

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2019
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1266 of 2008
and
M.P. No.1 of 2008

1. Valliammal
2. Duraisamy
3. Loganathan
4. Palanisamy

... Appellants

1. Palanisamy @ Palani
2. Pappathi

.... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the Judgment and decree dated 14.12.2005 made in A.S. No.63 of 2004 on the file of the Principal District Court, Erode confirming the judgment and decree dated 31.12.2003 made in O.S.No.42 of 2002 on the file of the First Additional District Munsif Court, Erode.

For appellants : Mr.N.Manokaran
For respondents : Ms.Prithivi for
Mr.S.Kaithamalai Kumaran

JUDGMENT

This Second Appeal has been filed by the Concurrent findings of the Courts below.

Brief facts leading to the filing of the Second Appeal :

2. The appellants are the defendants in the suit O.S No.42 of 2002 on the file of the First Additional District Munsif Court, Erode and the respondents are the plaintiffs. The suit was filed by the plaintiffs against the defendants for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit properties.

3. The case of the plaintiffs is that the suit property is a Natham poramboke in R.S. No.176 of 2005. According to them, it consists of a tiled house, a thatched shed in front of the

house and a vacant site in front of the house. According to the appellants / plaintiffs, they occupied the land 33 years before the date of the filing of the suit. It is the case of the appellants / plaintiffs that they obtained electricity service connection and they have been paying the electricity charges to the Electricity Board ever since their occupation of the building in the suit property. It is the case of the plaintiffs that the defendants are the influential persons in the said locality and they attempted to occupy the suit property by force. It is also stated in the plaint that the defendants 2 to 4 trespassed into the suit property and damaged the utensils and several articles inside the house on 09.01.2002 and also caused injuries to the plaintiffs. It is also stated in the plaint that the plaintiffs gave a complaint against the defendants to the Sub Inspector of Police, Modakurichi Police Station and the said complaint was registered as 7/2002 of Modakurichi Police Station. Since, according to the plaintiffs, the defendants were disturbing their peaceful possession and enjoyment of the suit schedule property, they were constrained to file the suit.

4. But the defendants have denied all the allegations contained in the plaint as seen from their written statement. According to them, the plaintiffs are not in possession and enjoyment of R.S.No. 176/5 and 6 of Punjai Lakkapuram village, Erode Taluk and they have also not put up a house as alleged in the plaint. It is their case that the plaintiffs are strangers to the suit schedule properties. According to them the description of the properties as found in the suit schedule is also vague. Excepting for disputing the possession of the plaintiffs in their written statement, the defendants have not made any averments whether they are the owners of the suit schedule property.

5. The Trial Court after framing issues and after trial decreed the suit O.S. No.42 of 2002 filed by the plaintiffs and held that the plaintiffs have proved their possession by virtue of Ex.A9 - voters list as on 01.01.93, house tax receipts for the year 1994-95 marked as Exs.A1 and A2 and Exs.C1, C2, the Advocate Commissioner's report as well as sketch attached to the Advocate Commissioner's report. The Trial Court has also taken into consideration Ex.A8 series, which relates to the E.B. Receipts for the electricity charges paid by the plaintiffs between October and December 2001 and 2002. The Trial Court has also taken into consideration, the family card for the year 1998-2003, marked as Ex.A4 standing in the name of the plaintiffs, which discloses the address of the suit schedule property. The Trial Court while decreeing the suit in favour of

the plaintiffs has also taken into consideration the documents filed by the defendants, which were marked as Exs.B1 to B3. The Trial Court has observed that the sale deed dated 14.06.1996 standing in the name of the first defendant which was marked as Ex.B1, the survey No. of property is mentioned as R.S.176 of 2006, whereas the suit property relates to R.S. No.176 of 2005. The Trial Court has also observed Ex.B3 the house tax receipt filed by the defendants, does not relate to the suit property. Based on all these factors, the Trial Court held the plaintiffs have proved that they are in possession of the suit property. The Trial Court has also taken note of the fact that there is no pleading by the defendants in the written statement regarding the sale deed, dated 14.06.1996 which was marked as Ex.B1.

6. Aggrieved by the judgment and decree dated 31.12.2003 passed by the Trial Court in O.S. No.42 of 2003, the defendants in the suit filed an appeal before the Principal District Munsif Court, Erode in A.S. No.63 of 2004.

7. The Lower Appellate Court by its judgment and decree dated 14.12.2005 confirmed the findings of the Trial Court and dismissed the appeal filed by the defendants in the suit.

8. Aggrieved by the concurrent findings of the Courts below, this Second Appeal has been filed by the defendants in the suit.

