

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.04.2018

PRONOUNCED ON : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.709 of 2004

1. The Govt. of Tamil Nadu
rep. by its District Collector,
Coimbatore.
 2. The Tahsildar
Tirupur.
 3. The Village Administrative Officer,
Veerapandi Village, Tirupur Taluk.
... Appellants/1 to 3 defendants
- Vs.
1. T.Natarajan ... Respondent/Plaintiff
 2. S.Velusamy
 3. S.Ganesan
 4. Angappa Mudaliar ... 2 to 4 Respondents/4 to 6 defendants

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.02.2004 passed in A.S.No.9 of 2003 on the file of the Additional District Judge (Fast Track court No.5), Coimbatore, at Tiruppur, reversing the Judgment and Decree dated 30.04.2002 passed in O.S.No.177 of 2001 on the file of the District Munsif, Tirupur.

For Appellants : Mr.A.Madhumathi
Additional Govt.Pleader (CS)

For Respondent : Mr.T.M.Hariharan
No.1

Respondents 2to 4 : absent and set exparte

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 05.02.2004 passed in A.S.No.9 of 2003 on the file of the Additional District Judge (Fast Track Court No.5), Coimbatore, at Tiruppur, reversing the Judgment and Decree dated 30.04.2002 passed in O.S.No.177 of 2001 on the file of the District Munsif Court, Tirupur.

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 plaint schedule property originally belonged to the plaintiff's father Thenpalani Mudaliar by virtue of a registered sale deed dated 15.12.1927 and pursuant to the abovesaid purchase, it is only Thenpalani Mudaliar, who has been in possession and enjoyment of the suit property till his death and the suit property was a vacant land till the death of the plaintiff's father and after the death of Thenpalani Mudaliar, the plaintiff is in possession and enjoyment of the suit property without any interruption and constructed a shop building in the suit property and the shop building is also assessed to property Tax by the Marugampalayam Panchayat in the name of the plaintiff and the plaintiff is paying the property tax and the Revenue Inspector, Tirupur south also issued a certificate that the plaintiff and the 6th defendant are the absolute owners of the suit property and the 4th defendant is the Councilor and the 5th defendant is his henchman and the defendants 4 & 5, being jealous of the development of the plaintiff, without no manner of right or title to the suit property, attempted to interfere with the plaintiff's possession and enjoyment of the suit property illegally and also made complaints to the police against the plaintiff without any basis and the police, after enquiry, finding that the matter is civil in nature, advised both the parties to sort out the issue and the defendants 4 & 5 with the help of the defendants 2 & 3 are attempting to evict the plaintiff from the suit property alleging that the suit property is Pavadi land and thereby, the defendants are now attempting to disturb the plaintiff's possession and enjoyment of the suit property unlawfully and hence, according to him, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants 1 to 3, in brief, is that after denying all the averments contained in the plaint in toto, according to them, the certificate issued by the Revenue inspector would not confer title to the suit property on the

plaintiff and also denied that the suit property had been acquired by the plaintiff's father Thenpalani Mudaliar by virtue of the registered sale deed dated 15.12.1927 as alleged in the plaint and also disputed the plaintiff's possession and enjoyment of the suit property, after the demise of his father, by putting up a shop building and paying the property tax etc., and according to them, the suit property is in the name of the Government as Poramboke Pavadi land and the plaintiff has no right, title or interest in the suit property whatsoever and it is false to state that the defendants 1 to 3 are attempting to invade or threaten the plaintiff's possession and enjoyment of the suit property and the suit property is still in the name of the Government as Pavadi Poramboke land covering S.F.Old 109 and new 689/1 and 701/7 and therefore, the plaintiff's suit, without any cause of action, is liable to be dismissed.

