

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :19.07.2018

PRONOUNCED ON:14.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2049 of 2004

1.Swaminathan

2.Raja

3.Ramesh

4.Balu

... Appellants/Respondents

Vs.

M.Rajamani

... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.10.2003 made in A.S.No.15 of 2002 on the file of the Principal District Judge, Dharmapuri at Krishnagiri reversing the judgment and decree dated 28.11.2001 made in O.S.No.28 of 1998 on the file of the District Munsif cum Judicial Magistrate, Uthangarai.

For Appellants : Mr.S.Parthasarathy, SC
for M/s. Sarvabhauman Associates

For Respondent: Mr.P.Mani

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 31.10.2003 passed in A.S.No.15 of 2002 on the file of the Principal District Court, Dharmapuri at Krishnagiri reversing the judgment and decree dated 28.11.2001 passed in O.S.No.28 of 1998 on the file of the District Munsif cum Judicial Magistrate Court, Uthangarai.

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

3. Suit for declaration, possession and mandatory injunction.

4.The case of the plaintiff in brief is that the plaintiff has filed a plan along with the plaint and the suit property originally belonged to Santham Poosari and his three sons and been enjoyed by them by obtaining patta, paying Kists, house

tax, electricity charges etc., and all were standing in the name of Santham Poosari and the plaintiff had purchased the same from Santham Poosari and others by way of a registered sale deed dated 29.04.1994 and since then, it is only the plaintiff, who has been in possession and enjoyment of the suit property by obtaining patta, paying tax, electricity charges etc., and the suit property has been described as "ABCD" in the plaint plan and the defendants own property on the western side and also own property on the southern side of the suit property, however the defendants are not entitled to any portion of the suit property shown as "ABCD" in the plaint plan and also not in possession and enjoyment of the same lawfully. While so, when the plaintiff was out of station, the defendants without any authority, unlawfully trespassed into a portion of the suit property shown as "DEFG" in the plaint plan and put up a wall on the same and started using the said portion as a backyard and on coming to know of the same, the plaintiff requested the defendants to remove all the encroachments put up by them in the suit property and also lodged a complaint against them before Police and Revenue authorities and also to the elders of the village and however the defendants in the meanwhile raised a superstructure in the encroached portion and accordingly, the defendants were directed to surrender the encroached portion to the plaintiff after demolishing the superstructure put up by them and on the other hand, the defendants had refused to do so and hence left with no other alternative, 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. After denying the plaint averments as put forth in the plaint, according to the defendants, after the death of the father of the first defendant, he and his brothers Santham Poosari and Nadupaiyan @ Mari Gounder were enjoying the ancestral properties jointly for some time which includes the suit property and later about 35 years ago, there was an oral partition in the joint family and the patta for the suit property in survey No.163/3C, though the same is also the ancestral property, stood in the name of Santham Poosari as such, as he happened to be the eldest member of the family and in the oral partition abovestated, the western portion of the suit survey No.163/3C fell to the share of the first defendant along with the thatched hut and there is a dividing ridge between the share of the plaintiff and the first defendant in the suit survey number and it is incorrect to state that Santham Poosari alone enjoyed the suit survey number and on the other hand, Santham Poosari and his brothers including the first defendant were enjoying the same till the oral partition and later as per the oral partition, the first defendant is enjoying the western portion and Santham Poosari

was enjoying the eastern portion and accordingly the suit survey No.163/3C was subdivided as 163/3C1 and 163/3C2 and to the first defendant's share, survey No.163/3C2 was given and to the share of Santham Poosari, 163/3C1 was given and accordingly, the portions lying in survey No.163 / 3C2 has been in the possession and enjoyment of the defendants and further the defendant had also purchased the property from Santham Poosari lying in Suit survey No. 163/2 by way of a registered sale deed dated 13.06.1974 and subsequent to the same, the defendant put up a house construction in suit survey No.163/2 on the southern side portion and also put up construction in suit survey No.163/3C2 during 1982 and completed the same and accordingly enjoying the constructed portion consisting of terraced and tiled houses and also the vacant side lying on the east, north and south of building constructed in survey No.163/3C2 as backyard and kalam and tying cattle and Santham Poosari had not questioned the same and thereby on account of the long and continuous enjoyment exclusively, the defendants had prescribed their title to the suit property by way of adverse possession also and therefore the plaintiff is estopped from questioning the title of the defendants and also the plaintiff is not entitled to the relief of mandatory injunction on account of the doctrine of estoppel by way of acquiescence and the plaintiff appears to have obtained a sale deed from Santham Poosari in respect of the disputed property and further the plaintiff by influencing the revenue officials is found to have canceled the patta issued in favour of the defendants and without issuing notice to the defendants and in this connection, the defendants had taken appropriate steps and given the representation before the higher authority and the plaintiff's claim is barred by limitation and hence the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A 10 were marked. On the side of the defendants', D.Ws.1 and 2 were examined. Exs.B1 to B3 were marked. Exs.C1 to C3 were also 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 dismiss the plaintiff's suit. On appeal, 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 plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

