

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2018
PRONOUNCED ON : 23.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.343 of 2004
&
CMP.No.8300 of 2018

1. Rajammal (Deceased)
2. Balasubramaniam
3. Vijayalakshmi
4. Sarada
(Appellants 2 to 4 recorded as
LRs of the deceased 1st appellant
vide order of the Court dated 17.04.14
made in C.M.P. No.43/14) ... Appellants/Defendants 2 to 4

Vs.

1. Swamikannu
2. Sampornam ... Respondents/Plaintiffs

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.10.2002 made in A.S.No.221 of 2002 on the file of the Principal District Court, Namakkal confirming the judgment and decree dated 11.07.1997 made in O.S. No.478 of 1995 on the file of the Additional District Munsif Court at Namakkal.

For Appellants : Mr. T.Dhanyakumar

For Respondents : Mr.S.Saravanakumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 24.10.2002, passed in A.S.No.221 of 2002, on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 11.07.1997, passed in O.S. No.478 of 1995, on the file of the Additional District Munsif Court, Namakkal.

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

3. Suit for declaration, possession and permanent injunction.

4. The case of the plaintiffs, in brief is that the suit properties had been acquired by the first plaintiff through his mother as well as the second plaintiff by way of purchase from one Arumugha Udayar and others and been in the possession and enjoyment of the plaintiffs and the plaintiffs are enjoying the suit properties by obtaining patta, paying kist etc., The plaintiffs' properties comprising of vacant site and houses are shown as P series in the plaint plan and the defendants' properties comprising of houses and lands are shown as D series and in the common way cart track shown as PH in the plaint plan, the same belong only to the plaintiffs and one Sundaram and Jayam and accordingly, it is the case of the plaintiff that the properties shown as P1, P3, P4, P5 and P6 belong to the first plaintiff ancestrally and the property shown as P2 belong to the second plaintiff by way of purchase from Arumugha Udayar and others on 28.08.87 and the plaintiffs were running poultry farming in the property shown as P3 by putting up a soolai and about 10 years ago, the first defendant approached the plaintiffs and requested them to lease the property P3 in their favour and accordingly, the said property had been let out to the defendants and thereafter, as the defendants were was not regular in the payment of rent, they were directed to vacate the suit property. However, the defendants were delaying the same, later started asserting title to the property shown as P3 by claiming that they had been issued patta in respect of the said property. However, the defendants are not entitled to the property shown as P3 in the plaint plan and as far as PH common way cart track is concerned, the defendants are not entitled to in respect of the same and on the other hand, without any authority the defendants attempted to discharge their drainage water by laying a pipeline through the said common way cart track and also attempted to interfere with the plaintiffs' possession and enjoyment of the other items of the suit properties. Hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. It is false to state that the properties shown as P1, P3, P4, P5 and P6 belong to the plaintiffs ancestrally and the property shown as P2 was acquired by the second plaintiff by way of purchase from Arumugha Udayar and others on 28.08.87 and it is false to state that the plaintiffs had been running a poultry farm in P3 and put up a soolai and the same had been rented to the defendants and the plaintiffs had demanded the defendants to vacate the same and thereafter, the defendants had asserted title to the said property by claiming patta in their favour and the defendants do not claim any interest in the properties shown as P1, P2, P5 and P6 and therefore, the case of the plaintiffs that the defendants are interfering with their enjoyment of the pathway from P5 portion to P6 portion is false. It is false to state that PH cart track exclusively belonged to the plaintiffs and one Jayam and Sundaram and on the other hand,