6. The case of the defendants 4 & 5, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and denied the case of the plaintiff that the suit property had been purchased by his father by way of the registered sale deed dated 15.12.1927 and that, the plaintiff's father and thereafter, the plaintiff has been enjoying the suit property and in particular, disputed the claim of the plaintiff that he had put up a shop building in the suit property and been paying property tax etc., and according to them, the property is situated in Idukampalayam village, where, the families engaged in weaving business used to dry the warp before weaving in the open places in the early morning and the said process is called Drying Warp i.e. Pavadi and for the said purpose, about 40 cents of vacant land is available in the village called Pavadi Poramboku and the said place is meant and used for Pavadi purpose by the entire weaving community in the village and the same is used as Pavadi for more than 100 years and no individual is entitled to claim separate ownership to the said land and the revenue records also disclosed that the said property is only Pavadi and hence, the plaintiff cannot lay any exclusive claim of title, possession and enjoyment of the suit property comprised in new survey No.701 which has been in the enjoyment of the whole weaving community of the village and the plaintiff attempted to put up a construction in the suit property without any basis and the same had been prevented by the villagers and in this Connection, the villagers/weaving community preferred a petition before the revenue officials against the illegal acts of the plaintiff to usurp the suit property and the plaintiff is not in possession and enjoyment of the suit property and has no title to the same and hence, the suit laid by the plaintiff is liable to be dismissed.

7. In support of the plaintiff's case, PWS1 to 4 were examined and Exs.A1 to 5 were marked. On the side of the defendants, DWS1 to 4 were examined and Exs.B1 was marked and Exs.X1 & X2 were also marked.

8. 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. Aggrieved over the same, the present second appeal has been laid by the defendants 1 to 3.

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

"(i) Whether the lower Appellate Court was right in drawing adverse inference against the defendant when the plaintiff has miserably failed to prove his title over the suit property?

(ii) Whether the lower Appellate Court was right in eschewing Ex.B series, the records maintained by the appellant in its usual course of functions?

(iii) Whether the lower Appellate Court was right in accepting Ex.A4 document, namely, unregistered agreement which would not confer any right title over the suit property to the plaintiff/respondent?

(iv) Whether the lower Appellate Court was right in placing its reliance on Ex.A1 an ancient document to that of suit property when admittedly Ex.A1 does not have any survey No. or pymash number to corroborating the suit property?"

10. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction. The suit property is described as located in old survey No.109 of Idukampalayam village, within the specific boundaries and measurements and the suit property is also described to be comprising of a structure

bearing D.No.2/336. Now, according to the plaintiff, the suit property has been acquired by his father Thenpalani Mudaliar by virtue of the registered sale deed dated 15.12.1927 and by way of the same, it is the case of the plaintiff that his father and after the demise of his father, he has been in possession and enjoyment of the suit property and further, according to the plaintiff, he had put up shop building in the suit property and running a tea stall therein and it is stated that the said building is assessed to property tax and accordingly, he is paying the property tax to the Panchayat and thus, it is the case of the plaintiff that he has both title as well as possession and enjoyment of the suit property and inasmuch as the defendants 1 to 5, without any authority under law, attempted to threaten and invade his possession and enjoyment of the suit property, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

11. Per contra, it is the case of the defendants that the suit property is belonging to the Government and classified as Pavadi Poramboke land and intended for the general use of weaving community of the Village for drying warp and according to them, no one is entitled to claim any exclusive title, possession and enjoyment of the suit property as such and hence, it is stated that the plaintiff cannot lay any claim of title, possession and enjoyment of the suit property as per law as putforth in the plaint and further, according to the defendants, inasmuch as the plaintiff under the guise of a false claim made attempts to usurp the suit property, according to the defendants, complaints had been preferred against the plaintiff, in connection with the same, to the officials concerned and hence, it is stated that the plaintiff has no cause of action and the suit is liable to be dismissed.

