

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.09.2019	Delivered on: 18.09.2019
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No. 1079 of 2002

N.Rangaswamy ... Appellant/ Respondent/Plaintiff

Vs.

1.K.Arunagiri (died)

2.Moorthy

3.Ravi ...1-3 Respondents/ Appellants/ Defendants

4.S.Kamalammal

5.Vasantha ... 4&5 Respondents/
LRS of the 1st Appellant

(R4 and R5 brought on record
as LRS of the deceased R1 viz.,
K.Arunagiri vide Court order
dated 15.11.2018 made in CMP.No.288/2012
in S.A.No.1079/2002)

PRAYER: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree dated 25.01.2002 made in
A.S.No.103 of 2001 on the file of the Principal District
Judge, Tiruvannamalai, reversing the judgment and decree dated
31.07.2001 made in O.S.No.95 of 1997 on the file of the
Principal District Munsif Court, Tiruvannamalai.

For Appellant : Mr.P.Dinesh Kumar for
M/s. Sarvabhauman Associates

For Respondents : Mrs. A.B.Reehana Begum for
Mr.T.R.Rajaraman

JUDGMENT

This Second Appeal has been filed by the plaintiff
against the judgment and decree passed by the Principal
District Judge, Tiruvannamalai, in A.S.No.103 of 2001 dated
25.01.2002 reversing the judgment and decree passed by the
Principal District Munsif, Tiruvannamalai, in O.S.No.95 of
1997 dated 31.07.2001.

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2. The appellant herein had filed a suit in O.S.No.95 of
1997 on the file of the Principal District Munsif,

Tiruvannamalai, for the relief of permanent injunction, restraining the defendants, their men, etc., from interfering with his peaceful possession of the suit property. The learned Principal District Munsif, Tiruvannamalai, by the judgment dated 31.07.2001 had decreed the suit as prayed for. Further, he directed the parties to bear their respective costs.

3. Aggrieved by the same, the defendants filed an appeal in A.S.No.103 of 2001 on the file of the Principal District Judge, Tiruvannamalai. The learned Principal District Judge, Tiruvannamalai, by the judgment dated 25.01.2002 had allowed the said appeal with costs and set aside the judgment and decree passed by the trial Court and dismissed the suit with costs. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

4. For the sake of convenience, the parties are referred to as described before the trial Court.

5. The averments made in the plaint are in brief as follows:-

The suit property is a Government poramboke land and the same has been occupied by the plaintiff about 45 years back and put up a thatched house and residing there. He has been paying house tax and obtained electricity service connection. The defendants 2 and 3 are the sons of the first defendant and they are owning land on the northern side. They attempted to trespass into the suit property and the same has been prevented by the plaintiff. The defendants are not having any right over the suit property and hence, the plaintiff filed a suit for permanent injunction to restrain the defendants from interfering with his peaceful possession and enjoyment of the suit property.

6. The averments made in the written statement filed by the first defendant and adopted by the second respondent are in brief as follows:-

(a) Admittedly, the suit property is situated within the town limit. As such, it should have a town survey number, but in the plaint schedule town survey number has not been mentioned. So, it is clear that the suit property has not been properly described. The dispute is not with regard to the house put up by the plaintiff, but, it relates only to the vacant site situated on the north of the plaintiff's house. The defendants are owning the properties in S.No.180/6 ad-measuring 53 cents. The said land is situated abutting poramboke vacant site on the northern and western side. The poramboke vacant site had always been in the possession and enjoyment of the defendants and they are enjoying the same, along with their patta lands. The plaintiff never enjoyed the vacant site situated on the north of his house. In fact, dispute arose between the plaintiff and the defendants and

there was also a complaint to the Police in the first week of April, 1997. The panchayat president and others intervened and a compromise was effected on 07.04.1977 between the parties. At that time, it was agreed that the plaintiff and his brother should get $\frac{1}{2}$ share in the vacant site and another $\frac{1}{2}$ share by the defendants. At the time of executing the compromise deed, the plaintiff was not present and hence, on behalf of the plaintiff, his father-in-law entered into a compromise. Similarly, an application was given to the Sub-Inspector of Police and in accordance with the compromise, complaint was dropped. Subsequent to the said compromise, the first defendant herein planted five stone pillars demarcating his area and was making preparations to put up fence for his area.

