

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Second Appeal No.213 of 2018

C.Ravi Kumar

...Appellant/Appellant/Plaintiff

Vs

1.P.Akkaiah

2.Ramesh

3.Santha

4.Thasildar

having its own office at
Tiruttani Town and Taluk.

5.Revenue Divisional Officer,

having office at
Tiruttani Town and Taluk.

6.District Collector,

having office at
Tiruttani Town and Taluk.

... Respondents/Respondents/
Defendants 2 to 7

Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 26.02.2015 made in A.S.No.16 of 2013 on the file of the Subordinate Judge, Tiruttani, modifying the judgment and decree dated 23.12.2011 made in O.S.No.36 of 2007 on the file of the District Munsif Court, Tiruttani.

For Appellant : Mr.D.Ashokkumar

For Respondents : Mr.K.Goviganesan for
M/s.G.Elanchezian for R1 to R3

JUDGMENT

The appellant herein is the plaintiff and the respondents herein are the defendants 2 to 7 in the suit filed in O.S.No.36 of 2007 on the file of the District Munsif Court, Tiruttani.

2.The plaintiff filed the suit in O.S.No.36 of 2007 on the file of the District Munsif Court, Tiruttani for declaring the plaintiff's right, title and interest in the suit properties and for granting permanent injunction restraining the defendants 1 to 4 and their men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties, granting injunction restraining the defendants 5 to 7/ respondents 4 to 6 herein from change of patta from the name of the plaintiff to the names of the defendants.

3.The Trial Court partly decreed the suit granting injunction as against the defendants 1 to 4, but dismissed the prayer for declaration. Challenging the judgment of the Trial Court, the appellant / plaintiff preferred an appeal in A.S.No.16 of 2013 on the file of the Subordinate Judge, Thiruttani. The Lower Appellate Court partly allowed the appeal granting declaration and permanent injunction in favour of the plaintiff in respect of Item Nos.6 and 14 of the suit properties and also granting permanent injunction restraining the defendants 2 to 4 and his men from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties, in respect of properties other than Item Nos.6 and 14 of the suit properties. Challenging the judgment of the Lower Appellate Court, the present Second Appeal has been filed by the appellant / plaintiff, raising the following substantial questions of law:

"1.Whether the Lower Appellate Court is correct in law in not considering the plea of adverse possession raised by the plaintiff / appellant both in the pleadings and letting in evidence therefor?

2.When both the Courts below have concurred in finding that the plaintiff / appellant and his predecessors were in possession of all the suit items from 1974 onwards as per Ex.A4 and the plaintiff had exercised acts of ownership by mortgaging the suit items and redeemed the same as per Ex.A3, are the Courts below correct in law in not entering a finding that the plaintiff / appellant has perfected his title by adverse possession?

3.When nec vi, nec clam and nec precario were satisfied in this case, are the Courts below correct in law in brushing aside the evidence let in by the plaintiff / appellant?"

4.The case of the appellant / plaintiff in brief, is as follows:

The suit properties are the ancestral properties of the plaintiff. Plaintiff's father one Cella Krishnamurthy was in possession and enjoyment of the suit properties and raised crops. After the death of the plaintiff's father, the plaintiff, who is the only son, is in possession of the suit properties and Patta was also transferred in the name of the plaintiff and he has been paying kist in his name. Thereafter, the plaintiff mortgaged the suit properties with Cooperative Primary Agricultural Rural Development Bank, Tiruvalangadu, and obtained a loan of about Rs.49,000/- on 28.11.1995 and the same was discharged by him on 25.08.2006. The defendants 1 to 4 / adjacent land owners, who have no title over the suit properties, are interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. Hence the above suit.

5.The defendants 1 to 4 filed a written statement before the Trial Court, contending that the suit properties originally belonged to Podamegala Munuswamy, the husband of the first defendant. After the death of the said Podamegala Munuswamy, the first defendant was living with her daughter at Kalahasthi, and she leased out the suit properties to the plaintiff's father. Taking advantage of the absence of the first defendant, the plaintiff fabricated the revenue records as if he is in possession of the properties, but the actual possession remained only with the first defendant.

6.The Trial Court, considering the pleadings and the evidence, oral and documentary, came to a conclusion that the plaintiff failed to establish that the suit properties are the ancestral properties of the plaintiff and the documentary evidence makes it clear that the suit properties originally belonged to the third defendant's father Podamegala Munuswamy. Further, the Trial Court also held that the revenue records stood in the names of Kuppaiyan and the third defendant's father Podamegala Munuswamy. Accordingly, the Trial Court dismissed the prayer for declaration, but decreed the suit in respect of permanent injunction holding that the plaintiff is in actual possession of the suit property.

7.Challenging the judgment of the Trial Court, the appellant / plaintiff filed an appeal in A.S.No.16 of 2013 on the file of the Subordinate Judge, Thiruttani. The Lower Appellate Court,

after considering the pleadings, held that the plaintiff's father had purchased two items of the suit schedule properties from the legal heirs of the original owner, ie., Items 6 and 14 and accordingly decreed the suit by granting declaration and permanent injunction in respect of those two items. In respect of other items of the suit properties, the Lower Appellate Court confirmed the permanent injunction granted by the Trial Court.

8.Challenging the judgment of the Lower Appellate Court, the present Second Appeal has been filed by the appellant / plaintiff.

9.When this appeal came up for admission, this Court, without admitting the appeal, ordered notice to the respondents and accordingly the respondents 1 to 3 have entered appearance.

10.The contention of the appellant / plaintiff is that the suit properties are his ancestral properties. But in order to establish the same, no materials have been placed by the appellant / plaintiff. It is the specific case of the plaintiff that the suit schedule properties were enjoyed by his father Cella Krishnamurthy and after his death, the plaintiff is in possession and enjoyment of the same, whereas, the defendants 1 to 3 have contended that the suit properties have been originally owned by Kuppaian and Podamegala Munuswamy who are the predecessors of the first defendant, and to establish the same, SLR copy as well as 'A' Register have been marked. Thereafter, the plaintiff came with the plea that Kuppaian is his grandfather, but he failed to prove, that also. Considering all the materials, the Trial Court dismissed the prayer in respect of declaration, and granted permanent injunction as against the defendants 1 to 4 holding that the plaintiff should not be evicted except by due process of law. But the Lower Appellate Court, after considering the fact that the plaintiff's father Cella Krishnamurthy purchased the items 6 and 14 of the suit schedule properties from the legal heirs of the original owner, decreed the suit by granting declaration in respect of only those two items, modifying the judgment of the Trial Court, and further confirmed the permanent injunction granted by the Trial Court, restraining the defendants 2 to 4 from interfering with the plaintiff's peaceful possession and enjoyment in respect of the suit properties.

11.After careful consideration of the materials available on record, this Court finds no error or illegality in the judgment of the Lower Appellate Court and no substantial questions of law

arise for consideration in this appeal. Hence, the Second Appeal deserves to be dismissed and accordingly it is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Subordinate Judge, Tiruttani
2. The District Munsif, Tiruttani

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to M/s.G.Elanchezian, Advocate, S.R.No.30281
+1cc to Mr.D.Ashokkumar, Advocate, S.R.No.30245

Second Appeal No.213 of 2018

RSK(CO)
CS/18/06/2019