12. Despite the above resistance offered by the defendants, in fact, totally disputing the claim of title to the suit property by the plaintiff as putforth in the plaint, still, the plaintiff has not chosen to seek the relief of declaration as regards the suit property and the same has not been explained by the plaintiff in any manner. When it is the specific case of the defendants that the suit property is the government property, which is known as Pavadi poramboke land and the plaintiff is not entitled to claim any exclusive title with reference to the same, still, for the reason best known to the plaintiff, he had not chosen to amend the plaint for including the relief of declaration of title to the suit property and on that footing alone, it is found that the plaintiff's suit simplicitor laid for bare injunction is not maintainable and this position of law could be gathered from the decision of the apex Court reported in AIR 2008 SCC 2033 (Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LR's. And Ors.).

13. Now, according to the plaintiff, he has title to the suit property by virtue of the purchase of the same by his father on 15.12.1927 and the said sale deed has come to be marked as Ex.A1. The defendants have disputed the genuineness of Ex.A1. At the foremost, as rightly determined by the trial Court, there is no reference about any survey number in Ex.A1. In such view of the matter, when according to the plaintiff, the suit property is comprised in old survey No.109, at least, to sustain that the property comprised in the suit survey number had been acquired by way of Ex.A1, there should be some materials pointing to the same in the said document, however, the reference about any survey number is conspicuously not found in Ex.A1 and in the light of the above position, it is highly doubtful whether the suit property as described in the plaint is the subject matter of Ex.A1 sale transaction. In addition to that, when according to the defendants, the suit property had not been acquired by virtue of Ex.A1 as claimed by the plaintiff, at the outset, the plaintiff has to establish that the vendor of Ex.A1 had the legal competency to convey the suit property in favour of the plaintiff's father. However, it is found that there is no plea put forth in the plaint as to how the vendor of Ex.A1 had acquired title to the suit property, so as to enable him, to legally convey the same to the plaintiff's father by way of Ex.A1. In such view of the matter, it is found that accordingly, merely on the production of Ex.A1, we cannot uphold the plaintiff's claim of title to the suit property and grant the relief sought for in the plaint. To establish that the plaintiff's father had been in possession and enjoyment of the suit property by virtue of Ex.A1, there is no material forthcoming. Conveniently the plaintiff has averred that inasmuch as only the vacant land had been acquired by way of Ex.A1, there is no document to prove the possession of the same by his father. Still, when the case of the plaintiff that the suit property has been in the possession and enjoyment of his father is being challenged by the defendants, it is for the plaintiff to establish his case by placing acceptable proof and in the light of the above case, it is found that by virtue of Ex.A1, we cannot safely conclude that the plaintiff's father had acquired a valid title to the suit property under the said document.

14. The recitals found in Ex.A1 also would go to show that only the Pavadai land has been the subject matter of the said transaction. To sustain the claim of title to the suit property, apart from Ex.A1, the plaintiff also relied upon the certificate issued by the Revenue Inspector marked as Ex.A3. On a perusal of Ex.A3, it is found that the said document has been purported to be issued by the revenue inspector for the purpose of obtaining the electric service connection. Further, a reading of the said

certificate goes to show that the certificate has been issued in favour of the plaintiff and Angappa Mudaliar S/o. Chinniya Mudaliar and it is also found that the Revenue Inspector has issued the certificate in their favour based upon the sale deeds dated 23.11.1927, 15.12.1927 and the sale agreement dated 08.07.1957. However, in Ex.A3, though the old survey No.109 is referred to, it has not been explained by the plaintiff, as to on what basis, the Revenue Inspector concerned, who had issued the said certificate, has incorporated the survey number in the certificate based upon Ex.A1 sale deed. That apart, the sale deed dated 23.11.1927 has not been placed, to show the entitlement of Angappa Mudaliar in respect of the property described in the certificate i.e. the suit property. Furthermore, the concerned Revenue Inspector has not been examined. In addition to that, when the certificate marked as Ex.A3 could not be treated as a document of title and when it is not established by the plaintiff, as to on what basis, the said Revenue Inspector had come to issue the said certificate in his favour and in favour of Angappa Mudaliar and when the sale deed dated 23.11.1927 also formed the basis for the concerned Revenue Inspector to issue the said certificate, particularly, when the said sale deed has not seen the light of the day, it does not stand to reason as to how, the plaintiff would be entitled to seek the claim of title to the suit property based on the certificate marked as Ex.A3. Ex.A3 could only be construed as a piece of revenue record, as such and when the revenue record cannot be made equivalent to a document of title and when it is further seen that the said certificate, on the face of it, is stated to have been issued only for the purpose of obtaining electric service connection, as rightly determined by the trial Court, no safe reliance at all could be placed upon Ex.A3 to uphold the plaintiff's claim of title to the suit property.