in the release deed dated 10.11.80, executed between the first plaintiff and others, the abovesaid cart track is shown to be extending upto Nainamalai and the said cart track is common to one and all and the cart track proceeds upto Nainamalai temple, Karumalai and Chinnakulam and in respect of the cart track portion, joint patta had been issued and the plaintiffs cannot claim any right in respect of the abovesaid cart track as projected in the plaint and it is false to state that the defendants attempted to lay underneath pipeline in the said cart track for discharging the drainage water. The pipeline had been in existence in the said cart track and the plaintiffs had destroyed the said pipeline about six months back and levelled the land illegally. The suit laid by the plaintiffs without impleading the others is bad in law. The plaintiffs have no right or interest in the property shown as P3 and the property shown as P3 has been in the possession and enjoyment of the defendants in their own right and the defendants had been granted patta in respect of the said property and the plaintiffs are not entitled to seek the reliefs as prayed for, particularly, as regards the property shown as P3 and the PH pathway and the plaintiffs have no cause of action to lay the suit and therefore, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs 1 to 4 were examined, Exs.A1 to A7 were marked. On the side of the defendants, DWs 1 to 5 were examined, Exs.B1 to B11 were marked. Exs.C1 and C2 were also 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 grant the reliefs as prayed for by the plaintiffs. Challenging the same, the second appeal has been preferred.

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

"1. Whether the courts below failed to appreciate the case of the defendants claiming title through Ex.B1 Release Deed and Ex.B7 Patta.

2. Whether the courts below erred in granting decree with respect of Item No.4 of the suit property, when the plaintiffs did not seek for any relief with regard to that item and did not pay court fee.

3. Whether the findings of the courts below relating to the value of Item No.3 of the suit property and payment of correct fee are perverse to the evidence on record."

9. The plaintiffs had laid the suit in respect of the various items of the properties i.e., in respect of the suit properties shown as P1 to P6 and the PH cart track as shown in the plaint plan. From the defence projected by the defendants, it is found that the defendants are not in issue with the plaintiffs as regards the properties shown as P1, P2, P5 and P6. According to the defendants, they have not, at any point of time, disputed the claim of title of the plaintiffs in respect of the abovesaid properties and further, accordingly pleaded that the case of the plaintiffs that they had interfered with the plaintiffs' usage of the pathway from P5 to P6 portion is false. Such being the position, when there is no material placed to hold that the defendants has raised any dispute with reference to the abovesaid items of the properties, accordingly, it is seen that as regards the abovesaid item of the properties, the plaintiffs have no cause of action to lay the suit against the defendants. It is thus found that the issue involved between the parties is only with reference to the pathway PH cart track and P3 property.

10. It is the specific case of the plaintiffs that the properties shown as P1, P3, P4, P5 and P6 belong to the first plaintiff ancestrally and the property shown as P2 had been acquired by the second defendant by way of purchase. As above seen, there is no dispute raised by the defendants as regards the property shown as P1, P2, P4 and P5. Accordingly, it is found that it is for the plaintiffs to establish that they have right in respect of the property shown as P3 as put forth by them. However, as rightly projected by the defendants, from the documents placed by the plaintiffs, namely, Ex.A1 not shown to be pertaining to P3 property as no survey number is mentioned and boundaries not show to tally with P3 property, Ex.A2 which pertains to P5 and P6 properties and Ex.A3 which pertains to P2 property, it is thus found that the abovesaid documents would not in any manner show any claim of title to the plaintiffs in so far as property P3 is concerned. In so far as this suit is concerned, it is seen that in the description of the suit properties, survey numbers as such had not been given and on the other hand, the properties had been described as being located in the suit village within the boundaries described in survey numbers. Even the extent of the various items of the properties had not been given. Accordingly, it is found that as regards the disputed property, namely, P3 is concerned, the same is also described as only being located with in the particular boundaries described in survey numbers. As above seen, the P3 property is stated to be acquired by the first plaintiff ancestrally. However, as to under what mode, the first plaintiff had acquired the said property ancestrally, there is no proper plea as well as no reliable material forthcoming on the side of the plaintiffs. When the documents of title projected by the plaintiffs marked as Ex.A1 to A3 do not show or not shown to be correlating with the property P3, accordingly it is seen that from the abovesaid documents, we cannot infer that

