

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.11.2018

PRONOUNCED ON: 22.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1182 of 2007

1.Govindasamy

2.Chennappan

3.Kuppan

4.Perumal

5.Chenrayan

6.Thangammal

7.Muniammal

8.Venkatammal ... Appellants/plaintiffs

Vs.

1.Government of Tamilnadu

rep. by the Collector of Krishnagiri District ,
Krishnagiri - 635 001.

2.The District Forest Officers,
Dharmapuri.

3.The Forest Ranger,
(Marandahalli South Beet),
Palacode.

... Respondents

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 31.10.2006 in A.S.No.1 of 2006 on the file of the learned Subordinate Judge, Hosur, partly confirming the Judgment and decree dated 27.10.2005 in O.S.No.8 of 1996 on the file of the learned District Munsif, Denkanikottai in respect of the relief of declaration and setting aside the decree in respect of the relief of permanent injunction.

For Appellants : Mr.V.Karthikeyan for
Mr.V.Nicholas

For Respondents : Mr.Manikandan
Government Advocate
(Criminal side).

J U D G M E N T

This Second Appeal has been filed by the Plaintiffs/appellants against the Judgment and decree dated 31.10.2006 in A.S.No.1 of 2006 on the file of the learned Subordinate Judge, Hosur. The appellants herein have filed a suit in O.S.No.8 of 1996 on the file of the learned Principal District Munsiff cum Judicial Magistrate, Denkanikottai, seeking for the relief of declaration, declaring that the plaintiffs are the absolute owners of the suit property and further, for the relief of permanent injunction restraining the defendants and their men from in any way interfering with their peaceful possession and enjoyment of the suit property. The learned Principal District Munsif, Denkanikottai by the Judgment and decree dated 27.10.2005 had dismissed the suit with cost. Aggrieved by the same, the appellants herein have filed an appeal in A.S.No.01 of 2006 on the file of the learned Subordinate Judge, Hosur. The learned Subordinate Judge, Hosur by the Judgment and decree dated 31.10.2006 had partly allowed the said appeal and modified the Judgment and decree passed by the trial Court and granted permanent injunction restraining the defendants from interfering with the Plaintiffs peaceful possession and enjoyment of the suit property. Further, the learned Subordinate Judge, Hosur observed that the plaintiffs have been evicted only by due process of law. He dismissed the appeal in respect to the relief of declaration sought by the plaintiffs. The learned Subordinate Judge directed the parties to bear their respective costs. Feeling aggrieved by the same, the plaintiffs herein have filed the present Second Appeal.

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

3. The averments made in the plaint, in brief, are as follows:

The father of the third Plaintiff namely, Senraya Gounder and the father of the first plaintiff are brothers. The father of the second plaintiff and the father of the fourth Plaintiff are all belongs to the same family. The suit schedule property are the ancestral property of the Plaintiffs for the past 40 years. The suit property was in the possession of the Plaintiffs and the Revenue authorities issued a patta in favour of the Plaintiffs for the same. Based on the patta issued by the Tahsildar, Palacode, the plaintiffs paid kist in respect to the suit property. The plaintiffs developed Tamarind trees in the said suit property and enjoying the same by plucking the tamarind fruits for the past 40 years. The defendants have no right in the said suit property. On 30.12.1995, when the

second and the third defendants were attempted unlawfully to enter into the suit property, the same was restrained by the plaintiffs. Due to the urgency, a notice under Section 80(1) C.P.C., was not sent to the defendants before filing of a suit and the said suit was filed seeking for the reliefs of declaration and for permanent injunction.

4. The averments made in the written statement filed by the defendants, in brief, are as follows:

It is false to state that, the Plaintiffs are the absolute owners of the suit property. It is denied that the Plaintiffs are enjoying the suit property for the past 40 years. The suit property was belonging to the Forest Department, declared in the year 1987 in the Government Gazette No.181 as 'the suit property are the reserved Forest'. The Tamarind trees situated in the suit property are auctioned every year by the forest authorities. It is denied that the Plaintiffs were paid land revenue to the suit property. Every year, after the preparation of fair price to the fruits of the Tamarind trees, the same were put on auction and the same was supervised by the District Forest Officer. Filing a suit without giving notice under Section 80 (1) of C.P.C., is not maintainable. Since, second and the third defendants are the custodians of the suit property, the question of trespassing into the suit property does not arise and hence, there is no cause of action for the suit filed by the plaintiffs and therefore, the defendants prayed to dismiss the above said suit.

