled possession of the suit property, as such and in such view of the matter, the decision relied upon by the plaintiff's counsel reported in AIR 2004 SCC 4609 (Rame Gowda (D) by Lrs Vs. M.Varadappa Naidu (D) by Lrs and another) is found to be inapplicable to the case at hand.

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 VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
(Fast Track Court),
Kallakurichi.
2. The Second Additional District Munsif Court,
Kallakurichi.
3. The Section Officer,
V.R.Section,
High Court, Madras.(2copies)

+1cc to M/s.Sarvabhauman Associates, Advocate sr.no.34647

S. A.No.1701 of 2004

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