

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.12.2019

Pronounced on:20.12.2019

Coram:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Second Appeal No.1438 of 2000

1.Azhagappa Chettiar

2.A.Vengateswaran

... Appellants/Plaintiffs

/versus/

1.S.Murugesan(died)

2.Pavadai

3.Ezhumalai

... Respondents 1 to 3/Defendants

4.Neela(died)

5.Velan

6.Murugan

7.Adilakshmi

8.Lakshmi

9.Surya

10.Arul Anand

(RR4 to 10 brought on record as LRS
of the deceased R1 vide order of Court
dated 24/10/2018 made in C.M.P.Nos.497
to 499 of 2018 in S.A.No.1438/2000 (RHJ))

... Respondents 4 to 10

Prayer:-

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned II Additional District Judge of Pondicherry dated 18.04.2000 made in A.S.No.133 of 1999 reversing the judgment and decree of the trial Court dated 25.06.1999 made in O.S.No.21 of 1995 on the file of the II Additional District Munsif Court of Pondicherry.

For Appellant :Mr.S.Sudarshan

For Respondents:M/s V.Raghavachari for
R2,R3,R5,R6 and R8 to R10
R1 and R4-Died
R7-Not ready in notice

J U D G M E N T

This appeal is directed against the judgment and
decree passed in A.S.No.133 of 1999 on the file of the learned
II Additional District Judge of Pondicherry dated 18.04.2000
reversing the judgment and decree passed in O.S.No.21 of 1995 on

the file of the II Additional District Munsif Court of Pondicherry dated 25.06.1999.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3.The plaintiffs filed a suit for bare injunction.

4.The case of the plaintiffs in brief is as follows:

The suit property originally belonged to one Navaneethammal. She leased out the entire property for cultivation to the 1st plaintiff in the year 1967 and the 1st plaintiff had been cultivating the suit property and paying the lease rent therefor. Whiles, the said Naveethammal executed a gift deed on 11.12.1968 in favour of her daughter Rajalakshmi. The said Rajalakshmi died intestate predeceasing her mother Navaneethammal leaving only one son by name Subramanian to succeed and inherit her rights and interest in the said property. Subsequently, the said Navaneethammal also died intestate. In such course, the said Subramanian executed a fresh lease deed in respect of the suit property in favour of the 1st plaintiff.

5. Whiles, the 1st plaintiff has lawfully purchased a portion of the said property from the said Subramanian for valid consideration under a registered sale deed executed by the said Subramanian dated 10.01.1992 in favour of the 2nd plaintiff, who is the son of the 1st plaintiff. By and under an amicable settlement, it was mutually agreed that the 1st plaintiff shall hand over and surrender physical possession of the rest of the land to the owner Subramanian and shall retain possession and cultivation of the property purchased by the 2nd plaintiff. Thus, the plaintiffs are in peaceful and lawful possession and enjoyment of the suit property. Whiles, on 28.12.1994, when the plaintiffs were tilling the suit property, the defendants along with their henchmen disturbed the plaintiffs' cultivation work in the suit property and thereafter, the plaintiffs lodged a complaint before the police but was of no avail. Hence, the suit was filed for permanent injunction restraining the defendants their men, agents or whomsoever claiming through them from disturbing or interfering with the plaintiffs peaceful possession by cultivating the suit property.

6. Resisting the same, the defendants adopted their counter affidavit filed in I.A.No.90 of 1995 as their written statement in the suit wherein they have contended that the suit property was not enjoyed or possessed at any point of time either by Navaneethammal or her heirs, including the said Subramanian. Navaneethammal or her heirs did not have any right, title or interest over the suit property. The suit property was originally owned by one Ramasamy Gounder. The said Ramasamy Gounder and his son Deivanayagam had been in enjoyment of the suit property for more than 40 years continuously without any interruption. There was a Well with Kavalai for irrigation in the suit property. The said Ramasamy gounder and his son sold the property to the defendant's father Kulla Padayatchi for true

and valid consideration on 26.11.1969 under a registered sale deed. The father of the defendants was enjoying and cultivating the land, till his death in the year 1976. The defendant's father was only paying the land tax and other revenue in respect of the suit property. Patta and other revenue records stands in the name of the defendant's family. For filing the suit, the plaintiffs created forged sale deed and gift deed in respect of the suit property. The said Subramanian never enjoyed the property and he has not executed any sale deed in favour of the 2nd plaintiff. After the death of the father of the defendant, the defendants are in possession and enjoyment of the suit property and they have raised Eucalyptus trees in a portion of the suit property and in the remaining portion of the suit property, they have raised Tapioca. Hence, they pray for dismissal of the plaint.