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

(a) When the Appellants had put up construction in the year 1974 itself, whether the suit for mandatory injunction filed in the year 1998 is sustainable, especially when the respondent/plaintiff is guilty of acquiescence (vide A.I.R 1983 S.C.452 & A.I.R 1982 Madras 220) ?

(b) When Article 65 of the Limitation Act, 1963 stipulates that the suit for possession of immovable property or any interest therein based on title should be instituted within 12 years from the date on which the possession of the defendants becomes adverse to the plaintiff, whether the present suit for recovery of possession tenable in law, particularly when the appellants had prescribed title?

(c) Whether the Lower Appellate Court is correct in law in rejecting the overwhelming evidence to prove open, continuous and hostile possessing by the Appellants of the suit property for over the statutory period?

9. Further this Court also formulated the following substantial substantial questions of law for determination in this Second Appeal.

1. Whether the Lower Appellate Court is correct in law reversing the judgment and decree of the learned District Munsif especially when the description of the encroachment is vague and the relief sought for relate to the encroachment specifically?

2. Whether the Lower Appellate court is correct in law in rejecting Ex.B1 Patta on the basis of Ex.A5 and A6 order which have been passed without following the due process of law and is thereby an invalid order?

10. The property measuring about 8 cents in survey No. 163/3C, according to the plaintiff, originally belonged to Santham Poosari and it is stated by the plaintiff that he had acquired the same from Santham Poosari and his sons by way of a registered sale deed dated 29.04.1994. The said property has been shown as "ABCD" in the plaint plan. According to the plaintiff, during his absence, the defendants had encroached into the portion of the abovesaid property shown as "DEFG" in the plaint plan measuring 4 ½ x 16 ft and thereafter, by way of

annexing the same, the defendants had put up the tiled structure in the encroached portion and using the same unlawfully and despite the requests of the plaintiff to hand over the same, the defendants failed to abide to the same, hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

11. Per contra, according to the defendants, the property lying in survey No.163/3C and other properties originally belonged to Santham Poosari, the first defendant and one Nadupaiyan @ Mari Gounder, who are brothers, ancestrally and it is stated by the defendants that an oral partition took place amongst the three brothers, 35 years ago and in the said oral partition, the land lying in suit survey No.163/3C got divided and the western portion was allotted to the share of the first defendant and the eastern portion was allotted to the share of Santham Poosari and it is stated that during subdivision, the portion allotted to the first defendant in survey No.163/3C was assigned survey No.163/3C2 and the portion allotted to Santham Poosari was assigned survey No.163/3C1 and accordingly it is further stated by the defendants, that the first defendant has purchased the property lying in survey No.163/2 from Santham Poosari and his sons by way of a sale deed dated 13.06.1974 and accordingly after the same, it is stated that the defendants had put up the terraced house, tiled superstructure in Survey Nos.163/2 and 163/3C2 and accordingly enjoying the same and therefore, it is stated that, on account of their long, continuous and uninterrupted possession and enjoyment, the defendants had also prescribed title to the suit property, by way of adverse possession and the plaintiff's sale deed as regards the disputed portion is invalid and hence the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

12. It is admitted even by the defendants that the patta for the land lying in Survey No.163/3C originally stood in the name of Santham Poosari. Now, according to the defendants, Santham Poosari and his two brothers namely the first defendant and Nadupaiyan @ Mari Gounder had effected oral partition about 35 years ago and in the said partition, it is stated that the western portion of Survey No.163/3C was allotted to the share of the first defendant and the eastern portion of Survey No.163/3C was allotted to the share of Santham Poosari. On the other hand, it is the case of the plaintiff that the entire extent of 8 cents lying in Survey No.163/3C belonged to Santham Poosari and he had purchased the same from Santham Poosari and his sons by way of a registered sale deed dated 29.04.1994 marked as Ex.B1 and according to the plaintiff, during his absence, the defendants had encroached into the portion of the said property shown as "DEFG" in the plaint plan and put up the construction

on the same. Hence, they need for the suit.

