

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.01.2019

Pronounced on :01.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1930 of 1997

Krishnan

... Appellant/Appellant/Plaintiff

Vs

1.S.Rangaswamy
2.Poomalai Maistry
3.Raman
4.Seemalai Maistry @ Chinnaian
5.Govindhan
6.Thangayeeammal
7.Arumugham
8.Manjayee Ammal

... Respondents/Respondents/Defendants

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the District Court, Villupuram in A.S.No.29 of 1995 dated 31.03.1995 confirming the judgment and decree of the District Munsif Court, Kallakuruchi, in O.S.No.570 of 1985 dated 29.10.1991.

For Appellant : Mr.R.Balasubramaniam

For RR2 - 4 : Mythili Suresh
For Sarvabhauman Associates

JUDGEMENT

The plaintiff in O.S.No.570 of 1985 on the file of the District Munsif Court, Kallakurichi, is the appellant herein.

2. O.S.No.570 of 1985 had been filed by the plaintiff Krishnan against the defendants for permanent injunction with respect seven items of suit property. By judgment and decree dated 29.10.1991, the suit was decreed with respect to Item Nos.1 to 7 items of suit property and dismissed with respect to item No.4 of the suit property. Challenging the said judgment, the plaintiff filed A.S.No.29 of 1995 before the District Court, Villupuram. By judgment and decree dated 31.03.1995, the appeal was dismissed. Challenging that judgment the plaintiff had filed the present Second Appeal.

3.The Second Appeal had been admitted on 22.01.1998, on the following three substantial questions of law:-

"1.Whether the courts below are right in dismissing the suit in respect of suit property Item 4 viz., kuttai in S.No.375/3 when the defendants themselves admitted that there is no kuttai in existence?

2.Whether the Courts below are justified in refusing the relief in respect of suit Item 4 solely on the basis of Ex.B1

3.In the absence of any establishment of right over the alleged kuttai to the vendor in Ex.B1 can the defendant derive any right in the kuttai in S.No.375/3 when the land in the said S.No.375/3 belonging to the plaintiffs."

O.S.No.570 of 1985 (District Munsif Court, Kallakurichi):-

4. O.S.No.570 of 1985 had been filed by the plaintiff Krishnan against six defendants namely, Rangaswamy, Chinnasamy Maistry, Poomalai Maistry, Raman, Semmalai Maistry @ Chinnaian and Govindhan. Pending the suit, the second defendant Chinnasamy Maistry died and his legal representatives Thangayiammal, Arumugam and Manjayiammal were brought on record as defendants 7, 8 and 9. In the plaint, it was stated that the suit properties were ancestral properties of the plaintiff and the patta stood in his name. He had been enjoying the suit property. The second defendant is the father of the first defendant. They owned properties adjacent to the suit properties. The 3rd to 6th defendants were relatives. It was stated that the defendants interfered with the peaceful possession of the plaintiff. Consequently, the suit had been filed seeking permanent injunction. The suit properties were described as follows in the suit:

- 1.Wet : R.S.No.375/12 : 0.60 cents
- 2.Wet : R.S.No.375/10 : 0.11 cents
- 3.Wet : R.S.No.375/8 : 0.12 cents
- 4.Wet : R.S.No.375/3 : 0.92 cents
- 5.Wet : R.S.No.375/14 : 0.22 cents
- 6.Dry : R.S.No.376/6 : 0.06 cents
- 7.Dry : R.S.No.376/7 : 0.10 cents

These lands were in patta No.483 in Madhavacheri Village, Kallakurichi Taluk, Villupuram District.

5. The first defendant filed written statement which was adopted by the other defendants. It was stated that the 4th items of suit property namely, Wet.R.S.No.375/3 measuring 0.92 cents

was Kuttai through which water flowed to the lands of both the plaintiff and defendants. The plaintiff wanted to obstruct the flow of water and when that was objected the suit had been filed. It was specifically stated that the said Kuttai or small lake was common for all the Villages. It was stated that the plaintiff had destroyed the lake. It was also stated that taking advantage of the ex-parte injunction, the plaintiff had practically obliterated the lake. It was claimed that the suit should be dismissed, particularly with respect to the 4th item of the suit property.

6. On the basis of the above pleadings, the learned District Munsif, Kallakurichi, framed the following issues:-

1. Whether the plaintiff was entitled for the relief of permanent injunction?
2. Whether the suit was maintainable?
3. Whether there is cause of action for filing the suit?
4. To what reliefs are the plaintiff entitled to?

7. During trial, the plaintiff examined himself as PW1. The third defendant examined himself as DW1 and the seventh defendant examined himself as DW2. The plaintiff marked Exs.A1 to A5. Ex.A1 is the patta No.483 in the name of Krishnan. Ex.A2 to A5 were patta and tax receipts in the name of Krishnan. The defendant marked Ex.B1 which is the sale deed dated 04.10.1973.