15. The trial Court seems to have placed acceptance on Ex.A1 sale deed on the footing that it is 30 years old document and therefore, the presumption could be raised in respect of the said deed by virtue of Section 90 of Indian Evidence Act. No doubt, the presumption could be drawn under Section 90 of the Indian Evidence Act, as regards 30 years old document. However, as per law, the said presumption could be raised only as to the execution and attestation of the said document and the presumption could not be raised as regards the genuineness of the said document, particularly, when the genuineness of the said document is being impeached by the defendants tooth and nail. It is thus found that the first appellate Court has erred in placing total reliance upon Ex.A1 including the genuineness of the same based upon the presumption raised under Section 90 of the Indian Evidence Act and thereby, erred in upholding the plaintiff's claim of title to the suit property by virtue of Ex.A1.

16. Now, according to the plaintiff, he has been in possession and enjoyment of the suit property, after the demise of his father. However, it has not been explained by the plaintiff, as to how, he is entitled to retain the suit property. Even assuming for the sake of arguments that his father had acquired a valid title to the suit property by virtue of Ex.A1, when it is seen that even as per the evidence tendered by plaintiff, Thenpalai Mudaliar, the plaintiff's father had left behind 6 daughters and 2 sons including the plaintiff as his legal heirs and when according to the plaintiff, the daughters and sons of Thenpalani Mudaliar had effected partition and when it is the claim of the plaintiff that the suit property has come to be allotted to him, if that be so, the plaintiff to sustain his case, should have placed the partition deed, by virtue of which, he has been allotted the suit property. However, the alleged partition deed has not seen the light of the day and not produced and no reason has been adduced for the same. It is thus found that the plaintiff as such cannot lay any exclusive title to the suit property, even if one were to go by the plaintiff's case that his father had acquired title to the suit property by virtue of Ex.A1, when it is seen that other than the plaintiff, there are other Legal Representatives and accordingly, it is seen that the claim of exclusive title to the suit property by the plaintiff as such cannot be accepted sans material pointing to the same.

17. Now, according to the plaintiff, after the demise of his father, he has been in possession and enjoyment of the suit property and it is further stated that he has constructed a shop building in the suit property and running a tea stall therein for more than 7 years prior to the institution of the suit and to establish the said case of the plaintiff, a tax receipt has been marked as Ex.A2. Ex.A2 is found to be pertaining to Door No.2/366, which is also mentioned in the description of the suit property. However, the said tax receipt is being impugned by the defendants on the footing that the same is not relating to the suit property. Other than the door number mentioned therein, there is no reference to hold that the said tax receipt pertains to the structure raised in the suit property. Further, it is found that Ex.A2 pertains to the period 1999-2000, 2001-2002. Now, according to the plaintiff, he has been running a tea stall for more than 7 years prior to the institution of the suit and if that be so, no explanation is offered by the plaintiff as to that he has not endeavorud to produce the other tax receipts in respect of the alleged structure put up by him in the suit property several years prior to the institution of the suit. Accordingly, it is seen that the trial Court has not placed reliance upon Ex.A2 as such to uphold the claim of title, legal possession and enjoyment of the suit property by the plaintiff.

I do not find no reason to deviate from the above said reasonings and conclusion of the trial Court for not placing reliance upon Ex.A2.

