

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2018
PRONOUNCED ON: 28.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1713 of 2004

K.Periyasamy ... Appellant/Defendant No.5

Vs.

1. S.P.Chellappa Gounder ..R1 /Plaintiff

2. Tamil Nadu Electricity Board,
Rep. by Superintending Engineer,
Vaikkal road,
Gobichettipalayam,
Erode District.

3. Tamil Nadu Electricity Board,
Rep. by Executive Engineer (O & M),
Varnapuram 1st street,
Bhavani, Erode District.

4. Tamil Nadu Electricity Board,
Rep. by Assistant Executive Engineer,
442 Cauvery street,
North Bhavani, Erode District.

5. Tamil Nadu Electricity Board,
Rep. by Junior Engineer,
North Bhavani, Erode District.

..RR2 to 5/Defendants 1 to 4

(Respondents 2 to 5 herein given up
as un-necessary parties)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.08.2002 made in A.S.No.21/2002 on the file of the Additional District Judge Fast Track Court No.IV at Bhavani reversing the judgment and decree dated 21.04.2001 made in O.S.No.346/98 on the file of the II Additional District Munsif Court, Bhavani.

For Appellant : Mr. V.Raghavachari
for M/s.M.A.P.Thangavel

For Respondents: No appearance/ Set exparte
vide order dated 19.06.2018

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.08.2002, passed in A.S.No.21/2002, on the file of the Additional District Judge, Fast track Court No.IV, Bhavani, reversing the judgment and decree dated 21.04.2001, passed in O.S. No.346 of 1998, on the file of the II Additional District Munsif Court, Bhavani.

2. The second appeal has been admitted on the following substantial question of law:

" Without praying for a relief of declaration, can a suit for mere possession, when the plaintiff's title is in dispute, is maintainable in law? "

3. The 5th defendant is the appellant in the present second appeal. The suit has come to be laid by the plaintiff for the reliefs of permanent injunction and possession claiming that the suit property belongs to the plaintiff and that the 5th defendant had been let out in the suit property by the plaintiff and on the other hand, the 5th defendant taking advantage of his possession of the suit property and inasmuch as he had been making attempts to secure the service connection in respect of the suit property in his own name which he is not entitled to and therefore, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

4. The 5th defendant has resisted the plaintiff's case contending that the suit property has been in his possession and enjoyment from the days of his ancestors and accordingly, he had applied for the service connection in his name and the plaintiff has no title to the suit property and therefore, the plaintiff cannot in any manner interfere with the possession and enjoyment of the 5th defendant in respect of the suit property and also not entitled to recover the same from the 5th defendant and hence, sought for the dismissal of the plaintiff's suit. The defendants 1 to 4 also sailed with the 5th defendant and sought for the dismissal of the suit preferred by the plaintiff.

5. In support of the plaintiff's case, the plaintiff has come to be examined as PW1 and Exs.A1 to A9 have been marked. On the side of the defendants, the 5th defendant has been examined as DW1 and Exs.B1 to B6 have come to be marked. Further, Exs.C1 and C2 have also been marked.

6. The trial Court, on an appreciation of the materials placed on record, both oral and documentary and the submissions

made, was pleased to dismiss the plaintiff's suit. On appeal, the first appellate Court, on a re-appreciation of the materials placed on record, set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

7. The suit property has been described as a thatched house bearing door No.1/186, located in R.S.No.298/4 (S.F.No.121/B) of Varadhanallur village of Bhavani Taluk, Erode district. The plaintiff claims that the suit property belongs to him ancestrally and that in the family arrangement effected amongst his family members, the suit property had come to be allotted to him. However, as rightly determined by the trial Court, there is absolutely no valid material placed by the plaintiff to show that the suit property as such belongs to him ancestrally. The suit has come to be laid by the plaintiff on 20.04.98. In support of his case, the plaintiff has filed 7 documents, of which, Exs.A1 to A3 are dated 16.04.98 and thus, it is found that the abovesaid 3 documents have come to be secured by the plaintiff on the eve of the filing of the suit. The other documents projected by the plaintiff have come into existence after the institution of the suit barring Exs.A8 and A9. The first document marked as Ex.A1 being the chitta extract is found to be in the names of seven persons and therefore, from the said document, it cannot be determined that the suit property exclusively belongs to the plaintiff. That apart, there is no reference about any construction or house available in the suit property in the documents Exs.A1 to A3. Similarly, the second document Ex.A2 also stands in the names of two persons and therefore, from the same, it cannot be inferred that the plaintiff has been allotted the suit property. The third document marked as Ex.A3 is standing in the name of one Sengodan and it is thus found that the abovesaid document does not in any manner advance the case of the plaintiff that he had been in the possession and enjoyment of the suit property as claimed by him. It is thus found that the main documents projected by the plaintiff marked as Exs.A1 to A3 does not entitle the plaintiff to seek a valid claim of title to the suit property as contended by him. When there is no acceptable and reliable material projected by the plaintiff to evidence that the suit property belongs to him exclusively and furthermore, when there is no material placed on record to hold that in the family arrangement effected, the suit property had come to be allotted to the plaintiff and that apart, the plaintiff having not even averred as to when the alleged family arrangement took place and amongst whom the family arrangement took place and what are the properties involved in the family arrangement and also when there is no material to show that after the so called family arrangement, the plaintiff had been in the possession and enjoyment of the suit property as claimed by him, it is found