(b) In the meanwhile, taking advantage of the fact, that he has not signed the compromise, the plaintiff had rushed to the Court and filed the suit and obtained ex-parte order of injunction. Being armed with the injunction order, the plaintiff had removed the stone pillars, demarcating the land of the defendants and is now falsely claiming the right over the entire area. The plaintiff has no right to claim over the entire property. Therefore, the defendants 1 and 2 prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Principal District Munsif, Tiruvannamalai, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and he had marked Exs.A1 to A26 as exhibits. On the side of the defendants, the defendants did not adduce either oral or documentary evidence.

8. The learned Principal District Munsif, after considering the materials placed before him found that the plaintiff has been in possession and enjoyment of the suit property and as such, he is entitled for the relief of permanent injunction. Accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendants filed an appeal in A.S.No.103 of 2001 on the file of the Principal District Judge, Tiruvannamalai. The learned Principal District Judge, Tiruvannamalai, had allowed the said appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

9. This Court, at the time of admitting the second appeal, has formulated the following substantial question of law:-

"Whether the lower appellate Court is correct in law in reversing the judgment and decree of the trial Court when the evidence on the part of the plaintiff is overwhelming and

there is absolutely no evidence on the part of the defendants".

10. Heard, Mr.P.Dinesh Kumar for M/s.Sarvabhavman Associates, the learned counsel for the appellant and Mrs. A.B.Reehana Begum for Mr.T.R.Rajaraman, the learned counsel for the respondents.

11.Substantial Question of law :

The learned counsel for the appellant/plaintiff has submitted that the first Appellate Court erred in reversing the well considered judgment of the trial Court. He further submitted that the first Appellate Court erred in holding that since town survey number has not been mentioned in the plaint schedule, the property has not been properly described, over looking into the fact that there is no dispute in respect of the identity of the property and also the fact that the defendants also claiming the right over the same property. He further submitted that the first Appellate Court failed to consider the oral and documentary evidence adduced by the plaintiff.

12. He further submitted that the first Appellate Court failed to consider that the defendants did not adduce any oral or documentary evidence rebutting the evidence of the plaintiff. He further submitted that the first Appellate Court relying upon the stray admission made by PW1 during his cross examination erroneously came to the conclusion that the plaintiff has admitted that the defendants are in possession of the suit property and the said approach is against the settled principles of law. He further submitted that eventhough, the defendants have stated in their written statement that there was a compromise arrived at between the parties on 07.04.1997, the defendants have not produced the said document before the Court and marked the same as evidence. He further submitted that if really, the defendants are in possession of the aforesaid property, there was no necessity for entering a compromise with the plaintiff.

13. He further submitted that the trial Court after taking into consideration of all the aforesaid facts had rightly decreed the suit but, the first Appellate Court erroneously reversed the findings of the trial Court and dismissed the suit and therefore, he prayed to allow the Second Appeal and set aside the judgment and decree passed by the first Appellate Court and restore the judgment and decree passed by the trial Court.

14. In support of the aforesaid contentions, the learned Counsel for the appellant/plaintiff relied upon the following decisions:

2019 (SA.No.901 of 2005 on the file of this Court dated 15.04.2019).

15. Per contra, the learned counsel for the respondents /defendants has submitted that admittedly, the suit property is situated within the town limit and as such, the town survey number should have been mentioned but in the plaint schedule, the plaintiff did not mention the town survey number and so, it is clear that in the plaint, the suit property has not been properly described. She further submitted that when the plaintiff examining himself as PW1 had categorically admitted in the cross examination that the defendants have encroached the suit property and they are in possession of the same.