18. The plaintiff has marked an agreement dated 08.07.1957, where under, some agreement has been entered into between Thenpalani Mudaliar and Angappal Mudaliar as regards the enjoyment of the Pavadai land. However, the above said agreement, even assuming the same is a true document, by itself would not, in any manner, confer a valid title to the suit property as putforth by the plaintiff and particularly, when the plaintiff has failed to establish that his father has acquired a valid title to the suit property by virtue of Ex.A1 as aforestated. The subsequent agreement said to have been entered into between his father and Angappa Mudaliar as regards the enjoyment of the pavadi land claimed to be owned by them as such cannot be the basis for upholding the plaintiff's case. As rightly determined by the trial Court, even in Ex.A4, there is no reference about the survey number of the suit property and it has also not been established that pursuant to Ex.A4, Thenpalani Mudaliar and Angappa Mudaliar had been in possession and enjoyment of the Pavadi land alleged to be owned by them as recited therein. Ex.A4 is an unregistered document and when the defendants are not parties to the same, it is found that absolutely the said document would not be binding upon the defendants and also would not confer any valid title to the suit property in favour of the plaintiff. Ex.A4 is thus found to be rightly negated by the trial Court.

19. Ex.A5 is the sale deed dated 01.05.1967, whereunder, it is the case of the plaintiff that the Pavadi land had been alienated by way of the said document in favour of PW4's father, one Rasappa Mudaliayar. However, when the said document is not related to the suit property as such, that apart, when even in the said document, there is no reference about any survey number and when it is further seen that the witness through whom, the said document has come to be marked, happens to be the relative of the plaintiff, he having married the plaintiff's sister, considering the above said factors, it is found that Ex.A5 cannot be the basis for upholding the claim of title, possession and enjoyment of the suit property as putforth.

20. Other than Exs.A1 to A5, there is no other material placed by the plaintiff to establish his claim of title, possession and enjoyment of the suit property. PW2, who has deposed in favour of the plaintiff, has testified that there are 14 Pavadi lands in the said village and of them, Pavadi No.7 belongs to the plaintiff and is in his possession and enjoyment and he would claim that the Pavadi No.14 belongs to him. However, there is no material placed to hold that Pavadi No.14

belongs to PW2 and also no material placed to hold that the said land is in the possession and enjoyment of PW2. It is further seen that PW2 has admitted that he is related to the plaintiff. Accordingly, it is found that merely on the oral testimony of PW2, without any basis, it may not be proper to accept the plaintiff's case on the basis of such uncorroborated and unreliable evidence and accordingly, found to have been disbelieved by the trial Court rightly. Similarly PW3 another witness, who had deposed in favour of the plaintiff, has also claimed that he owns Pavadi land No.5 and that, the plaintiff owns Pavadi No.7 and running a tea shop therein. However, there is no material placed to hold that Pavadi No.5 belongs to PW3 and is in his possession and enjoyment and further, it is also seen that PW3 is related to the plaintiff as having married the girl from the plaintiff's family and accordingly, it is seen that without any support, we cannot accept the plaintiff's case on the basis of the interested testimony of PW3. As above seen PW4 through whom Ex.A5 has come to be marked and also related to the plaintiff and when Ex.A5 is not related to the suit property as such and thereby, it is seen that PW4's evidence also would not be the acceptable factor for granting the reliefs sought for by the plaintiff.

21. In the light of the above said reasons, it is found that no valid and acceptable material either oral or documentary has been placed by the plaintiff to uphold his claim of title, possession and enjoyment of the suit property. It is the specific case of the defendants that the suit property belongs to the Government and classified as Pavadi Poramboke land. In this connection, the 4th defendant has made a claim of the issuance of patta in his favour in respect of the suit property and the same has been turned down by the Thasiladar, Tirupur, holding that the suit property belongs to the Government and hence, patta could not be issued in favour of the 4th defendant and the letter sent by the Thasildar, Tirupur, in connection with the same, has come to be marked as Ex.B1. Therefore, from Ex.B1, it could be seen that the suit property is only the Government property intended for the benefit of one and all concerned. That apart, as seen from the evidence of PW4 and the documents marked as Exs.X1 & X2, the Adangal extract of the suit survey number and the map pertaining to the suit survey number respectively, as rightly found by the trial Court, the old survey No.109 corresponds to the new survey No.701/7, it is seen that on a perusal of Exs.X1 & X2 and the evidence of DW4 that survey No.701 had been subdivided as 701/1 to 701/18 and accordingly, it is found that 701/1, 7, 18, 5 & 6 are remaining vacant and the other subdivisions are shown as Manaikattu and accordingly, it is found that the said new survey No.701/7 has been classified only as Pavadi land of the Government and in the light of the abovesaid materials placed, when there is no proof

