

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.01.2019

PRONOUNCED ON : 31.01.2019
CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.NO.1162 OF 2000

1.Joghi (Deceased)
2.Lingan
3.Mrs.Mitchiammal
4.J.Jevana
5.Mrs.Ruckmani
6.J.Chandrasekar
7.Mrs.Seetha

.... Appellants

Appellant 3 to 7 brought on record as LR of the deceased 1st appellant vide order of court dated 22.07.2009 made in CMP.No.802 of 2009.

Vs

1.Badan (Deceased)
2.Seetha
3.P.Ramalingam
4.Gowri
5.Sundari (Deceased)
6.Nirmala
7.Krishnan
8.K.Ganesh
9.K.Nisha

... Respondents

RR2 to 6 brought on record as Legal representatives of the deceased sole respondent vide order of court dated 30.11.2018 made in CMP.No.3835 of 2006 in S.A.No.1162 of 2000 (CVKJ)

RR7 to 9 brought on record as Legal representatives of the deceased R5 Viz., Sundari vide order of court dated 07.12.2018 made in CMP.No.361 to 363 of 2010 in S.A.No.1162 of 2000 (CVKJ)

PRAYER:

The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Sub Court, Ootacamund in A.S.No.30 of 1997 dated 25.03.1998 reversing the judgment and decree of the District Munsif Court, Coonoor, in O.S.No.355 of 1993 dated 12.09.1997.

For Appellants : Mr.D.Krishna Pradeep
for N.Damodaran

For RR2 to 4 & RR6 to 9 : No Appearance

For R1 & R5 : Died

JUDGEMENT

The defendants in O.S.No.355 of 1993 on the file of the District Munsif Court, Coonoor, are the appellants herein.

2.O.S.No.355 of 1993 had been filed by the plaintiff J.Bathan against two defendants K.N.Jogee and H.Lingan for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff in the suit schedule properties. This suit came up for consideration before the District Munsif Court, Coonoor. By judgment and decree dated 12.09.1997, the suit was dismissed. Challenging that judgment, the plaintiff filed A.S.No.30 of 1997 before the Sub Court, Ootacamund. By judgment and decree dated 25.03.1998, the learned Sub Judge, Ootacamund, allowed the appeal and set aside the judgment of the Trial Court.

3.Challenging the judgment and decree in A.S.No.30 of 1997, the defendants have filed the present Second Appeal. Pending the Second Appeal, the first appellant/first defendant died and his legal representatives were brought on record as appellants 3 to 7. The sole respondent/plaintiff also died and his legal representatives were brought on record as respondents 2 to 6. Among the said respondents, the fifth respondent also died and her legal representatives were brought on record as respondents 7 to 9.

4.The Second Appeal had been admitted on 04.08.2000, on the following three substantial questions of law:-

"1.Whether the lower appellate court erred in law and misdirected itself in decreeing the suit when the plaintiff failed to prove his case of exclusive

possession and enjoyment of the suit properties at any point of time or on the date of the suit by adducing evidence both oral as well as documentary?

2. Whether the lower appellate court is correct in law in relying upon Ex.A1 sale deed which document does not disclose the boundaries and admitted by PW1, Ex.A4 certificate issued by the Village Administrative Officer without examining the said officer to prove the exclusive possession of the plaintiff to the suit properties?

3. Whether the lower appellate court is correct in shifting the burden upon the defendants to prove the negative aspect when in law the burden is upon the plaintiff to prove his case of possession of the suit properties to the exclusion of other joint owners?"

O.S.No.355 of 1993(District Munsif Court, Coonoor):-

5. The plaintiff J.Bathan claimed that he was the owner of the suit schedule properties over the total extent of 1.76 acres in S.No.89/3C at Kerkandu Hamlet, Ketty Village, by virtue of inheritance and also by purchase from third parties under registered sale deed. He claimed to be in exclusive possession of 1.35 acres. He also claimed that the defendants owned some lands in the same S.No.89/3C, which totally measured 8.82 acres. He claimed that the defendants attempted to disturb his peaceful possession. Consequently, he filed the suit for permanent injunction. The suit property had been described in the schedule to the plaint as land measuring 1.76 acres out of 8.82 acres in S.No.89/3C in Ketty Village. This was subdivided into six pieces of land measuring 0.20 acres, 0.10 acres, 0.25 acres, 0.40 acres, 0.25 acres and 0.15 acres.