7. On the side of the plaintiffs, five witnesses were examined as PW-1 to PW-5 and two documents were marked as Exs.A1 and A2. On the side of the defendants, two witnesses were examined as DW1 and DW2 and four documents were marked as Exs.B1 to B4. Through DW2, who was working as Village Administrative Officer, they have marked Exs.X1 and X2. Through the Court Witness CW1(Thanigasalam), the Advocate Commissioner's Report and sketch were marked as Exs.C1 and C2. The Advocate Commissioner was also examined as CW1.

8. Based on the materials placed on record both oral and documentary by the respective parties and the submissions made, the trial Court decreed the suit in favour of the plaintiffs by granting permanent injunction restraining the defendants from disturbing or interfering with the peaceful possession by cultivating the suit property by the plaintiffs.

9. Aggrieved by the same, the defendants preferred an Appeal Suit in A.S.No.133 of 1999 and the first appellate Court reversed the finding of the trial Court and allowed the appeal. As against the same, the plaintiffs/appellants has filed the second appeal.

10. At the time of admission of this appeal, the following Substantial Questions of Law were formulated for consideration:

1. Whether the lower appellate Court was right in not considering the oral evidence and the documentary evidence particularly Exs.C1 and C2 and X2?

2. Whether the lower appellate Court was right in dismissing the suit inspite of the recitals in Ex.X2 which would go a long way to show the possession of the plaintiff's vendor?

11. The learned counsel appearing for the appellants and the respondents reiterated the averments made in the plaint as well as the written statement.

12. Heard Mr.S.Sudarshan, learned counsel appearing for the appellants/plaintiffs and Mr.V.Raghavachari, learned counsel appearing for the respondents/defendants 2,3,5,6 and 8 to 10.

13. The suit property was originally belonged to one Navaneethammal. She leased out the suit property for cultivation in the year 1967 in favour of the 1st plaintiff. Simultaneously, during her life time, she executed the gift deed dated 11.12.1968 in respect of the certain portion of the properties in favour of her daughter Rajalakshmi. She died intestate pre-deceasing her mother Navaneethammal leaving her only son Subramanian to succeed and inherit her rights and interest in the properties and subsequently, the said Navaneethammal also died intestate. Thereafter, the said Subramanian executed fresh lease deed in favour of the 1st plaintiff for cultivating the land, which was marked as Ex.A2. While being so, the said Subramanian also executed a sale deed in respect of the portion of the property in favour of the 2nd plaintiff dated 10.01.1992, which was marked as Ex.A1. Therefore, the defendants have no right or title over the said property. The Advocate Commissioner was appointed to note down the physical feature of the suit property and his report and plan were marked as Exs.C1 and C2. He was also examined as CW1.

14. According to defendants, the suit property was originally owned by one Ramasamy Gounder. He along with his son are in possession and enjoyment of the suit property and the said property has a Well with Kavali for irrigation of the properties. The said Ramasamy Gounder and his brother Deivanayagam sold out the suit property in favour of the father of the defendants by name Kulla Padayatchi for valid sale consideration on 26.11.1969 by way of a registered sale deed, which was marked as Ex.B1. Thereafter, the father of the defendants was paying all the revenue tax continuously in respect of the suit property in his name. The patta and other revenue records were also issued in the name of the defendants. Further, the case of the defendants is that the alleged sale deed as well as the lease deed are created for the purpose of filing the suit. The said Subramanian never enjoyed the suit property and did not execute any sale deed in favour of the 2nd plaintiff. The settlement extract dated 03.02.1995 issued by the Deputy Tahsildar was marked as Ex.B2.