placed by the plaintiff to hold that he has a valid title, legal possession and enjoyment of the suit property as such and on the other hand, the materials placed by the defendants in toto would lead to the conclusion that the suit property only belongs to the Government for the common enjoyment of the weaving community of the village, the first appellate Court is found to have accepted the plaintiff's case on the basis of improper and erroneous appreciation of the materials placed on record and also finding fault on the part of the defendants in failing to establish their defence version. As rightly put forth by the defendants' counsel, when the plaintiff has come forward with the suit seeking specific relief, it is for the plaintiff to establish his case by placing acceptable, reliable and convincing materials and the plaintiff failing to do so, cannot be allowed to pick holes in the defendants' case and thereby, endeavour to succeed in his case, sans any material pointing to his case. In such view of the matter, it is found that the first appellate Court has seriously dealt with the failure of the defendants 1 to 3 in adducing the evidence in support of their case and on that basis, proceeded to uphold the plaintiff's case, despite the failure of the plaintiff to establish his claim of title to the suit property as above discussed. It is thus found that the reasonings and conclusions of the first appellate Court for accepting the plaintiff's case, not based upon the proper appreciation of the materials placed on record in the correct perspective, as rightly argued, the reasonings and conclusions of the first appellate Court could be only termed as perverse and illogical and hence, the judgement and decree of the first appellate Court cannot be allowed to sustain any further. In view of the abovesaid discussions, the first appellate Court has totally erred in drawing adverse inference against the defendants in not establishing their case, particularly, failing to appreciate that the plaintiff has miserably failed to prove his title in respect of the suit property. Equally, the first appellate Court has not properly appreciated the document and materials placed by the defendants in the matter and particularly, eschewing the documents placed by way of Exs.B1, X1 & X2, the records maintained by the Government in its usual course of business and also, it is noted that the first appellate Court has erroneously and without any basis placed reliance upon the plaintiff's documents as above discussed, which do not at all corelate to the suit property and also cannot be treated as equivalent to documents of title and found to have erred in placing reliance upon Ex.A1 despite the fact that Ex.A1 is not shown to be pertaining to any survey number or pymash number to corelate with the suit property, in such view of the matter, it is found that the first appellate Court has totally failed to look into the materials placed on record in the correct legal approach and thereby, erred in upholding the plaintiff's case and in such

view of the matter, the substantial questions of law formulated in this second appeal are accordingly, answered against the plaintiff and in favour of the defendants.

At the end, the Judgement and Decree dated 05.02.2004 passed in A.S.No.9 of 2003 on the file of the Additional District Judge (Fast Track court No.5), Coimbatore, at Tiruppur, are set aside and the Judgment and Decree dated 30.04.2002 passed in O.S.No.177 of 2001 on the file of the District Munsif Court, Tirupur, are confirmed and the second appeal is allowed with costs. Consequently connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District Judge (Fast Track court No.5), Coimbatore, at Tiruppur.
2. The District Munsif, Tirupur.
3. The Section Officer, V.R.Section, High Court, Madras. (2 copies)

+1cc to Mr.S.SIVASHANMUGAM, Advocate, S.R.No.28785
+1cc to Mr.T.M.HARIHARAN, Advocate, S.R.No. 27988
+1cc to the Government Pleader, S.R.No. 27917

Pre-Delivery Judgment made
in S.A.No.709 of 2004

VG II (CO)
TR(23/05/2018)

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