5. Based on the above said pleadings, the learned District Munsif, Denkanikottai had framed necessary issues and tried the suit. During the trial, on the side of the Plaintiffs, the first plaintiff examined himself as PW1 and two more witnesses were examined as PW2 and PW3. Exs.A1 to Ex.A16 were marked. On the side of the defendants, one Mr.Varadarajan, who is the Forest Ranger, Palacode, was examined as DW1 and Exs.B1 to Ex.B18 were marked.

6. The learned District Munsiff, Denkanikottai after considering the materials placed before him found that the documents exhibited on the side of the plaintiffs does not prove their title and due to the Official position of the grandfather of the plaintiffs, who was the Training Officer in British period, he enjoyed the suit property as an encroacher. The learned District Munsiff also found that the plaintiffs were not having any title and possession of the suit property and hence, he dismissed the suit with cost. In the appeal filed by the appellants in A.S.No.01 of 2006, the learned Subordinate Judge, Hosur, had observed that the receipts issued by the Revenue authorities in favour of the Plaintiffs confer that the plaintiffs are in possession of the suit property. It has been

specifically stated in Ex.B18, a letter sent by the District Forest Officer to the District Collector, Dharmapuri, that the District Forest Officer himself admitted the possession of the plaintiffs in the suit property. On considering the recitals found in Ex.B18 and in view of the entries made in the tax receipts and adangal, the learned Subordinate Judge, Hosur came to the conclusion that the plaintiffs have to be evicted from the suit property, only by the due process of law and passed the Judgment that the plaintiffs are entitled for the relief of injunction and dismissed the suit, in respect to the relief of declaration.

7. This Court, at the time of admitting the Second Appeal has formulated the following substantial questions of law:-

(i) When the revenue records stand in the name of the predecessors-in-title and after them in the name of the plaintiffs and the pattas also have been given to them as early as from 1923 and as such the plaintiffs are the owners of the suit lands and that the lands are agricultural land and not forest lands, and therefore the Defendants are estopped from denying the title of the plaintiffs whether the Courts below are correct in negating the title of the plaintiff?

(ii) When the plaintiffs are in possession and enjoyment of the suit lands openly, continuously and adversely to the knowledge of the defendants for more than the statutory period and as such they have perfected title by adverse possession whether the Courts below are correct in negating the relief of declaration to the plaintiffs?

8. In the present case, the plaintiffs are claiming the title through the patta issued in favour of the predecessor of the plaintiffs in the year 1923. In the trial Court, the patta alleged to be issued in favour of the predecessor of the plaintiffs was marked as Ex.A1. Now, on going through the particulars, it is seen that the name of the patta holder is not correctly found. Without establishing the name found in the patta, we cannot hold that the Government had issued a patta in favour of the plaintiffs. Except the patta on the side of the plaintiffs, re-survey notice issued in favour of the Grandfather of the plaintiffs was marked as Ex.A2 and the Tax receipts were marked as Exs.A3 and Ex.A7. Now, on going through the aforesaid documents, it appears that all the documents are 2C Receipts, usually the said 2C Receipt was issued by the Revenue Authorities to a person, for enjoying the fruits of the tree stands in the property belonging to the Government. In the present case also, the entries made in Ex.A3 proves that the plaintiffs are enjoying the fruits of the Tamarind trees as per the above patta.

9. Apart from Ex.A3, the receipts issued by the Revenue Authorities, from the various years were marked as Exs.A5 to A11 and A15. Further, the Chitta Nagal and UDR patta were marked as Exs.B12 and Ex.B14. The Adangal Nagal related to the suit property was marked as Ex.B13. Therefore, on culling out the entire documents produced by the plaintiffs, which shows except the receipts issued by the Revenue Authorities, they are not having any title document in respect to the suit property.