the first plaintiff is having title to the property P3. The other documents projected by the plaintiffs, namely, patta and the house tax receipts etc., would not in any manner be helpful to uphold the claim of the plaintiffs in respect of the property P3. The sale deed dated 15.7.94, marked as Ex.A7 is also not shown to be relating to the property P3. Accordingly, when the plaintiffs have failed to establish their trace of title to the property P3 in the plaint as well as not placed any document worth acceptance pointing to their entitlement to the said property and when the documents projected by them are not shown to be correlating to the property P3 as described in the plaint and when in the plaint, the property P3 has not been described by giving survey number, the owners of the properties surrounding the said item as well as the door number of the said property, it is found that with the abovesaid description, we cannot correlate the said item of property i.e., P3 with the documents projected by the plaintiffs and accordingly, as rightly put forth by the defendants, none of the documents projected by the plaintiffs are helpful to uphold the plaintiffs claim of title to the property P3, in particular. Though by way of amendment, the first plaintiff would claim that the suit properties had been acquired through his mother, however, when Ex.A1 and A2 in particular are not shown to be relating to the property P3 and when the plaintiffs examined as PWs 1 and 2 are unable to correlate the P3 property with the abovesaid sale deeds, it is found that the plaintiffs have miserably failed to establish their claim of title to the property P3 as projected in the plaint.

11. Inasmuch as the plaintiffs have no valid title to the property P3, it is found that though the plaintiffs would claim that they had been using the said property by running a poultry farm and raising a soolai etc., with reference to the enjoyment of the said property, no scrap of paper has been placed by them in support of their case. Further, the claim of the plaintiffs that they had let out the abovesaid property to the defendants on lease is also not borne out by any evidence. It is the further case of the plaintiffs that the defendants had been paying rents in respect of the said property, but the same is also not supported by any material. In such view of the matter, it is found that the plaintiffs had never been in the possession and enjoyment of the property P3. Thus the plaintiffs have miserably failed to establish their claim of title to the said property as well as their case of letting out the said property to the defendants. It is thus found that the defendants in their own right, are in the occupation of the property P3. In such view of the matter, when the plaintiffs have failed to establish their claim of title to the property P3 as projected by them, it is found that the Courts below basing on the failure of the defendants to sustain their claim of title to the property P3, by picking holes in the documents projected by them particularly the defendants having failed to produce the Will which had come to be executed after Ex.B4 Will, on that

reasoning, found to have upheld the plaintiffs' case. However, the abovesaid approach of the Courts below is found to be unacceptable. When the plaintiffs have come forward with the suit seeking the reliefs on a particular set of facts, it is for the plaintiffs to establish the same and the plaintiffs cannot be allowed to pick holes in the defence version and thereby endeavour to succeed in their case. In such view of the matter, when the plaintiffs are unable to correlate P3 property with any of the documents projected and when the defendants are seriously challenging the plaintiffs' title in respect of P3 property, the Courts below instead of focusing their attention as regards the lack of proof on the part of the plaintiffs to sustain their claim of title to the property P3 had diverted their attention only in the defects of the defendants case, particularly, the failure of the defendants in not projecting the Will of the year 1954 and on that basis, seems to have accepted the plaintiffs case. As rightly put forth by the plaintiffs counsel, when the onus is heavy on the plaintiffs to establish their claim of title to the disputed property i.e., P3 and admittedly, when the defendants are in possession and enjoyment of the said property, the lease arrangement projected by the plaintiffs having not been established, it is found that the plaintiffs are as such not entitled to claim the reliefs of declaration and possession as regards the P3 property.

12. As regards the PH cart track, it has not been explained by the plaintiffs as to how they claim exclusive right to the cart track as projected in the plaint. According to the plaintiffs, the said cart track exclusively belong to them and one Jayam and Sundaram. At the foremost, there is no document as such placed by the plaintiffs worth acceptance to show the entitlement of the PH cart track in their favour and in favour of Jayam and Sundaram. The Courts below seem to have accepted the above aspect of the plaintiffs case based on the boundary recitals found in the documents projected in the matter. However, as rightly put forth by the defendants' counsel, on the basis of the boundary recitals contained in the documents projected, we cannot infer that PH cart track exclusively belong to the plaintiffs, Jayam and Sundaram as pleaded. If that be so, it does not stand to reason as to why the other owners had not been impleaded as parties to the suit proceedings. In so far as PH cart track, the plaintiffs have sought the negative the relief i.e., sought the relief that the defendants are not entitled to use the said cart track. However, when the plaintiffs have not established their exclusive right or title to the said cart track, it is seen that the plaintiffs are not entitled to prevent the defendants from using the said cart track. That apart, when as per the release deed projected in the matter, marked as Ex.B1, which document has not been disputed by the plaintiffs as such, but, on the other hand, according to the plaintiffs, the said document had not been acted upon, when it is found that as seen from Ex.B1, the PH cart track extends to Nainamalai temple and the neighbouring village and to say

