

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.01.2019

Pronounced on :12.02.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1321 of 2001

1.Karuppana Gounder
2.Nallasivam
3.Loganathan
4.Deviasigamani

.... Appellants/Respondent/Defendant

Vs.

1.Subramaniam (died)
2.Chinnammal
3.Sugumar
4.Loganathan

RR2 to 4 brought on record as LRS
of the deceased sole respondent
vide order of court dated
07.01.2019 made in CMP.No.7378 &
7379 of 2018 in S.A.No.1321 of
2000 (CVKJ)

.... Respondents/Appellant/Plaintiff

PRAYER: The Second Appeal filed under Section 100 of CPC,
against the judgment and decree of the II Additional District
Court, Erode in A.S.No.79 of 2000 dated 13.11.2000 reversing the
judgment and decree of the Principal District Munsif Court,
Erode, in O.S.No.429 of 1998 dated 03.03.1999.

For Appellants 1 to 4 : Mr.N.Manokaran

For RR2 to R4 : Mrs.V.Srimathi

R1 : Died

JUDGMENT

The defendants in O.S.No.429 of 1998 on the file of the Principal District Munsif Court, Erode, are the appellants herein.

2.O.S.No.429 of 1998 had been filed by the plaintiff, Subramaniam against four defendants namely, M.Karupppana Gounder, Nallasivam, Loganathan and Deivasigamani, seeking a judgment and decree for permanent injunction restraining the defendants from trespassing into the suit property and interfering with the peaceful possession of the plaintiff and for costs. By judgment dated 03.03.1999, the learned Principal District Munsif, Erode, dismissed the suit.

3.Challenging that judgment, the plaintiff then filed A.S.No.79 of 2000 before the District Court, Erode. By judgment and decree dated 13.11.2000, the learned II Additional District Judge, Erode, allowed the appeal.

4.Challenging the judgment of the First Appellate Court, the defendants have filed the present Second Appeal. The Second Appeal had been admitted on 06.09.2001, on the following two substantial questions of law:

"1.Whether the lower appellate court erred in law in granting the relief with respect to the entirety of the suit property in the absence of any evidence or explanation for entitlement of more extent of suit property?

2.Whether the lower appellate court erred in admitting additional evidence asked for by the plaintiff?"

O.S.No.429 of 1998 (Principal District Munsif Court, Erode):-

5.The plaintiff, had filed the suit seeking permanent injunction to protect the possession. The suit property was described as Natham Promboke measuring 72 feet North to South on the West, 70 feet North to South on the East and 55 feet East to West on both sides. This was part of a larger extent of 5.97 acers of dry lands in R.S.No.362, Vadugapatti Village, Erode District. According to the plaintiff, he had purchased the property by sale deed dated 22.01.1997 from S.Rangasamy Gounder and two others. It had been claimed that the property was the ancestral property of the vendors of the plaintiff. Since it was a Natham Promboke land, there was no tax levied by the Government. The plaintiff claimed that his vendors were in

possession and subsequent to the sale deed he had been given exclusive possession. It had been stated that the second to fourth defendants are the sons of the first defendant. They own ancestral lands to the West side of the property. It was stated that the defendants attempted to trespass into the property. The plaintiff further claimed that he had constructed two thatched sheds in the property. Seeking to protect possession, the plaintiff filed the suit.

6.The first defendant filed a written statement, stating that S.Rangasamy Gounder and two others who executed the sale deed dated 22.01.1997 in favour of the plaintiff with respect to the suit property were not competent to execute the sale deed. It was stated that the suit property was Natham Promboke land and consequently, it cannot be claimed to be the ancestral property of the vendors of the plaintiff. It was stated that the defendants were residing in the suit property. It was stated that the plaintiff was not in exclusive possession and enjoyment of the suit property. It was further stated that there were earlier dispute between the parties. It was also stated that the possession of the third defendant had been recognized by the Government. It was therefore stated that the suit should be dismissed.

