

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1054 of 2007

Ramalingam @ MGR

...Appellant/1st Respondent/1st Plaintiff

Vs

1.Jayaraman

...1st Respondent/Appellant/1st Respondent

2.Rajangam

... Respondent/2nd Respondent/2nd Plaintiff

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 23.02.2005 in A.S.No.62 of 2004 on the file of the I Additional Sub Court, Cuddalore reversing the Judgment and decree dated 05.03.2004 in O.S.No.364 of 2002 before the I Additional District Munsif's Court, Cuddalore.

For Appellant : Mrs.R.Meenal

For Respondents : No appearance

JUDGMENT

This second appeal has been filed challenging the Judgement and decree dated 23.02.2005 passed by the I Additional Sub Court, Cuddalore in A.S.No.62 of 2004 reversing the Judgement and decree dated 05.03.2004 passed by the I Additional District Munsif Court, Cuddalore in O.S.No.364 of 2002.

Brief facts leading to the filing of the appeal:

2. The Appellant is the first plaintiff in the suit O.S.No.364 of 2002 and the first respondent is the defendant and the second respondent is the second plaintiff in the said suit.

3. For the purpose of convenience, the parties are referred to as per their ranking before the Trial Court.

4. The plaintiffs filed a suit O.S.No.364 of 2002 before the Additional District Munsif Court, Cuddalore seeking for an injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit

schedule properties. It is the case of the plaintiffs that the first plaintiff is the owner of the item 1 of the suit schedule property and second plaintiff is the owner of the item 2 of the suit schedule property. It is disputed by the defendant in his written statement.

5. According to the defendant, the first plaintiff is the owner of only 3 cents of land under the allotment letter issued by the Special Tahsildar and he has encroached upon one cent which is a poramboke land.

6. The Trial Court decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendant filed an appeal before the lower appellate court viz., First Additional Sub Court, Cuddalore in A.S.No.62 of 2004. The lower appellate court reversed the findings of the Trial Court by allowing the appeal filed by the defendant on the ground that patta issued in favour of the plaintiffs for one cent of land has been cancelled subsequently. Aggrieved by the judgment and decree dated 23.02.2005 passed in A.S.No.62 of 2004, this Second Appeal has been filed by the first plaintiff in the suit.

7. Heard Mrs.Meenal learned counsel for the Appellant. There is no representation on the side of the respondents.

8. This Court at the time of admission of this second appeal formulated the following substantial questions of law:

"(i) Whether in law the lower appellate court was right in dismissing the suit on the basis of Ex.B8 which was subsequent to the suit as well as the appellants?

(ii) Whether in law the lower appellate court was right in failing to see that injunction ought to have been granted on the basis of actual possession on the date of suit especially since the defendant had admitted to it in his written statement itself?"

9. As seen from the materials and evidence available on record, there is a genuine dispute raised by the defendant in the suit. According to the defendant, the plaintiffs are the owners of only three cents of land and has not entitled for the remaining one cent as it is a poramboke land and that the plaintiffs have encroached upon the same. The plaintiffs have filed a suit only for a bare injunction and not for any declaratory relief. It is settled law that when a genuine dispute has been raised by the defendant as regards ownership of the plaintiff, the plaintiff will have seek the relief of declaration.

10. Further in the case on hand, subsequent to the passing of the decree by the Trial Court, patta was cancelled for one cent of land issued earlier in favour of the plaintiffs. This fact was taken into consideration by the lower appellate court and only thereafter, reversed the findings of the trial Court.

11. The Hon'ble Supreme Court in the case of Anathula Sudhakar Vs. P.Buchi Reddy reported in 2008 (4) SCC 594 has held that in case of dispute raised by the defendant as regards ownership of the property by the plaintiff unless and until a suit for declaration is filed, a bare injunction suit is not maintainable. In the case on hand also, the plaintiffs have filed only a bare injunction suit, despite the fact that the defendant has raised dispute as regards the plaintiffs' ownership and therefore, the patta issued in favour of the plaintiffs for one cent which has also been cancelled subsequent to the passing of the decree.

12. In view of the settled propositions of law, the lower appellate court has rightly reversed the findings of the Trial Court. Therefore, the substantial questions of law raised by this Court at the time of admission of this second appeal is answered against the appellant and hence, the judgment and decree dated 23.02.2005 passed by the I Additional Sub Court, Cuddalore in A.S.No.62 of 2004 is hereby confirmed. Accordingly, the appeal is dismissed. No costs.

13. Since patta was cancelled subsequent to the passing of the decree by the Trial Court, the Appellant is permitted to file a suit for declaration if so advised for one cent. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Sub Court,
Cuddalore

2.The I Additional District Munsif's Court,
Cuddalore.

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

+1cc to Mrs.R.Meenal, Advocate SR.95322

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AD(CO)
CB(11/09/2020)



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