10. It is a settled position of law that the revenue documents does not confer any right to the plaintiffs in respect to the suit property. In the present case, it is useful and relevant to refer the Judgment of our Honourable Division Bench of this Court reported in 1995-MLJ-426 in the case of Kuppuswami Nainar Vs. The District Revenue Officer, Thiruvannamalai and Others in W.A No.1342 of 1994 dated 26.10.1994, where in, it was held as follows:-

"Revenue officers in a patta proceedings may express their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting patta. Ultimately, it is the civil court which has to adjudicate the question as to whether the person claiming patta is the title-holder of the land. Even if the revenue authorities decide the question of title, that will not in any way affect the jurisdiction of the civil court, which has to decide the question without reference to the decision of the revenue authorities."

11. Accordingly, an attempt made by the plaintiffs for proving the title by way of exhibiting the tax receipts issued by the Revenue Authorities are not the relevant documents to show their title. Accordingly, they were not proved the title.

12. However, in Ex.B18, a letter sent by the District Forest Officer to the District Collector, Dharmapuri dated 17.04.2003, the District Forest Officer admitted the possession of the plaintiffs. In the cross examination also, D.W.1 has categorically admitted that the plaintiffs are in possession in the suit schedule property.

13. In the present case, it is useful and relevant to refer the Judgment of our Honourable Apex Court reported in 2006 (4) CTC 524, in the case of Anil Rishi Vs. Gurbaksh Singh in C.A.No.2413 of 2006 dated 02.05.2006, wherein, in paragraph nos.7 & 8, it was held as follows:

"7.The initial burden of proof would be on the plaintiff in view of section 101 of the Evidence Act,

which reads as under:

'Section 101: Burden of proof.-whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.'

8. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be exception thereto. The learned Trial Court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.

14. Therefore, in the present case, by applying the above principle of our Honourable Apex Court, this Court is of the opinion that the plaintiffs are not the absolute owners of the suit schedule mentioned property. Thereby, the findings arrived at by the trial Court that the plaintiffs have not proved their title is accurately found correct.

15. In respect to the adverse possession, it is relevant to refer the judgment of our Hon'ble Court reported in 2010-3-L.W.892 in the case of Mrs.K.Saraswathy Vs. The State of Tamilnadu rep. by the Collector of Chennai, Chennai-003 and 3 Others, wherein, it was held as follows:-

'Though there is no categorical pleadings as to adverse possession, the necessary implication as to this question can be inferred from the pleadings placed by the appellant.'

16. By applying the principles of the above referred judgment of our Hon'ble Court, in the present case, the plaintiffs have pleaded that they are in a long and continuous possession of the suit property. Even though, they are pleaded as above, they are claiming the title to the suit property based on the patta issued in the year 1923. Accordingly, they made a plea that they are the absolute owners of the suit property and not adverted against the interest of the defendants. So, the above said circumstances, appeared in the case of the appellants are destruct the plea of adverse possession and accordingly, they had not perfected title by means of adverse possession.

17. In otherwise, as already discussed, it was admitted by the District Forest Officer itself that the appellants/plaintiffs are in the possession of the suit property. In this regard, since the plaintiffs are in a long continuous possession, for disposing of this case, it is useful to refer the judgment of our Honourable Apex Court, reported in 2004 (3) LW.143 in Civil Appeal No.7662 of 1997 dated 15.12.2003 in the case of Rame Gowda(D) by Lrs Vs. M.Varadappa Naidu(D) by Lrs. & Another, wherein, it is held that

''...no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner.''

18. By applying the principle laid down by our Hon''ble Apex Court in the above said Judgment to the present case, as the appellants are in a long continuous possession of the suit schedule property, they must have been evicted only by the due process of law. Accordingly, the lower Appellate Court has rightly held and partly allowed the appeal filed by the plaintiffs.

19. In view of the above said findings, this Court is of the opinion that there is no need to change the observation made by the first Appellate Court in this regard. Accordingly, the substantial questions of law are answered.

20. In fine, the Second Appeal is dismissed by confirming the Judgment and decree dated 31.10.2006 passed by the learned Subordinate Judge, Hosur in A.S.No.1 of 2006. No costs.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Hosur.

2.The District Munsif, Denkanikottai

+1cc to Mr.V.Nicholas, Advocate, SR.No.4957/19

+1cc to the Spl. Govt.Pleader (C.S) Vide Sr.No.4939/19

S.A.No.1182 of 2007

Kak(04/09/2019)



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