6. In the written statement filed by first defendant, and adopted by the second defendant, it had been stated that the defendants were also in possession of the lands in S.No.89 which had been subdivided as R.Nos.89/3A, 3B and 3C measuring two acres. It had been stated that the description of the property in the plaint is incorrect. It was stated that the plaintiff is seeking to grab the lands of the defendant in the guise of filing the suit.

7.This suit came up for consideration before the learned District Munsif, Coonoor and the following issues have been framed:

- 1.Whether the plaintiff was entitled for the relief of permanent injunction?
- 2.To what other reliefs?

8.During trial, the plaintiff examined himself as PW1. The first defendant examined himself as DW1. The plaintiff marked Exs.A1 to A5. Ex.A1 was the sale deed. Ex.A2 was the Chitta. Ex.A4 was the certificate given by the Village Administrative Officer. Ex.A5 was the complaint given to the police. On the side of the defendants, Exs.B1 and B2 were marked. Ex.B1 and B2 were land tax receipts.

9.On the basis of the oral and documentary evidence, by judgment dated 12.09.1997, the learned District Munsif, Coonoor, found that PW1 during cross examination had admitted that the defendants were also in possession in portions of the land in the same survey number and that they were also enjoying the said lands. He also stated that he did not file the land tax receipts for the immediate preceding years 1991, 1992 and 1993, though he had filed the suit in the year 1993. It was also found that the plaintiff had not filed the Adangal for the year 1991, 1992 and 1993. Consequently, the learned District Munsif found that the plaintiff had not established possession of the properties. He also found that the plaintiff had not given the boundaries in the schedule of the properties in the plaint. The learned District Munsif, dismissed the suit.

A.S.No.30 of 1997 (Sub Court, Ootacamund):-

10.The unsuccessful plaintiff filed the above first appeal before the Sub Court, Ootacamund. By judgment dated 25.03.1998, the learned Sub Judge, framed points for consideration and re-appraised the evidence. The learned Sub Judge, found that the suit had been filed with respect to 1.76 acres in S.No.89/3. Ex.A1 was the sale deed executed on 27.09.1966. It was for 70 cents in S.No.89/3C. It was found that the defendants have not established, the fact whether the entire area in S.No.89/3C measured 8.82 acres. It was also found that the defendants had not proved that the plaintiff was not in possession of 1.76 acres. It was also found that the plaintiff had filed necessary certificate from the Village Administrative Officer to prove possession. It was also found that there was no bar for a joint owner in possession to seek injunction against another joint owner. Consequently, the learned Sub Judge, allowed the first appeal and set aside the order the learned District Munsif in O.S.No.355 of 1993.

S.A.No.1162 of 2000:

11.As stated above, the defendants in the suit have filed the present Second Appeal. The Second Appeal had been admitted on 04.08.2000, on the following three substantial questions of law:-

"1.Whether the lower appellate court erred in law and misdirected itself in decreeing the suit when the plaintiff failed to prove his case of exclusive possession and enjoyment of the suit properties at any point of time or on the date of the suit by adducing evidence both oral as well as documentary?

2.Whether the lower appellate court is correct in law in relying upon Ex.A1 sale deed which document does not disclose the boundaries and admitted by PW1, Ex.A4 certificate issued by the Village Administrative Officer without examining the said officer to prove the exclusive possession of the plaintiff to the suit properties?

3.Whether the lower appellate court is correct in shifting the burden upon the defendants to prove the negative aspect when in law the burden is upon the plaintiff to prove his case of possession of the suit properties to the exclusion of other joint owners?"