13. When it has been admitted by the defendants that the patta for the suit survey No.163/3C originally stood only in the name of Santham Poosari and when there is no material placed on the part of the defendants that the said patta had been granted in favour of Santham Poosari in his capacity as the head of the family and when the plea of oral partition projected by the defendants, which is said to have taken place 35 years ago, is not established by placing acceptable and reliable materials as such and when there is no material placed by the defendants, worth acceptance, that in the said oral partition, the western portion of the said suit survey number was allotted to the share of first defendant, particularly, when there is no material worth acceptance to show that, since the date of the alleged partition, the defendants had been in the possession and enjoyment of the western portion of the suit survey number and when as regards the claim of the possession and enjoyment of the western portion of the suit survey number, the defendants had projected only Ex.B1 rough patta which is found to be issued on 25.04.1990 and therefore, as rightly determined by the first appellate court, when the defendants themselves have admitted that the patta for the entire suit survey No.163/3C originally stood only in the name of Santham Poosari and when before effecting any change in the abovesaid patta in favour of the defendants by way of Ex.B1, no notice has been sent to Santham Poosari and when the defendants have not placed material worth acceptance to show Ex.B1 patta has been issued only after sending notice to Santham Poosari and when Ex.B1 as such cannot be also be termed as a regular patta, but it is only the rough patta and a reading of the same would only state that objections were called for from all persons interested as regards the issue of the patta in favour of the defendants and when there is no material placed by the defendants that thereafter any regular patta had been granted in their favour and on the other hand, when it is found that the said patta granted by way of Ex.B1 had been since canceled by way of Ex.A5 and following the same, the patta had been ordered to be issued in favour of the plaintiff for the disputed property by way of Ex.A6 and accordingly the plaintiff had also been granted the patta marked as Ex.A2 and the same is also buttressed by the chitta extracts and adangal extracts marked as Exs.A7 and A10 and and when as abovenoted, according to the plaintiff, he has purchased the entire extent in survey No.163/3C from Santham Poosari and his sons by way of Ex.A1 sale deed, accordingly, it is found that it is only the plaintiff who has title to the suit property as such.

14. Other than Ex.B1 rough patta, the defendants have not placed any material worth acceptance to show that the disputed property had been allotted to them in the oral

partition effected 35 years ago as put forth by them and been in their possession and enjoyment. If the same had been true, the defendants would have placed proof to evidence their possession for the past 35 years since the date of partition and on the other hand, other than Ex.B1 rough patta, there is no material placed by the defendants for claiming title to the disputed property and when Ex.B1 rough patta cannot be equated to a document of title for accepting the defendant's claim of title to the same and as above seen, the defendants have not placed any material to show that Ex.B1 rough patta had been issued in their favour after sending notice to Santham Poossari and not only that, when the said patta marked as Ex.B1 had been subsequently canceled and the patta had been ordered to be issued in favour of the plaintiff as could be evidenced from Exs.A5 and A6 and accordingly recognizing the possession and enjoyment of the plaintiff, the patta had been issued in his favour as abovenoted, it is found that it is only the plaintiff who has pucca title to the suit property i.e., for the entire extent in survey No.163/3C and the defendants have failed to establish their claim of title to the disputed property in the survey number, as such, as sought to be projected by them.

15. In this matter, from the materials placed on record, it is found that the defendants have purchased the property lying in survey No.163/2 from Santham Poosari and others by way of Ex.B2 sale deed on 13.06.1974 and thereafter it is found that they have put up a terraced house superstructure in the said property and without any authority, it is also noted that thereafter the defendants had also, after encroachment into the suit property, put up a tiled superstructure therein and accordingly, it is found that, from the materials placed on record and as determined by the first appellate court, the defendants had obtained the service connection only in respect of the house superstructure constructed by them in survey No.163/2 and thereafter extended the same to the tiled portion put up by them in the disputed property and when there is no material placed by the defendants that the tiled portion put up by them in the disputed area was also put up along with the terraced superstructure put up by them in survey No.163/2 and when as determined by the first appellate court and also seen from the Commissioner's report and plan, the tiled superstructure could not have been put up by the defendants along with the terraced portion put up by them in survey No.163/2 and when the first appellate court is found to have assessed/analysed the above said materials placed on record in the right perceptive by discussing the merits and demerits of the same judiciously and when the defendants have thrown a claim of title to the disputed property and for the same is found to be relying only upon Ex.B1 rough patta and when the said document cannot be the basis for accepting the defendants' claim