8. On the basis of the oral and documentary evidence, the learned District Munsif, found that the 4th item of suit property is a small lake and through the said lake, the water flowed for irrigation to the defendants agricultural lands. It was therefore found that the plaintiff cannot seek injunction with respect to the 4th item of suit property. With respect to the other items of suit property, it was found that the plaintiff had established title and also possession. Consequently, the suit was decreed with respect to Item Nos.1,2,3,5,6,7 and dismissed with respect to Item No.4 of the suit property.

A.S.No.29 of 1995 (District Court, Villupuram):-

9. The plaintiff then filed A.S.No.29 of 1995 before the District Court, Villupuram. By judgment dated 31.03.1995, the learned District Judge framed points for consideration and reappraised the evidence. The learned District Judge also found that the 4th item of suit property was a lake through which water flowed for irrigation purposes to the agricultural lands of the defendants. It was also found that the plaintiff had established title for Item Nos.1,2,3,5,6,7. It was also found that the 4th item of suit property was used in common and consequently, the learned District Judge agreed with the findings of the Trial Judge and dismissed the appeal.

S.A.No.1930 of 1995:

10.Challenging the judgment in A.S.29 of 1995, the plaintiff then filed the present Second Appeal. The Second Appeal had been admitted on 22.01.1998, on the following three substantial questions of law:-

"1.Whether the courts below are right in dismissing the suit in respect of suit property Item 4 viz., kuttai in S.No.375/3 when the defendants themselves admitted that there is no kuttai in existence?

2.Whether the Courts below are justified in refusing the relief in respect of suit Item 4 solely on the basis of Ex.B1

3.In the absence of any establishment of right over the alleged kuttai to the vendor in Ex.B1 can the defendant derive any right in the kuttai in S.No.375/3 when the land in the said S.No.375/3 belonging to the plaintiffs."

11.For the sake of convenience, the parties would be referred as plaintiff and defendants.

12.The suit had been filed seeking permanent injunction with respect to 7 items of suit properties. The suit properties had been described as follows in the suit property: 1.Wet : R.S.No.375/12 : 0.60 cents

2.Wet : R.S.No.375/10 : 0.11 cents

3.Wet : R.S.No.375/8 : 0.12 cents

4.Wet : R.S.No.375/3 : 0.92 cents

5.Wet : R.S.No.375/14 : 0.22 cents

6.Dry : R.S.No.376/6 : 0.06 cents

7.Dry : R.S.No.376/7 : 0.10 cents

Even according to the defendants, they did not challenge or question the right of the plaintiff with respect to Item Nos. 1,2,3,5,6,7. However, both the Courts below had given a specific finding with respect to Item No.4 that it was a Kuttai or small lake through which water flowed for irrigation purposes to the defendants lands. Consequently, that being a finding on fact it could be inappropriate if this Court were to interfere with that findings.

13.The first substantial question of law was with respect to Item No.4 namely, Kuttai in S.No.375/3. Both the Courts had found that the Kuttai was in existence and water flow for irrigation purposes. Consequently, I hold that both the Courts

below were right in dismissing the suit with respect to Item No.4.

14.The second and third substantial questions of law are whether both the Courts below were right in refusing to the relief solely on the basis of Ex.B1. Ex.B1 is the sale deed dated 04.10.1973, executed by Chengan Padayachi to Chinnasamy Maistry. In Ex.B1 it had been specifically stated that the second defendant Chinnasamy Maistry had a right to use the water from the Kuttai. During cross examination of DW1, it was stated that out of 0.92 cents, the kuttai was in 0.18 cents and it was enjoyed by all the defendants. The second defendant had obtained right to use the water from the Kuttai under Ex.B1. Even though it had been urged by the learned counsel for the appellant before this Court that injunction should be granted only for 0.18 cents were the Kuttai is found out of 0.92 cents in Item No.4, since the boundaries have not been given for the 0.18 cents, the said relief cannot be granted at this stage by this Court. Consequently, I hold that both the Courts below were right in refusing to grant injunction with respect to Item No.4.

15.In view of the above discussions, I hold that both the Courts below had correctly decided that the plaintiff was not entitled for injunction with respect to Item No.4 of the suit property. Therefore, I hold that the Second Appeal has to be dismissed, with costs. The Judgments and decree of both the Trial Court and First Appellate Court are confirmed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Smv

To

- 1.The District Judge, Villupuram.
- 2.The District Munsif, Kallakurichi.

Copy To

- 1.The Section Officer, VR Section,
Madras High Court.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 8574

S.A.No.1930 of 1997

SSI (CO)
GN(26/04/2019)