that absolutely there is no material worth acceptance placed by the plaintiff to show that he has a valid title to the suit property. That apart, Exs.A1 to A3 being revenue documents and also not standing in the name of the plaintiff as such to evidence that he has exclusive title to the same and when the so called family arrangement projected by the plaintiff has not been established by the plaintiff as above discussed, it is found that Exs.A1 to A3 would not in any manner serve any purpose to sustain his claim of title to the suit property. The suit property is described as Nilavial Kallankuthu and therefore, as rightly determined by the trial Court, the suit property is found to be not fit for cultivation. It is not the case of the plaintiff himself that he has engaged the suit property for any agricultural operation. That being the position, it is found that the kist receipts marked by the plaintiff as Exs.A8 and A9 would not in any manner advance the case of the plaintiff that he has been in the possession and enjoyment of the suit property. More than that, the kist receipts cannot be construed as the documents of title and therefore, the abovesaid documents would be of no purpose to uphold the plaintiff's case. That apart, when the patta in respect of the land for which the alleged kist has been paid has not been shown to be allotted to the plaintiff as such by the Government, it is found that on the basis of Exs.A8 and A9 kist receipts, we cannot uphold the plaintiff's case. Thus, it is found that none of the documents projected by the plaintiff serves his claim of title to the suit property and further, when the plaintiff claims that he has built the superstructure put up in the suit property and let out the same to the defendant, at least there must be some material to hold that it is only the plaintiff who had put up the superstructure by way of tax receipts etc. However, there is no material placed by the plaintiff to evidence that he had put up the thatched house located in the suit property, by producing the tax receipts etc., in respect of the abovesaid superstructure. Similarly, there is no material to hold that it is only the plaintiff, who had let out to the defendant to occupy the suit property as claimed by him.

8. As rightly found by the trial Court, the plaintiff has not even averred as to what is the extent of the suit property, the measurement of the superstructure put up thereon and also not described the suit property by giving boundaries. Such being the position, the description of the suit property being very very vague and when there is no valid material projected by the plaintiff to show his title, possession and also letting out the same to the defendant as claimed, the trial Court is found to be justified in negating the plaintiff's case.

9. As far as the possession and enjoyment of the suit property by the defendant, it is found that it is only the

defendant, who has been in the possession and enjoyment of the suit property. As above seen, the defendant claims to be in possession and enjoyment of the suit property from the days of his ancestors and accordingly, it is seen that the defendant has not admitted the plaintiff's case of letting out the suit property to him as projected in the plaint. As above seen, the plaintiff has not placed any material to show that the defendant had been inducted into the possession of the suit property by him as stated in the plaint. Thus, it is found that the defendant is in possession and enjoyment of the suit property as put forth by him by encroaching into the same and accordingly put up the superstructure thereon and thus, it is found that the defendant is able to place the tax receipts in respect of the superstructure put up by him in the suit property marked as Exs.B1 to B6. Of the said documents, it is found that Exs.B1 to B4 have come into existence even prior to the institution of the suit and Exs.B5 and B6 are after the date of the suit. Despite the above position, the first appellate Court seems to have ignored the defendant's version by holding that the documents projected by the 5th defendant are all after the institution of the suit. It is thus found that the first appellate Court has not assessed the materials placed on record in the proper perspective and understanding and mechanically found to have disbelieved the defendant's case.

10. Considering the pleadings of the respective parties, when it is found that the defendant is admittedly in the possession and enjoyment of the suit property and when the plaintiff has failed to establish his title to the suit property and also failed to establish his case that he had let out the suit property to the defendant, accordingly, it is found that the plaintiff cannot in any manner restrain the defendant from enjoying the suit property or prevent him from obtaining the service connection in respect of the same and also seek the recovery of possession of the same sans title. Accordingly, it is found that the trial Court, based on the materials placed on record and considering the fact that the plaintiff has miserably failed to establish his case in all aspects, rightly dismissed the plaintiff's suit. However, the first appellate Court, without assigning proper reasons and also without appreciating the materials placed on record in the correct perspective, is found to have accepted the plaintiff's case, despite there being no valid document to sustain the claim of title to the suit property in favour of the plaintiff. That apart, the plaintiff should have sought for the declaration of title to the suit property, considering the defence projected by the defendant and the plaintiff having not done so and further, the plaintiff having failed to establish his title to the suit property and the documents projected by the plaintiff not pointing to the ownership of the plaintiff in respect of the suit property, accordingly, it is found that the plaintiff is not entitled to

seek both the reliefs sought for by him i.e., permanent injunction as well as the recovery of possession without establishing his title to the suit property. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the 5th defendant.

11. In conclusion, the judgment and decree dated 28.08.2002, passed in A.S.No.21/2002, on the file of the Additional District Judge, Fast track Court No.IV, Bhavani, are set-aside and the judgment and decree dated 21.04.2001, passed in O.S. No.346 of 1998, on the file of the II Additional District Munsif Court, Bhavani are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS.VI)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge,
Fast track Court No.IV, Bhavani.
2. The II Additional District Munsif
Bhavani.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 41338.

S. A.No.1713 of 2004

SP(03/08/2018)

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