

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :18.04.2018

PRONOUNCED ON: 04.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.859 of 2004

1.Thottiya Thambidi (Deceased)

2.Chinnamara Thambidi

3.Chinnamari ... 1 TO 3 appellants/Appellants/
Defendants

4.Chinnammal

5.Naga Thambidi

6.Alagu Thambidi

7.Sikkiah Thambidi

8.Chinnuthai

[Appellants 4 to 8 brought on record
as LR's of the deceased first appellant
vide order of Court dated 11.12.2014
made in C.M.P.No.290 of 2014] ... 4 to 8 Appellants

Vs.

1.Madhu @ Madhan

2.Mani

3.Chinnasamy Respondents/Respondents/Plaintiffs

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Learned Fast Track Court No.IV (Additional District Judge) Erode at Bhavani in A.S.No.17 of 2002 dated 17.06.2002 confirming the Judgment and Decree of the Learned First Additional District Munsif, Bhavani in O.S.No.612 of 1996 dated 08.09.2000.

For Appellants :Mr.P.Parthi Kannan
for Mr.S.Kaithamalai Kumaran

For Respondents :Mrs.P.Saritha
for M/s.S.Krishnamoorthy

J U D G M E N T

This second appeal is directed against the judgment and Decree dated 17.06.2002 passed in A.S.No.17 of 2002 on the file of the Additional District Judge, Fast Track Court No.IV, Erode at Bhavani confirming the judgment and decree dated 08.09.2000 passed in O.S.No.612 of 1996 on the file of the First Additional District Munsif Court, Bhavani.

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

3. Suit for permanent injunction .

4.The case of the plaintiffs in brief is that the plaintiffs are brothers and plaintiffs' father Late Karuppan @ Karuppanan worked as village Thandal and his father is Javarayan and the patta in respect of the suit property was granted by the Government in favour of the plaintiff's father and since then, it is only the plaintiffs' father along with his family, who has been in possession and enjoyment of the suit property for nearly more than 40 years and the plaintiffs' father died intestate, during March 1995 and thereafter it is only the plaintiffs, who are in possession and enjoyment of the suit property by paying Kists etc., and the Chitta, RSR, Adangal extract in respect of the suit property are in the names of the plaintiffs' father and the defendants have no right or interest in respect of the suit property and they had never been in possession and enjoyment of the suit property and the defendants own lands to the south of the suit property and they requested the plaintiffs to sell the suit property in their favour to which the plaintiffs refused and engaged over the same, the defendants attempted to interfere with the plaintiffs' possession and enjoyment of the suit property and hence the suit for permanent injunction.

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 patta in respect of the suit property was granted in favour of the plaintiffs' father Karuppan @ Karuppanan by the Government and it is false to state that thereafter, the plaintiffs' father along with his family has been in possession and enjoyment of the suit property for more than 40 years and after his demise, the plaintiffs are in

possession and enjoyment of the suit property. It is false to state that the defendants requested the plaintiff to sell the suit property in their favour to which the plaintiffs had refused and it is false to state that the defendants attempted to interfere with the plaintiffs' possession and enjoyment of the suit property. On the other hand, the suit property was granted in favour of the defendants' ancestor under the Inam Abolition Act by way of Ryothwari patta and since then, it is only the defendants' ancestor and the defendants, who are in possession and enjoyment of the suit property by paying necessary Kists etc., and the plaintiff and their predecessors had never been in possession and enjoyment of the suit property at any point of time and the plaintiffs' father died 6, 7 years prior to the institution of the suit and the plaintiffs' mother and sister are necessary parties to the suit and the suit is bad for their non-jointer. The suit laid by the plaintiff simplicitor for permanent injunction without seeking the relief of declaration is not maintainable and hence the suit laid by the plaintiffs is liable to be dismissed as devoid of any cause of action.

6. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. Exs.A1 to A12 were marked. On the side of the defendants, D.Ws.1 to 4 were examined. Exs.B1 to B37 were marked. Exs.C1 to C4 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 grant the relief of permanent injunction as prayed for by the plaintiffs in respect of the suit property less 28 ares of land and the same had been also confirmed by the first appellate court. 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.

i. When the Courts below having found that the appellants are in possession of a portion of the suit property, is justified in granting a decree in respect of the entire suit property in favour of the plaintiffs?

ii. Whether the Courts below are right in decreeing a suit for permanent injunction without a prayer for declaration, especially when the title and possession of the plaintiffs are disputed by the

defendants/appellants?