7.On the basis of the above pleadings, the learned Principal District Munsif, Erode, framed the following issues for trial:

- 1.Whether the plaintiff has been in exclusive possession and enjoyment of the suit property right from the purchase of the same under the sale deed dated 22.01.1997?
- 2.Whether the plaintiff constructed two thatched sheds on the northern portion of the suit property about one year ago?
- 3.Whether the first defendant and his family members are residing in one portion of the suit property?
- 4.Whether the sale deed dated 22.01.1997 does not bind the first defendant?
- 5.Whether the plaintiff is not in exclusive possession and enjoyment of the suit property?
- 6.Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
- 7.To what relief is the plaintiff entitled?

8. During trial, the plaintiff S. Subramaniam, examined himself as PW1 and the third defendant Loganathan, examined himself as DW1. The plaintiff also examined three other witnesses namely, Balasubramanian, Karuppanna Gounder and Durai Sakthivel as PW2, PW3 and PW4. The plaintiff marked Exs. A1 and A2. Ex. A1 was the sale deed dated 22.01.1997. Ex. A2, dated 18.10.1993, was the another sale deed in favour of the plaintiff. The defendants marked Exs. B1 and B2. Ex. B1 dated 03.09.1993, was the patta issued in favour of the third defendant. Ex. B2 dated 08.02.1999, was the tax receipt in the name of the third defendant for the period 1998-1999. An Advocate Commissioner was also appointed and his report and plan were marked as Exs. C1 and C2.

9. By judgment dated 03.03.1999, the learned Principal District Munsif, examined the oral and documentary evidence on record. On the basis of the oral and documentary evidence, the learned Principal District Munsif found that the suit property was situated in R.S.No.362 Vadugapatti Village, Sivagiri, Erode District. It was originally a Natham Promboke land. PW2 was one of the vendors of the plaintiff. However, to prove title or atleast possession, revenue records have not been produced by the plaintiff. PW2 himself admitted that there were no entries in the revenue records to show his possession. Patta was not granted to him. Patta had been granted to others who had constructed houses in R.S.No.362. It was not granted either to him or to the other vendors or to the plaintiff. PW3, one of the attester of the sale deed in Ex. A1, stated that patta was granted to him. The learned Principal District Munsif found that since patta was not granted either to the vendors of the plaintiff or to the plaintiff, the claim of the plaintiff that the vendors were ancestral owners has to be rejected. It was also found that in the schedule to the plaint, in the description of the suit property it was not mentioned that thatched houses were there. In the absence of the convincing evidence, the learned Principal District Munsif rejected the contention of the plaintiff. The learned Principal District Munsif also considered the evidence of DW1 who was the third defendant, who produced Ex. B1 patta and Ex. B2 receipt of payment of house tax. It was stated that B1 relates to the suit property namely, R.S.No.362/25. It was also found that the defendants were in possession of portion of the suit property. Consequently, holding that the plaintiff was not in exclusive possession, the suit for injunction was dismissed.

A.S.No.79 of 2000 (II Additional District Court, Erode):-

10.Challenging that judgment, the plaintiff then filed A.S.No.79 of 2000. This appeal came up for consideration before the learned II Additional District Judge, Erode. By judgment dated 13.11.2000, the learned II Additional District Judge, framed the following points for consideration:

1.Whether the plaintiff was in possession of the suit property?

2.Whether the judgment and decree of the Trial Court has to be set aside?

3.To what relief is the plaintiff entitled?

The learned II Additional District Judge reappraised the evidence and primarily relied on Exs.C1 and C2 namely, the report and sketch of the Advocate Commissioner. It was observed that it was clear from the Exs.C1 and C2 that the plaintiff was in possession of the suit property. Holding that therefore, the plaintiff had established possession, the learned II Additional District Judge, allowed the appeal and the judgment and decree of the Trial Court was reversed.