the said cart track ends with Jayam house and does not proceed further, as such cannot be accepted in any manner. In this connection, the Courts below had relied upon the commissioner's report and plan. However, when the documents projected in the matter show that the PH cart track does not end with Jayam's house and also proceed further to vellavari and other villages, the case of the plaintiffs that the defendants are not entitled to use the same as such cannot be countenanced. To seek such a relief, the plaintiffs should establish that the said cart track exclusively belong to them and others and with reference to the same, there is no acceptable material forthcoming other than some boundary recitals and when the boundary recitals cannot be the factors for upholding the claim of title of the plaintiffs and others in respect of the cart track, it is seen that the Courts below had erred in upholding the above aspect of the plaintiffs case. Despite the same, it is found that the Courts below had however permitted the defendants to use the said cart track for ingress and egress and had only injuncted them from laying pipelines in the same and accordingly, it is seen that the plaintiffs are not shown to be the exclusive title holder of the cart track PH as projected in the plaint. It is seen that the plaintiffs would not be entitled to injunct the defendants from using the cart track, being a public cart track to the maximum advantage and in such view of the matter, it is found that the plaintiffs have no case as regards PH cart track.

13. C.M.P.No.8300 of 2018

(i) Petition filed under Order 41 Rule 27 of the Civil Procedure Code.

(ii) The petitioners/appellants seek to project certain documents as additional evidence in support of the property marked as D in the plaint plan. However, as rightly put forth by the respondents' counsel, the projected documents do not relate to the suit properties as such. Further, the petitioners have also not pleaded anything about the projected documents in their written statement or during the course of their evidence. In addition to that, it is also not the case of the petitioners that they are not aware of the projected documents during the course of trial. It is thus found that when none of the ingredients contemplated under Order 41 Rule 27 CPC is satisfied by the petitioners for entertaining petition for the reception of the additional evidence and also when the projected documents are found to be not necessary for the adjudication of the issues involved between the parties as regards the suit properties, in my considered opinion, the petition filed for the reception of the projected documents as additional evidence do not merit acceptance and hence, the petition deserves rejection.

14. Inasmuch as the defendants are not shown to have disputed the claim of the plaintiffs as regards the properties P1, P2, P5, P6 and the plaintiffs themselves have not sought for any relief, in particular, in respect of the P4 property and also when there is no material to show that the defendants had

interfered with the right of access of the plaintiffs from P5 portion to P6 portion as projected in the plaint and further, when the plaintiffs have miserably failed to establish their claim of title to P3 property and also failed to establish their claim of exclusive title to PH cart track as projected in the plaint, it is found that the failure of the defendants in establishing their claim of title to P3 property as such, as determined by the Courts below, by itself would not entitle the plaintiffs to seek the reliefs prayed for and in such view of the matter, it is found that as such the plaintiffs have no cause of action to institute the suit against the defendants. Resultantly, the judgment and decree of the Courts below upholding the plaintiffs case are liable to be set-aside. The substantial questions of law formulated in the second appeal are accordingly answered.

15. In conclusion, the judgment and decree dated 24.10.2002, passed in A.S.No.221 of 2002, on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 11.07.1997, passed in O.S. No.478 of 1995, on the file of the Additional District Munsif Court, Namakkal are set-aside and the suit laid by the plaintiffs in O.S. No.478 of 1995 is dismissed with costs. Accordingly, the second appeal is allowed with costs. CMP.No.8300 of 2018 is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Namakkal.
2. The Additional District Munsif Court,
Namakkal.
3. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+2cc to M/s.T.Dhanyakumar, Advocate SR.NO.49107, 48681

AK(CO)

sm:18.9.2018

S. A.No.343 of 2004