

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2019

PRONOUNCED ON : 04.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.396 of 2002

1.Periyanayagam
2.Pichai Periyanaagasamy
3.Simon @ Simanraj
4.Sandanasamy
5.Arul Marie
6.Louise Marie
7.Andonisamy Appellants/Plaintiffs

.. Vs ..

1.Vellaisamy @ Anthonimuthu
2.George
3.Santhiagu
4.Deivasagayam
5.Karikalan
6.Sekar @ Periyanaayagam (Died)
7.Periyanayagarsamy
8.Padmini @ Jayanthi
9.Minor Janefer
10.Minor Jananika
[Minors 9 and 10 are represented by mother and guardian Padmini @ Jayanthi] .. Respondents/Defendants

[Respondents 8 to 10 brought on record as legal representatives of the deceased/sixth respondent viz., Sekar @ Periyanaayagam vide order of this Court dated 11.04.2019 made in CMP.No.429 to 431 of 2011 in S.A.No. 396 of 2002]

RR9 and 10 declared as Major Mother and Guardian Padmini @ Jayanthi discharged from Guardianship vide order of Court dated 03/04/2019 made in SA No.396/2002 as per Memo dated 23/04/2019 are recorded.

PRAYER: This appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree passed in A.S.No.8 of 1998, dated 20.04.1998, on the file of the learned

Additional District Judge, Pondicherry at Karaikal, in confirming the judgment and decree passed in O.S.No. 189 of 1996, dated 30.09.1997, on the file of the learned Principal District Munsif, Karaikal.

For Appellants : Mr.R.Natarajan

For R1 to R5
& R7 to R10 : Mr.T.Susindran

R6 : Died (Steps taken)

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree passed in A.S.No.8 of 1998, dated 20.04.1998, on the file of the learned Additional District Judge, Pondicherry at Karaikal, in confirming the judgment and decree passed in O.S.No. 189 of 1996, dated 30.09.1997, on the file of the learned Principal District Munsif, Karaikal.

2 For the sake of convenience, parties are referred to as per their ranking before the Trial Court. The plaintiffs are the appellants herein. The appellants/plaintiffs have filed Civil suit in O.S.No. 189 of 1996 before the learned Principal District Munsif at Karaikal, for grant of permanent injunction against the respondents herein, restraining them from interfering with the peaceful possession of the suit property of the plaintiffs/appellants herein.

3.(a) The appellants are the plaintiffs in the suit referred above. The suit property is comprised in R.S.No.23/6 measuring an extent of 371/2 Kuzhies.

(b) The plaintiffs are owning agricultural lands for cultivation and they are having residence in Nallazanur Village and their father viz., Savarimuthu was died on 09.04.1993 leaving behind them to succeed and inherit the estate left by him. The plaintiffs are the legal heirs of late Savarimuthu.

(c) It is stated that their grand father has acquired a portion of the suit property by way of Sale Deed dated 03.04.1948 and thereafter, by subsequent two Sale Deeds dated 26.11.1985 and dated 27.07.1988, father of the plaintiffs' viz., Savarimuthu has acquired the suit property by way of purchase. The aforesaid three Sale Deeds were marked as Exs.A8, A9 and A10 respectively in O.S.No.189 of 1996 claim for this suit property.

(d) The plaintiffs have been in enjoyment and possession of the suit property. After the demise of their father Savarimuthu, their family has decided to construct new houses in the vacant space for their separate livings. The land comprised

in R.S.No.23/6 being a vacant site can be used for construction of houses. During the life time of plaintiffs' father and subsequently also, they have been using the land comprised in R.S.No.23/6 for keeping manure for using agricultural purposes.

(e) It is the specific case of the appellants that the first respondent herein has no right in any manner with regard to land covered in R.S.No.23/6. There is no evidenciary proof in support of claim of the first respondent herein, with regard to land covered in R.S.No.23/6 except making untenable claim of adverse possession.

4 The respondents have filed a written statement alleging that

(a) as per Ex.B1, suit property does not stand in the name of the plaintiffs and the suit property is standing in the name of the eight persons and the plaintiffs have not taken any steps to effect mutation of name in the revenue records and hence, the plaintiffs cannot claim any derivative title based upon Exs.A8 to A10.

5 During the trial, the third plaintiff examined himself as PW1 and Ex.A1 to A10 were marked. On the side of the defendants, DW1 has been examined and no document was marked.

6 The third plaintiff both in his pleadings as well as in his evidence have stated that the entire suit property in R.S.No.23/6 is in possession and enjoyment of the plaintiffs and as such they prayed for issuance of permanent injunction resisting the defendants from interfering with peaceful possession and enjoyment of the plaintiffs. Whereas, the defendants contended that they are in possession and enjoyment of 20 Kuzhies of land out of the suit property and that the remaining property were under the enjoyment of different persons and that the plaintiffs are not in enjoyment of any portion of the suit property and as such the plaintiffs are not entitled for any permanent injunction.