of title to the disputed property and though the defendants would claim that they had taken steps to challenge the cancellation of patta made under Ex.A5, till date no order had been obtained in their favour and when the defendants as such failed to establish that the property lying in survey No.163/3C is the ancestral property of Santham Poosari and his brothers and in the alleged oral partition, the same had got divided into the western and eastern portions as put forth by them and that the western portion had been allotted to them and as above noted, for all these events, the defendants solely only rely upon Ex.B1 rough patta which had came into existence during 1990 and when the said patta had not been shown to be duly granted after issuing notice to all the parties concerned, the defendants cannot be allowed to complain that the said patta issued in their favour had been canceled without sending notice to them. Be that as it may, when the trace of title to the disputed property as put forth by the defendants has not been established in any manner and on the other hand, when as per the admitted case of the defendants, the patta for the said survey number is standing only in the name of Santham Poosari and when the said property is not shown to be the subject matter of the alleged partition, which is stated to have taken place 35 years ago and accordingly, when it is seen that the plaintiff has purchased the same from Santham Poosari by way of Ex.A1 sale deed and his possession had been recognized by the grant of patta and other documents in his favour as exhibited in the matter on the side of the plaintiff, accordingly, it is only the plaintiff, who has title to the suit property as determined by the first appellate court and thereby, it is found that the defendants had unlawfully encroached into the portion of the suit property shown as "DEFG" in the plaint plan and put up the superstructure therein and unlawfully enjoying the same.

16. Knowing fully well that they do not have any legal claim of title to the suit property, particularly the disputed property, the defendants had also been taken the plea of adverse possession. It is thus found that the defendants thereby have impliedly admitted the title of plaintiff to the same. As regards the plea of adverse possession, other than Ex.B1 rough patta, there is no valid material projected by the defendants with reference to the same to sustain the said claim. The house tax receipts marked as Ex.B3 series found to be related to the terraced superstructure put up by the defendants in survey No.163/2 and not shown to be related to the tiled superstructure put up by them in the disputed area and accordingly, when the documents marked by the defendants as Exs.B1 and B3 do not in any manner advanced the theory of adverse title to the disputed property, the same is found to be rightly negatived by the first appellate court.

17. In this connection, in the second appeal the argument has been put forth that the first appellate court had shifted the burden on the defendants for upholding the plaintiff's claim of title to the suit property. However the abovesaid contention does not merit acceptance. Considering the reasons/conclusions of the first appellate court and accordingly it is found that the first appellate court had on a thorough analysis of the materials placed on record, correctly come to the conclusion that, it is only the plaintiff, who has established his claim of title to the suit property, on the strength of the materials placed by him and accordingly, upholding his claim of title to the disputed area and finding that the defendants have failed to establish their trace of title to the suit property as put forth in the written statement and also finding that the defendants have failed to establish their claim of adverse possession/title to the suit property, accordingly and rightly set aside the judgment and decree of the trial court and granted the necessary reliefs in favour of the plaintiff. In such view of the matter, the defendants having failed to establish that they had put up the construction in the disputed area during 1974 and 1982, as the case may be and on the other hand, when it is found that the tiled superstructure put up by the defendants in the disputed area is of recent origin and put up the same taking advantage of the absence of the plaintiff, it is found that the suit having been laid by the plaintiff, on coming to know of the same, it is seen that the plaintiff cannot be held to be guilty of laches on his part in not questioning the alleged construction put up by the defendants in the disputed property or the plaintiff cannot be held to be estopped by way of acquiescence and when the defendants have failed to establish their plea of adverse title to the disputed property and when the plaintiff is found to have laid the suit based on the title and also established the title to the suit property and when the defendants have failed to establish that 12 years prior to the filing of the suit, their possession had become adverse to the plaintiff and when with reference to the abovesaid claim of adverse title, other than Ex.B1 rough patta, there is no other valid material projected on the side of the defendants and when it is found that Ex.B1 rough patta had been subsequently canceled and further more, when Ex.B1 rough patta is found to have been issued in favour of the defendants without inviting objections from all concerned particularly, from Santham Poossari, in such view of the matter, the substantial questions of law formulated in the Second Appeal are accordingly answered against the defendants and in favour of the plaintiffs.

18. The counsel for the defendants in support of his contentions placed reliance upon the decision reported in 2008 (1) LW 62 [Manickammal Vs. R.Jayaraman]. The principles of law

outlined in the abovesaid decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. For the reasons aforesated, the Second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge, Dharmapuri at Krishnagiri.

2.The District Munsif cum Judicial Magistrate, Uthangarai.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.P.Mani, Advocate SR.NO.55993

+1cc to M/s.Sarvabhuman Associates, SR.NO.56297

NRI (CO)

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