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

13.The plaintiff had filed the suit seeking permanent injunction restraining the defendants from interfering with his peaceful possession of the suit property. The suit schedule property was described as 1.76 acres out of the total extent of 8.82 acres in R.S.No.89/3C, Ketty Village, Coonnor Taluk, Nilgiris District. This area had been further subdivided into six pieces of land measuring 0.20 acres, 0.10 acres, 0.25 acres, 0.40 acres, 0.25 acres and 0.15 acres. The plaintiff had not given the boundaries for the 1.76 acres. It is seen that the plaintiff claimed title by Ex.A1, sale deed dated 27.09.1966 executed by K.N.Joshee and others in favour of the plaintiff. The said sale deed was for an extent of 70 cents in S.No.89/3C. The plaintiff has claimed that he enjoyed the remaining land by

inheritance. Even the boundaries for the 70 cents had not been given in the plaint.

14. During cross examination, PW1, the plaintiff, had admitted that in the very same S.No.89/3C, the defendants are also in possession of lands and they are also enjoying the same. It was also found that he did not produce the land tax receipts for the three immediate years prior to the institution of the suit to show his actual possession. He had filed Ex.A4, certificate of enjoyment from the Village Administrative Officer. However, the Village Administrative Officer, had not been examined to prove the certificate. The learned Sub Judge, in the course of the judgment in the first appeal, had shifted the burden to the defendants to prove that the plaintiff was not in possession of 1.76 acres. The learned Sub Judge also had relied on Ex.A1, sale deed though it did not disclose the boundaries for the property conveyed under it. It is under these circumstances, that the Second Appeal had been admitted and substantial questions of law had been framed for consideration.

15. The first substantial question of law was whether the Lower Appellate Court had erred in decreeing the suit when the plaintiff had failed to prove exclusive possession. I hold the Lower Appellate Court had certainly erred in decreeing the suit when the plaintiff had failed to prove possession. The plaintiff had come to Court seeking permanent injunction, restraining the defendants from interfering with his peaceful possession. In such a case, the plaintiff must first prove that he was in possession and that the defendants attempted to interfere with such possession. When the plaintiff had not even proved exclusive possession, then certainly injunction cannot be granted. In this case, the plaintiff had stated that not only he was in possession but also that the defendants were also in joint possession of lands in the very same survey number. He had not given the boundaries to show his exclusive possession or the exact area over which he was in possession. Consequently, I hold that the Lower Appellate Court had erred in granting the relief of injunction as sought in the plaint.

16. The second substantial question of law is, whether the Lower Appellate Court was correct in relying on Ex.A1 sale deed when there was no boundaries in the said sale deed and in relying on Ex.A4 when the Village Administrative Officer had not been examined. I hold that the Lower Appellate Court had erred in relying on a sale deed in which the property conveyed was not described with specific boundaries. The Lower Appellate Court erred in also relying on Ex.A4 which was a certificate from the Village Administrative Officer, when it had not been proved in the manner known to law by examining the Village Administrative Officer or any other official from the Revenue department. The

plaintiff has to prove possession and he cannot rely on the Village Administrative Officer to prove his possession. Consequently, I hold that the Lower Appellate Court erred in relying on Exs.A1 and A4.

17.The third substantial question of law is whether the Lower Appellate Court was correct in shifting the burden upon the defendants to prove the negative. In a suit for permanent injunction, the plaintiff has to prove possession of a well defined area. In the present case, the plaintiff had not given the boundaries for the 1.76 acres in the plaint. The burden was on the plaintiff to prove that he was in possession and that there was disturbances to such possession. This burden can never be shifted to the defendants. Consequently, I hold that the Lower Appellate Court again erred in shifting the burden on the defendants to prove that the plaintiff was not in possession.

18.In view of the reasons stated above, I hold that the Second Appeal has to succeed and consequently, the Second Appeal is allowed, with costs. The judgment and decree of the learned Sub Judge in A.S.No.30 of 1997 dated 25.03.1998 is set aside and the judgment and decree of the learned District Munsif, Coonoor in O.S.No.355 of 1993 dated 12.09.1997 is confirmed. The Second Appeal is allowed with costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Smv

To

1. The District Munsif Court, Coonoor.

2. The Sub Court, Ootacamund.

3. The Section Officer, VR Section,
Madras High Court.

+1cc to Mr.N.Damodaran, Advocate, S.R.No.8856

S.A.No.1162 of 2000

SPD(CO)
CS/06/05/2019