S.A.No.1321 of 2001:-

11.As stated above, the defendants have then filed the present Second Appeal. The Second Appeal had been admitted on 06.09.2001, on the following two substantial questions of law:

"1.Whether the lower appellate court erred in law in granting the relief with respect to the entirety of the suit property in the absence of any evidence or explanation for entitlement of more extent of suit property?

2.Whether the lower appellate court erred in admitting additional evidence asked for by the plaintiff?"

12.Pending the Second Appeal the respondent/plaintiff died and his legal representatives were brought on record as respondents 2 to 4.

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

14.The first substantial question of law was whether the Lower Appellate had erred in law in granting relief to the eniterity of the suit property in the absence of any evidence for entitlement of more extent of suit property. The suit property had been described in the plaint is as follows:

Schedule of Property

Erode regd. dt., Sivagiri sub regd, dt, Erode Taluk, Vadugapatti Village, R.S.No.362, 2.41.5 Hectare dry land extent 5.97 acres Natham Promboke in this 72 feet in north south on the west, 70 feet in north south on the east, 55 feet in east west on both sides with momoolpat ways rights is situated within the following boundaries:- To the south of the plaintiff's and his brother Kandasamy's land: To the north of Muthuswami gounder's vacant site : originally to the east of north south cart track and now to the east of the cart track encroached by the defendants. To the west of pappan gounder's vagaiara's house properties. The property is situated within the Vadugapatti Town Panchayat.

To substantiate possession, the plaintiff had not filed a single document. The suit property is admittedly a Natham Promboke land. To establish possession the plaintiff has to file revenue records to show that his possession has been recognized by the Government. Ex.A1 is the sale deed in his favour. There is no document filed to show that his vendors were in possession. PW2 is one of the vendors. During cross examination he admitted that even though patta was granted to others in possession, patta was not granted to him or to any of the other vendors of the plaintiff. On the contrary, Ex.B1 is the patta granted in favour of the third defendant. It relates to the suit property namely S.No.362/25. It is thus seen that the defendants had established possession. The First Appellate Court relied on the report of the Advocate Commissioner to hold that the plaintiff is in possession. The Advocate Commissioner cannot be an agency to collect evidence on behalf of the plaintiff. It is the plaintiff who has to put forward positive evidence to establish and prove his possession. In the present case, execution of a sale deed and a recital in the sale deed that the vendors have handed over possession would be of no use to the plaintiff, since one of the vendors himself admitted that he has no document to show his possession. I hold that, the Lower Appellate Court was wrong in law in granting the relief of injunction.

15.The second substantial question of law was with respect to additional evidence. A perusal of the records show that the Lower Appellate Court actually relied on Exs.C1 and C2 namely, report and sketch of the Advocate Commissioner to hold that the

plaintiff was in possession. An Advocate Commissioner cannot speak about possession. He can only give a record regarding the physical features of the land. It is for the party who asserts that he is in possession to actually prove possession. In the present case, the plaintiff has failed to prove possession. Even though the records do not reveal that additional evidence had been filed during the First Appellate Court proceedings, the substantial question of law had been framed as if additional evidence had been let in. It is clarified that the Lower Appellate had only relied on Exs.C1 and C2 to establish possession of the plaintiff. This approach is erroneous.

16. In view of the above reasoning, I hold that the Second Appeal has to be allowed and the judgment and decree of the First Appellate Court has to be necessarily interfered with. Consequently, the Second Appeal is allowed with costs. The judgment and decree of the learned II Additional District Judge, Erode, in A.S.No.79 of 2000 dated 13.11.2000 is set aside and the judgment and decree of the learned Principal District Munsif, Erode, in O.S.No.429 of 1999 dated 03.03.1998 is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To,

1.The Principal District Munsif Court, Erode.

2.The II Additional District Court, Erode.

3.The Section officer
VR Section, Madras High Court

+1cc to Mr.N.Manokaran, Advocate sr.no.12577
+1cc to M/s.V.Raghavachari, Advocate sr.12114

S.A.No.1321 of 2001

ad(co)
nr 09/04/2019