16. She further submitted that since the admission made by the opposite party is the best evidence, the defendants have not adduced any evidence. She further submitted that since the plaintiff himself has admitted that the defendants are in possession of the suit property, no adverse inference can be drawn against the defendants as they have not adduced any oral or documentary evidence. She further submitted that since the plaintiff has approached the Court, seeking certain relief, the burden is upon him to prove that he is in possession and enjoyment of the suit property, but in this case, he miserably failed to prove his exclusive possession over the vacant site. She further submitted that Ex.A1 eviction notice, it is clearly stated that the extent of the property as one cent and that one cent is equal to 432 sq.ft., whereas, the plaintiff has claimed right over the property measuring 26 ft X 48 ft which comes to 1248 sq.ft., and the same is equivalent to 3 cents. She further submitted that the plaintiff has not produced any documentary evidence to show that he is in possession of 1248 sq.ft., (3 cents). She further submitted that the trial Court without considering the aforesaid facts in a proper prospective had mechanically decreed the suit but, the first Appellate Court after taking into consideration of the aforesaid facts had rightly reversed the findings of the trial Court and dismissed the plaintiff's suit and in the said factual findings, this Court cannot interfere and therefore, she prayed to dismiss the Second Appeal.

17. In Order VII Rule 3 of the Civil Procedure Code, it is stated how the immovable property has to be described. For proper appreciation, the said provision is extracted hereunder:-

"3. When the subject-matter of the suit is immovable property- Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by

boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.”

18. From the aforesaid provision, it is clear that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

19. In this case, in the plaint, while describing the property, the survey number has not been mentioned, but boundaries and measurements have been given. For proper appreciation, the description of the property given in the plaint is extracted as hereunder:-

“Tiruvannamalai Town, VEDIYAPPAN Koil Street, North and East of VEDIYAPPAN Koil Street, West of Natarajan's house, South of Arunagiri's land in between measuring East to West 26 ft., north to south 48 ft., in which a thatched house and thottan bearing Ol.D.No.5 and New D.No.15.”

20. So, it is clear that the plaintiff has mentioned the boundaries. With the help of the said boundaries, the property can be identified. As already pointed out that as per Order VII Rule 3 of CPC, it is sufficient to mention either Survey number or boundaries. The said provision does not insist that both the survey number and boundaries should be mentioned. In this case, the plaintiff has mentioned boundaries. Therefore, this Court is of the view that the plaintiff has complied with the procedure prescribed under Order VII Rule 3 of the Civil Procedure Code.

21. Furthermore, in this case, the defendants also claim right over the suit property. So, it is clear that there is no dispute with regard to the identification of the property. But the first Appellate Court had observed that since Town survey number has not been mentioned in the plaint schedule, it has to be held that the property has not been properly described. The said finding is totally against the provisions of law. As already pointed out that as per Order VII Rule 3 of CPC, in respect of the

immovable properties the plaint shall contain the description of the property sufficient to identify it. In case, such property can be identified with the boundaries, it is sufficient to mention the boundaries. In this case, the boundaries have been clearly mentioned and measurements also given. Therefore, merely because the plaintiff has not mentioned the town survey number, the first Appellate Court ought not to have held that the property has not been properly

described in the plaint.

22. According to the plaintiff, the suit property is ad-measuring 26 ft X 48 ft in which, a thatched house and a garden are situated. His further case is that the said property is a Government poramboke land and he occupied the same about 45 years back and put up a thatched house and the said house was assessed for house tax and also he got the electricity service connection. His further case is that, recognizing his possession, the Government had issued 'B' Memos and also issued eviction notice. He had produced the eviction notice, 'B' memos and house tax receipts and they have been marked as Exs.A1 to A26. The oral evidence coupled with the documentary evidence adduced by the plaintiff would clearly establish that the plaintiff is in possession and enjoyment of the suit property at least from the year 1973. To controvert the evidence of the plaintiff, the defendants have not adduced either oral or documentary evidence.

23. It is true that in the case of bare injunction, the person who seeks the relief should prove his possession on the date of the suit. In this case, the plaintiff entered into the witness box and examined himself as PW1 and also subjected himself for cross examination. Further, in support of his oral evidence, he had marked as many as 26 documents. But the defendants did not adduce either oral or documentary evidence in support of their pleadings. Under the said circumstances, an adverse inference has to be drawn against the defendants.