15. The trial Court decreed the suit on the strength of the Ex.A1(sale deed executed in favour of the 2nd plaintiff) and Ex.A2(lease deed executed in favour of the 1st plaintiff). Further, the trial Court from the report of the Advocate Commissioner along with his plan found that the suit property is comprised in R.S.Nos.27/3 and 27/4 situated at Karikalampakkam Village measuring 3 ares or 5 kulies 10 veesams. Further, he stated that the defendants are in possession and enjoyment of the property comprised in R.S.No.27/2. That apart, the trial Court has stated that Exs.X1-Settlement Extract issued by the Deputy Tahsildar dated 19.03.1999 and Ex.X2-Adangal Extract issued by the Deputy Tahsildar dated 19.03.1999 have clearly

proved the fact that the plaintiffs are in possession and enjoyment of the suit property. Except these documents, the plaintiffs did not produce any document to prove their possession and enjoyment of the suit property.

16. It is the bounden duty of the plaintiffs to establish the ownership of the said Navaneethammal, execution of the lease deed and possession and enjoyment of the suit property. Further, according to the plaintiffs, the gift deed was executed by the said Navaneethammal in favour of her daughter Rajalakshmi and subsequently, her only son Subramanian had executed the sale deed in respect of the portion of the suit property in favour of the 2nd plaintiff. When the plaintiffs filed the suit for bare injunction, it has to gone into the question, whether the original ownership of the property as well as the continuous possession and enjoyment of lessee and also the question of payment of lease amount to be established by the plaintiffs.

17. Admittedly, except Exs.A1 and A2, the plaintiffs did not mark any document to that effect. It is also found from Ex.A1-Sale Deed that a portion of the suit property was sold out in favour of the 2nd plaintiff and if so, one of the boundaries has to be the remaining property of the said Subramanian, but in Ex.A1, it is not stated so and as such, the lease deed as well as the sale deed Exs.A2 and A1 respectively are subsequent to Ex.B1-Sale deed dated 26.11.1969. Further, Ex.X2-Adangal Extract issued in respect of the property comprised in R.S.No.27/3 is under cultivation of Rajivi ammal, Navaneethammal and Murugesu Padaiyatchi, who is none other than the first defendant. The property comprised in R.S.No.27/4 stands in the name of Rajivi ammal and Navaneethammal. Therefore, in the above said Ex.X2, nowhere it is stated that the plaintiffs are in possession and cultivation of the said property. In the suit for injunction, the report of the Advocate Commissioner cannot be considered in respect of the possession of the property. Unfortunately, only on the basis of the Advocate Commissioner report and plan Exs.X1 and X2 marked through DW-2(Village Administrative Officer) the trial Court decreed the suit in favour of the plaintiffs as they are in continuous possession and enjoyment of the suit property.

18. As rightly pointed out by the learned counsel appearing for the defendants, it is the bounden duty of the plaintiffs to establish the ownership as well as the possession and enjoyment of the suit property. But the suit was filed for injunction that too without the prayer for declaration.

19. Admittedly, both the plaintiffs as well as the defendants have marked Exs.A1 and A2 and Exs.B1 to B4 respectively in respect of the suit property to show their ownership. When there is a cloud over the title of the property, the plaintiffs ought to have filed a suit for declaration and permanent injunction. Even after filing the written statement, the plaintiffs did not take any steps to amend the prayer for declaration and permanent injunction. When there is a dispute over the title of the property, the suit for injunction alone

cannot be maintainable, without the prayer of declaration. Without considering these facts, the trial Court decreed the suit in favour of the plaintiffs.

20. The first appellate Court has rightly found that the plaintiffs failed to prove their possession and enjoyment of the suit property and hence, they are not entitled for the relief claimed by them.

21. In the light of the above discussions, the Substantial Questions of Law formulated in this appeal are answered in favour of the defendants. Therefore, this Court does not find any well reason to interfere with the findings rendered by the first appellate Court. Hence, this Court is of the considered opinion that no Substantial Question of law is involved in this appeal.

22. In fine, this Second Appeal is dismissed. The judgment and decree of the first appellate Court viz., II Additional District Judge of Pondicherry made in A.S.No.133 of 1999 dated 18.04.2000 is confirmed and the judgment and decree of the trial Court viz., II Additional District Munsif Court of Pondicherry made in O.S.No.21 of 1995 dated 25.06.1999 is dismissed. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional District Judge,
Pondicherry.
- 2.The II Additional District Munsif Court,
Pondicherry.
- 3.The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.V.Raghavachari, Advocate SR.105947
+1cc to Mr.S.Subramanian, Advocate SR.106445

S.A.No.1438 of 2000

SR(CO)
CB(25/03/2021)