9.The suit property is stated to be located at Burgur village in R.S.No.2160, old survey No.730 measuring an extent of 5.56.0 hectares, Patta No.1675 within specific boundaries. The above described suit property is claimed by the plaintiffs to be in their possession and enjoyment on the footing that the suit property had been granted in favour of their father Karuppan @ Karuppannan. The said fact has been challenged by the defendants. Though, the plaintiffs have claimed that the patta in respect of the suit property has been granted in favour of their father, the plaint does not disclose as to when the said patta had been granted in favour of their father. No date has been mentioned as regards when the said patta had been granted. That apart, the patta has also not been filed in the case in support of the plaintiffs' case. No valid reason has been assigned for the same. However, the plaintiffs would claim in the plaint that since the grant of patta, their father along with his family members had been in possession and enjoyment of the suit property for more than 40 years and after his demise, the plaintiffs are in possession and enjoyment of the suit property. When the plaintiffs' claim of title, possession and enjoyment of the suit property has been stoutly challenged by the defendants, atleast to show a prima facie case, the plaintiffs should have produced the patta alleged to have been granted in favour of their father by the Government as claimed in the plaint. However, the patta document has not been filed. As above seen, the plaintiffs have not disclosed to when the patta had been granted in favour of their father.

10.It is found that the suit has come to be laid by the plaintiffs on 09.08.1996. Both the Courts have not taken into consideration the documents marked as Exs.A5 to A8 as they are found to have come into existence after the institution of the suit. Thus, it is found that the Courts below have placed reliance only upon Exs.A1 to A4 for upholding the plaintiffs' case as determined by them. Exs.A1 to A4 are dated 25.07.1996, 30.07.1996, 25.07.1996 and 26.07.1996 namely Chitta, Settlement Register Extract and Adangal Extract and Kist receipt. It is thus found that all the abovesaid four documents have come into existence just a few days prior to the institution of the suit. When according to the plaintiffs' case, their father and they had been in possession and enjoyment of the suit property for more than 40 years, other than Exs.A1 to A4, there is no other valid material to evidence the abovesaid case of the plaintiffs. When Exs.A1 to A4 are challenged by the defendants, it is for the plaintiffs to establish that the abovesaid revenue records have come to be issued in their favour in recognition of their valid possession and enjoyment of the suit property as put forth by them. When the plaintiffs have not chosen to mark the

patta, by way of which, they seek title to the suit property and on the other hand, chosen to mark only Exs.A1 to A4 which have come into existence just a few days prior to the institution of the suit and when the plaintiffs' title deed said to have been granted in the name of their father has not seen the light of the day and further when Exs.A1 to A4 are challenged by the defendants, atleast to evidence that Exs.A1 to A4 had been issued based on proper records, the plaintiffs should have endeavored to examine the author of the above said documents. No reason has been adduced upon by the plaintiffs with reference to the same. Thus it is found that, by way of Exs.A1 to A4, we cannot safely conclude that the plaintiffs and their predecessors in interest had been in possession and enjoyment of the suit property for several years as put forth by them.

11.Both the Courts below have come to the conclusion that Ryothwary patta had been granted under the Inam Abolition Act in favour of the defendants to an extent of 28 ares of land in the suit survey number. In this connection, the documents marked as Exs.B1 to B33 were taken into consideration. Thus, even as per the determination of the Courts below, the defendants are in possession and enjoyment of an extent of 28 ares in the suit survey number. It is not made clear as to where the extent of 28 acres of land in the possession and enjoyment of the defendants lie in the suit survey number. When, according to the plaintiffs, they are in possession and enjoyment of the entire suit property based on the patta said to have been granted to their father and the said case is found to be not established and on the other hand, when even according to the Courts below, the defendants are in possession and enjoyment of an extent of 28 ares of land in the suit survey number and when the plaintiffs have not come forward with a clear case as to where the said extent of 28 ares of land lie in the suit survey number, whether on the eastern, western, southern or northern side and also not disclosed the boundaries with reference to the same i.e., the above said 28 ares of land found to be in the possession of the defendants, the determination of the Courts below that the plaintiffs are entitled to the relief of permanent injunction in respect of the suit property less 28 ares of land without demarcating or identifying as to where the said extent of 28 ares of land lie in the suit survey number, does not merit acceptance. Thus, it is found that even as per the determination of the Courts below, the plaintiffs are not in possession and enjoyment of the suit property as claimed by them.

12.The defendants have challenged the frame of the suit contending that the suit laid by the plaintiff without seeking the relief of declaration is not maintainable. As above seen, the defendants in the written statement as well as during the