24. It is also to be pointed out that in the written statement, the defendants have stated that there is no dispute with regard to the house put up by the plaintiff, but the dispute is only with regard to the vacant site situated on the north of the plaintiff's house. But the defendants have not stated what is the extent of the vacant site and to what extent they are in possession. According to the plaintiff, he is in possession of the house as well as the vacant site situated abutting his house within the aforesaid measurement of 26 ft X 48 ft. In such a case, the defendants ought to have pleaded and adduced evidence as to what extent they are in possession. But they have not specifically pleaded as to what extent they are in possession.

25. It is also to be pointed out that in the written statement, the defendants have stated that there was a compromise between the parties on 07.04.1997 with regard to the vacant site and as per the said compromise, it was agreed that the plaintiff and his brother should get $\frac{1}{2}$ share in the vacant site and the said defendants should get $\frac{1}{2}$ share and with regard to the said compromise, on behalf of the plaintiff his father-in-law had signed. Further, it is stated that the said compromise has been filed along with the written statement. But, the defendants have not filed the said compromise along with the written statement or during trial. As rightly held by the trial Court, if really the defendants

were in possession of the said vacant site, there was no necessity for them to enter into the said compromise. Further, during cross examination of PW1, nothing was suggested about the said compromise, so, it appears that the said compromise was pleaded only for the purpose of the case.

26. The plaintiff while examining himself as PW1, through out his evidence has deposed that he has been in possession of the suit property. During cross examination also, he has stated that the defendants 1 and 2 are encroaching the land which is situated on the north of his house and hence, he has filed the suit. But in one place, he has stated as follows:-

“ ஆக்கிரமிப்பு, செய்த இடத்திற்குத் தான் நான் வழக்கு போட்டுள்ளேன்.”

27. Relying upon the said statement, the first Appellate Court has held that the plaintiff himself has admitted in his evidence that the defendants had already encroached the suit property and on the date of suit, the plaintiff was not in possession and as such, he is not entitled to seek injunction. The aforesaid approach of the first Appellate Court cannot be upheld.

28. In Periannan and others Vs. Saraswathi (cited supra), this Court has observed that stray admission of the plaintiff made during the cross examination cannot be used against the plaintiff.

29. In Boramma Vs. Krishna Gowda and others (2000) 3 MLJ 199 SC = (2000) 9 SCC 214, the Hon'ble Supreme Court in para No.10 has observed as follows:-

“10.... In our view it will not be a sound rule of appreciation of evidence to pick up an answer from the cross-examination of a witness and draw inference taking it in isolation. The Court must see as to how consistent the testimony of the witness is and as to how that answer fits in with the rest of the evidence and probabilities of the case.”

30. Therefore, it will not be a sound rule of appreciation of evidence to pick up an answer from the cross-examination of a witness and draw inference taking it in isolation. The Court must see as to how consistent the testimony of the witness is and as to how that answer fits in with the rest of the evidence and probabilities of the case.

31. In this case, as already pointed out that PW1 through out his evidence has stated that he is in possession of the suit property. The suit property includes the house and garden measuring 26 ft X 48 ft. The plaintiff, in support of his oral evidence, has produced as many as 26 documents. To controvert the evidence of the plaintiff, the defendants not

at all entered into the witness box and also not produced even a single scrap of paper. The First Appellate Court, without considering the whole testimony of PW1, had picked up an answer from the cross-examination and draw inference that the plaintiff was not in possession of the suit property. The approach of the First Appellate Court is against the settled principles of law and the same cannot be upheld by this court.

32. It is also to be pointed out that the Poramboke land which is situated on the south of the defendants' property is having large extent, out of which, the plaintiff is in possession of a small portion measuring 26 ft X 48 ft. Though in Ex.A1 it is mentioned that the extent of the property which is in possession of the plaintiff as one cent, the said measurement has been mentioned only approximately. Further, the defendants have not disputed the plaintiff's possession with regard to the house. They claimed right only over the vacant site which is situated on the north of the plaintiff's house but they have not mentioned the extent over which they are claiming right.