9. Heard Mr.N.Manokaran, learned counsel for the appellants and Ms.Prithivi, learned counsel for the respondents.

10. According to the learned counsel for the appellants, the respondents /plaintiffs ought to have file a suit for declaration, since the suit schedule property is owned by the first defendant, as per Ex.B1, sale deed, dated 14.06.1996. According to him, when the defendants have disputed the possession of the suit schedule properties by the plaintiff and the Sale deed Ex.B1 has also been marked which stands in the name of the first defendant, the only recourse available to the plaintiff is to file a suit for declaration of title and a suit for bare injunction is not maintainable.

11. Per contra, the learned counsel for the respondents would submit that the plaintiffs are in possession of the suit schedule property for more than 33 years prior to the institution of the suit. She drew the attention of this Court to the documents filed by the plaintiffs before the Trial Court, which were marked as Exs.A1 to A9. In particular, she referred

to the house tax receipts and electricity charges receipts issued by the Electricity Board which were marked as Exs.A1, A2, A3 and A8 and submitted that as seen from those documents, the plaintiffs are in possession of the suit schedule property, even prior to Ex.B1, Sale deed, dated 14.06.1996, which stands in the name of the first defendant.

12. She also drew the attention of this Court to the written statement filed by the defendants in the suit and submitted that there is no pleading in the written statement as regards the sale deed dated 14.06.1996, Ex.B1.

13. She also drew the attention of this Court to the Advocate Commissioner's report which were marked as Exs.C1 and C2, before the Trial Court, which according to her clearly reveals that the plaintiffs are in possession of the suit schedule property. It was also pointed out by her, that before the Trial Court, objections were not raised by the defendants to the Advocate Commissioner's report. According to her, the Trial Court as well as the Lower Appellate Court has correctly held that the plaintiffs are in possession of the suit schedule property and they are entitled for an injunction as prayed for in the suit.

Discussion :

14. Admittedly, the plaintiffs are in possession of the suit schedule property. The only relief sought in the plaint is for a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. Before the Trial Court, the plaintiffs have proved their possession, by virtue of Exs.A1, A2, A3, A4 and A8 which are house tax receipts, electricity meter charges receipts and family card. All the documents marked as Exhibits before the Trial Court on the side of the plaintiffs are all prior to the sale deed dated 14.06.1996, Ex.B1, which the defendants rely upon for the purpose of proving their ownership of the suit schedule property.

15. This Court has also perused the written statement filed by the defendants. Even though in the trial, the defendants have filed their sale deed dated 14.06.1996, which was marked as Exs.B1, the written statement does not whisper about the said sale deed Ex.B1. The Trial Court has taken into consideration, the documents filed on both sides and has rightly held that the plaintiffs have proved their possession over the suit schedule property. When the defendants have not disputed the possession

of the plaintiffs over the suit schedule property and they have not disputed the Exhibits marked on the side of the plaintiffs in the suit viz.Exs.A1, A2, A3, A4 and A8. They cannot now contend that the plaintiffs will necessarily have to file only a suit for declaration. The plaintiffs have filed the suit only to protect their possession over the suit schedule property. This being the case, there is no necessity for the plaintiffs to file a suit for declaration as contended by the learned counsel for the appellants.

16. The second appeal is of the year 2008, this Court by its order dated 04.11.2008 issued notice to the respondents without admitting the second appeal. After receipt of the notice, the respondents have entered appearance through a learned counsel.

17. The appellants has raised the following substantial questions of law :

a) Whether the plaintiffs can on the strength of Exs.A1 to A9 sustain the suit for injunction as against the defendants who have proved a better title under Ex.B1, especially in the absence any pleadings in the plaint to establish the basis of the right over suit property?

b) Whether the plaintiffs have discharged the burden of proving their right over the suit property, if not, whether the findings of the courts below in drawing adverse inference against the defendants under section 114 of the Indian Evidence Act for non production of their title deed, are correct in law?

c) Whether the courts below are correct in law in decreeing the suit by simply extracting the decision reported in AIR 1999 SC 1441, even without analysing the binding nature of all the material facts and issues involved in the case and argued on both sides?

18. For the foregoings reasons, this court of the considered view that the substantial questions of law raised by the appellants does not deserve any merit.
Conclusion :

19. In the result, this Court does not find any perversity in the findings of the Trial Court as well as the lower appellate court and the judgments and decree of both the Courts are confirmed. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge, Erode.
2. The First Additional District Munsif, Erode.

+1 cc to Mr.N.Manokaran Advocate sr97251
+1 cc to Mr.A.K.Kumarasamy Advocate sr97415

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