7 Ex.A1 to A7 are not relevant to the point in issue. The plaintiffs claim possession of the suit property by virtue of three Sale Deeds which were marked as A8 to A10. Ex.A8 and A10 per se would not prove that the plaintiffs are in possession and enjoyment of the suit property. It is seen from the records that the claim of the plaintiffs would only rest upon Exs.A8, A9 & A10 Sale Deeds of the year 1948, 1985, 1988. It is seen that Ex.A8 marked through him is the Title Deed of the year 1946 in favour of their grand father and Ex.A9 and Ex.A10 are the subsequent title deeds under which the rest of the portion had said to have purchased by father of PW1.

8 Under the plaint schedule, what is referred as the suit property is an extent of 37 ½ Kuzhies lying under R.S.No.23/6, Nallazhandur village pointed on the North of the road and on the South by Vaikal and the East by punja land of Arokiasamy Pillai on the West of the road.

9 During the course of cross-examination the third plaintiff had specifically admitted that even before filing of the suit, he know that there is no patta in his favour for the suit land and neither his father had. Further admitted that he has not taken any steps to get patta in his favour assures ignorance.

10 Thus, the patta for the property had never stood either in the name of the plaintiffs or the ancestor of the plaintiffs, in spite of having purchased the same as early as 1948 and till this date, no constructive steps had been taken for causing mutation of names in revenue records in favour of the plaintiffs and the question arises is as to why the title holder of a valid Sale Deed should refrain from doing so and PW1 also admitted that he had no direct knowledge of the document of the Sale Deed under Ex.A8 and Ex.A10. Further more, Ex.A8 has no specific reference to any survey number and Ex.A9 refers to purchase of 11 kuzhies of land and R.S.No.23/6.

11 In the case of this nature the burden is on the plaintiffs to establish the factum of possession in respect of the suit property and moreover, this Court finds that the documents relied on by the plaintiffs to prove title to the property does not contain R.S.No to correlate the suit property with the property mentioned in the Sale Deed. In the said document, there is reference only to the cadastre number such as 521, 129/1 and 129/5 there is no corresponding R.S. number given in the said Sale Deed. There is absolutely no evidence on record to show that the plaintiffs are in possession and enjoyment of the said manure pit to an extent of 20 Kuzhies.

12 As already discussed, no documentary evidence of possession had been produced before this Court except under Exs.A8 to A10 which are only the Title Deeds and very evidence of PW1 rules out the case of possible constructive possession of the manure pit, which forms part of the suit property by him. Apart from that the suit being one for issuance of permanent injunction, Ex.A1 to Ex.A10 cannot be of much help unless there are corresponding documents to prove the factum of possession of the entire extent of the suit property by all the plaintiffs as on the date of presentation of the plaint.

13 The plaintiff has not taken steps to summon any other official authority to speak with regard to possession of the said land.

14 Hence, this Court finds that

(a) The plaintiff who is seeking the relief of permanent injunction in respect of property in survey No.23/6 has not adduced any documents to show his possession and Ex.A8 and A10, which has relied on, has not been given any corresponding R.S.No.23/6 with respect to the suit property. What was given is only Cadastre number.

(b) In the absence of any official documents, correlating to such Cadastre number along with resurvey number, both the Courts below have concurrently held that in the absence of any documents of correlation between the alleged number as stated in Sale Deed, Exs.A8 to A10 with that of the suit property, the relief of injunction cannot be granted.

(c) Furthermore, PW1 has admitted in the cross examination that he was not in possession of any documents of patta to show his possession

(d) Thus, in view of the fact that there is no documentary evidence to correlate the Cadastre number stated in Ex.A10 with that of the R.S.No.23/6, non examination of any revenue witness to speak about the correlation between the lands mentioned in the Sale Deeds of the suit property in R.S.No.23/6 and in the absence of any documentary evidence, his possession coupled with the admission of PW1 in the cross-examination that neither his father nor himself has applied for revenue department seeking of patta

(e) In view of the specific stand of the defendant that the land in question is in joint patta in the name of eight persons and in which neither the plaintiff nor the father of the plaintiffs' name is found and hence, this Court is of the considered view that none of the substantial questions of law arises for consideration on the above factual matrix.

15 In the result, the Second Appeal stands dismissed and devoid of merits and all the substantial questions of law raised in this appeal does not arise for consideration and hence, answered in negative against the appellant. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dua

To

1.The Additional District Judge,
Pondicherry,
Karaikal.

2.The Principal District Munsif,
Karaikal.

Copy to

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

+1cc to Mr.R.Natarajan, Advocate Sr.101371

+1cc to Mr.T.Susindran, Advocate Sr.101327

S.A.No.396 of 2002

nr[co]
srg 08/06/2020



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