

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Second Appeal No.1553 of 2011

1. T.Jayavelu(deceased)
2. T.Dhanapal
3. J.Padmavathy
4. Minor. J.Saranya

... Appellants

Appellants 3 and 4 brought on record as LRs of the deceased first appellant viz., T.Jayavelu vide Court order dated 22.06.2017 made in CMP Nos.7950, 7951, 7952 of 2017 in SA.No.1553 of 2011.

-Vs-

G.Venkataraman

... Respondent

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated passed in A.S.No.52 of 2010 dated 22.02.2011 on the file of the Subordinate Judge, Poonamallee confirming the Judgment and Decree in O.S.No.468 of 1999 dated 12.01.2010 on the file of the learned Additional District Munsif at Poonamallee.

For Appellants : Mr.P.Anand

For Respondent : Mr. Hari Krishnan

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 22.02.2011 made in A.S.No.52 of 2010 on the file of the Subordinate Judge, Poonamallee, confirming the judgment and decree dated 12.01.2010 made in O.S.No.468 of 1999 on the file of the learned Additional District Munsif at Poonamallee.

2. The respondent herein, as plaintiff, has preferred the suit for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the

suit property. According to plaintiff the suit property is owned by one Ramanuja Chettiar and thereafter to his son Sampath Chettiar. Plaintiff's forefathers are permanent occupants of the suit property and the plaintiff claims that he is in continuous possession of the suit property from the period of his forefathers for more than six decades. The defendant with an ulterior motive attempts to interfere with the possession of the plaintiff. The appellants 1 to 4 herein are the descendants of the first defendant. The appellants/defendants would contend that they have been in possession of the suit property measuring an extent of 55' x 19' i.e., 1045 sq.ft. for more than sixteen years. On the basis of continuous possession by the ancestors of the defendants, the defendants would seek for dismissal of the suit.

3. The trial Court framed necessary issues and after analysing both oral and documentary evidence, has found that Ex.A.13 enquiry report, issued by the Tahsildar, shows that the plaintiff has been in continuous possession of the suit property. That the suit property is not covered under Ex.B1-patta issued in favour of the defendants. Considering the overwhelming evidence in favour of the plaintiff and scarcely any evidence on the side of the defendants and decreed the suit in favour of the respondent/plaintiff. On appeal, the lower appellate Court framed two points for consideration and dismissed the appeal, confirming the judgment and decree passed by the trial Court, against which, the defendants have preferred this second appeal on the following questions of law.

" 1. Have not the Courts below committed an error in law in failed to appreciate and determine the real question of facts?

2. Whether the suit for permanent injunction is not maintainable when the exclusive title of the respondent/plaintiff is in question?

3. Whether the Courts below have erred in placing burden of proof on the Appellants/Defendants under Section 105 of the evidence Act?

4. Is the plaint itself it is found spelt out that the property stands only in the name of Ramanuja Chettiar and Sampath Chettiar in such a case without prayer for declaration of title of the suit framed was untenable?

5. Whether the Courts below miserably failed to take into account the fact that indisputably the property stands in the name of Ramanuja Chettiar?

6. Whether the Courts below was right in not framing points for determination in the appeal thereby violating the mandatory provision of order 41 Rule 31 of CPC?

7. Whether the judgment decree of the Courts below which is based on misreading of evidence, misapplication of law and full of conjectures and surmises are sustainable in law?

8. Whether the Courts below are justified in entertaining the suit even though the respondent/PW1 cross alleged that he has not seen the owners of the suit schedule property namely Ramanuja Chettiar and his son?

9. Whether the Courts below ought to have dismissed the suit on the ground of non joinder of necessary and proper parties?"

4. On a reading of the above questions it is noted that except question Nos.2 to 5 all other questions are pertaining to the facts. In so far as the question Nos.2, 4 and 5 are concerned they are one and the same that whether the suit for permanent injunction is maintainable without suit for declaration of title.

5. According to the appellants the suit filed by plaintiffs for bare injunction without the relief of declaration of possession not maintainable. Of course it is well settled that when the title is in dispute, then a suit for bare injunction is not maintainable and there shall be a declaratory suit for declaration of title and injunction. In the instant case, the title is not in dispute. Plaintiff does not claim title. It is an admitted fact even by the defendants that title to the property vests with one Sampath Chettiar and his family. However, it is the case of the respondent/plaintiff that they are the occupants for over sixty years from the period of his forefathers. Due to continuous possession and enjoyment and continuous payment of property tax and other dues the receipts were issued in the name of plaintiff. In a dispute over cancellation patta the Thasildhar has found that Sampath Chettiar is the original owner and that the property is a Natham land, and it is continuous possession of respondent/plaintiff.

The trial Court has found that the property being a Natham land and the respondent/plaintiff was in occupation of the property and his possession has been proved by Ex.A13, prior to the cancellation of patta, and accordingly held that the possession of the plaintiff stood proved. Whereas, the defendants though claimed that they are in possession of the property for more than sixteen years prior to the suit, they have not exhibited any document to show that they are in possession of the property for more than 16 years. There is also no pleadings to that effect. Documents marked on the side of the defendants as Exs.B1 to B6 would also go to show that the disputed suit property is one of the boundaries of the property of the defendant. It is categorically found that the defendants have failed to prove their possession and the Court below having found that the respondent/plaintiff is in possession decreed the suit. It is not the case that the plaintiff has sought for injunction against the true owner or that the defendants claim title to the property. Both the parties do not claim title to the property. But the plaintiff, by virtue of his possession of the Natham property filed the above suit for permanent injunction, to restrain the appellants/defendants from disturbing his possession. In such circumstances, the suit is maintainable, without the prayer for declaration of title. The judgments reported in 2008 (4) SCC Page No.594 in the case of Anathula Sudhakar Vs P.Buchi Reddy and others and 2011 (5) MLJ Page No. 566 in the case of Govindammal Vs Murugesan and another are not applicable to the present case.

6. The finding of the Courts below on the basis of oral and documentary evidence that the plaintiff is in possession of the property stands confirmed and as such the suit is maintainable.

7. As far as question of law No.3 is concerned whether the Courts below have erred in placing the burden on the appellants/defendants is concerned, the appellants/defendants have pleaded that they were in possession of the property for the past sixteen years. Since they have pleaded that they are in possession, burden is on them to prove that they are in possession of the suit property for more than 16 years. The plaintiff has discharged his burden by producing documents that he is in possession of the property. In that event the burden is shifted to the defendant to prove his possession. From the perusal of evidence it is ex facie clear that the defendants in spite of pleading that they are in possession of the property, have failed to adduce any evidence. In fact the document relied on by them vide Ex.B6 is not connected to the suit property. The extent of the property also differs from the pleading. The overall pleadings and evidence makes it clear that

burden of proof is on the shoulder of the defendant which they have failed to discharge. In view of the findings, I do not find any merits in the Second Appeal and accordingly the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Poonamallee, Chennai.
2. The Additional District Munsif,
Poonamallee, Chennai.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.B.Harikrishnan, Advocate Sr.16602 [23/11/2020]
+1cc to Mr.P.Anand, Advocate Sr.17035 [23/11/2020]

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srg 19/11/2020

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