course of evidence have challenged vehemently the claim of title to the suit property as put forth by the plaintiffs on the basis of the alleged patta granted in favour of their father. Despite the same, the plaintiffs have not chosen to produce the said patta for sustaining their case. That apart, despite the resistance put forth by the defendants that the suit laid by the plaintiffs simplicitor for permanent injunction without seeking the relief of declaration is not maintainable, still the plaintiffs have not endeavored to claim the relief of declaration. No valid reason has been assigned by the plaintiffs with reference to the same. The reasonings of the Courts below that inasmuch the plaintiffs had laid the suit for bare injunction complaining of only the interference made by the defendants and as the shares of the respective parties had been already demarcated by the grant of patta, so the suit laid by the plaintiffs is maintainable is found to be unacceptable and not in accordance with law, particularly, considering the principles of law, outlined in the decisions reported in 2008 (6) CTC 237 [Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs & others] and the decision of this Court dated 23.02.2008 passed in S.A.No.1461 of 2003 [Murugesan and Others Vs. Selladurai and Others]. It is found that the plaintiffs should have amended the plaint for seeking the relief of declaration in the light of the defence projected by the defendants challenging their title to the suit property as projected by them. Not only that, as above seen, the plaintiffs have not even marked the patta document based on which they seek title possession and enjoyment of the suit property. On the other hand, the plaintiffs seek to obtain the equitable relief of permanent injunction based on a set of revenue records which they were able to secure prior to the institution of the suit and when the said documents are also being challenged by the defendants, it is found that no safe reliance could be attached to the said documents for upholding the claim of the possession and enjoyment of the entire suit property as claimed by the plaintiffs. In addition to that, when even according to the Courts below, the plaintiffs are not in possession and enjoyment of the entire suit property and on the other hand, when the defendants are found to be in possession and an extent of 28 ares of land, the Courts below without any endeavor to identify the said extent of 28 ares of land, erred in granting the relief of permanent injunction in favour of the plaintiffs in respect of the suit property less 28 ares of land which is found to be not in accordance with law considering the facts and circumstances of the case at hand.

13. When the documents marked as Exs.A1 to A4 produced by the plaintiffs could not be taken into consideration as such for the reasons aforesaid, it is found that the plaintiffs' suit should fail for the reasons stated above. No doubt, the defendants have claimed the suit property to be in their

possession and enjoyment and however failed to establish the same. But, as rightly put forth, when the plaintiffs have failed to establish their case as projected, the plaintiffs cannot be allowed to pick holes in the defence version and thereby endeavor to succeed in their case without establishing their title, possession and enjoyment of the suit property as projected.

14. Sans acceptable and reliable documentary evidence on the part of the plaintiffs, on the basis of oral evidence alone, we cannot safely conclude that the plaintiffs are in possession and enjoyment of the suit property. Further, the evidence of D.W.4, the Village Administrative Officer is found to be neither here nor there and his evidence cannot be sustained merely on the production of adangal extract for three faslis and when he has not given any valid reason for not projecting the adangal extract of all the faslis available in their custody as regards the possession and enjoyment of the suit property, considering the rival claims of possession and enjoyment of the suit property by the contesting parties, D.W.4, at one place, would claim that the defendants are in possession and enjoyment of the suit property and at another place would state that the suit property is in possession and enjoyment of the plaintiffs and further as seen from the evidence of D.W.4, he has come to the suit village recently and therefore, it is found that his evidence would be no purpose to uphold either the case of the plaintiffs or the case of the defendants as such. Thus, it is found that the oral evidence projected in the matter are also not worth acceptance for upholding the case of both the parties. The evidence of P.W.2 examined on behalf of the plaintiffs cannot also be taken into consideration as P.W.2 feigns ignorance as to in whose favour the patta for the suit property had been granted and when according to P.W.2, he is residing one furlong away from the suit property and does not know as to who is paying the Kist in respect of the suit property and also does not know anything about the plaintiffs family as well as the ownership of the superstructure lying in the suit property and does not know in whose name the tax demand stands in respect of the superstructure, his evidence would be of no use to sustain the plaintiff's case.

15. In the light of the above reasons, it is found that as rightly argued by the defendants counsel, when the plaintiffs have failed to establish their claim of possession and enjoyment of the suit property as put forth by them and also establish their claim of title to the suit property as such and further when the plaintiffs have failed to seek the relief of declaration despite the resistance put forth by the defendants as regards their claim of title to the suit property as abovestated and when it is found that the defendants are in

possession and enjoyment of the part of the suit property, not having been demarcated and identified, the Courts below had committed an error, in particular, by granting the relief of permanent injunction in favour of the plaintiffs, which cannot be sustained in the eyes of law, for the reasons aforesaid and the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16. In conclusion, judgment and Decree dated 17.06.2002 passed in A.S.No.17 of 2002 on the file of the Additional District Judge, Fast Track Court No.IV Erode at Bhavani confirming the judgment and decree dated 08.09.2000 passed in O.S.No.612 of 1996 on the file of the First Additional District Munsif Court, Bhavani are set aside and resultantly, the suit laid by the plaintiffs in O.S.No.612 of 1996 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-vii)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Additional District Judge,
Fast Track Court No.IV,
Erode at Bhavani.

2. The First Additional District Munsif,
First Additional District Munsif Court,
Bhavani.

COPY TO

The Section Officer,
VR Section, High Court. (2 COPIES)

+1cc to Mr.A.K.KUMARASAMY, Advocate, S.R.No. 34442

judgment made in
S.A.No.859 of 2004

RSY (CO)
TR(27/06/2018)