33. In Seenivasan Vs. V.V.Rajalakshmi (cited supra) this Court has held that in the absence of any evidence in favour of the defendants, the Courts below have correctly concluded that the plaintiff has been in possession. Further, it has held that it is settled law that even if an encroacher has established his enjoyment and possession by 'B' Memos issued by the Government, he could be evicted and removed only under due process of law.

34. In this case, the plaintiff has proved his case by adducing oral and documentary evidence but the defendants have not adduced either oral or documentary evidence in support of their claim. Therefore, this Court is of the view that the trial Court has rightly decreed the plaintiff's suit, but, the first Appellate Court has erroneously reversed the findings of the trial court and therefore, the Second Appeal has to be allowed. Accordingly, the substantial question of law is answered in favour of the appellant/plaintiff.

35. In the result, the Second Appeal is allowed. No costs. The Judgment and decree passed by the First Appellate Court are set aside. The judgment and decree passed by the trial Court are restored.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To,

1.The Principal District Judge, Tiruvannamalai.

2.The Principal District Munsif, Tiruvannamalai.

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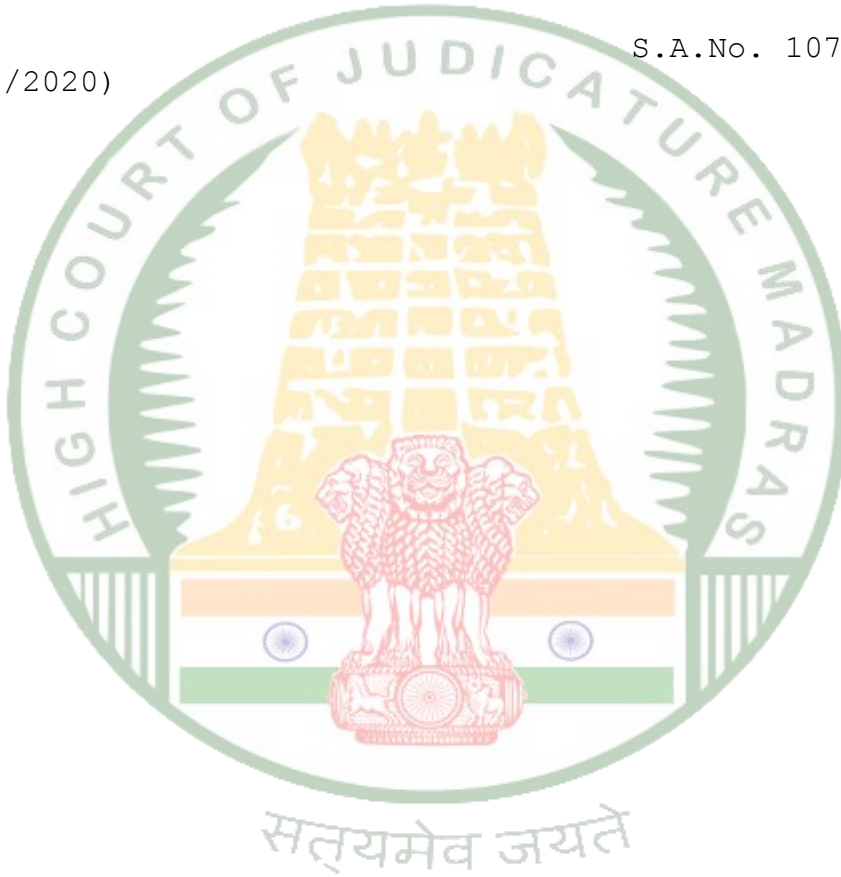
The Section Officer,VR Section, High Court,Madras.

+lcc to Mr.T.R.Rajaraman , Advocate SR.No. 808600

+lcc to Mr.Kuyilan , Advocate SR.No. 80394

S.A.No. 1079 of 2002

A.SK(04/12/2020)



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