

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.474 of 2008
and MP.No.1 of 2008

1.Balamugundhan
2.Marappa Gounder

... Appellants/Plaintiffs in Trial Court

Vs

1.N.N.Ramasamy
2.N.N.Kandasamy

... Respondents/Defendants in Trial Court

Prayer :- Second Appeal filed under Section 100 of CPC, against the judgment and decree passed in A.S.No.6 of 2007 on the file of Principal Sub Court, Gobichettipalayam, Erode District, dated 12.09.2007, reversing the judgment and decree passed in O.S.No.441 of 1999 on the file of District Munsif Court, Gobichettipalayam, Erode District, dated 12.12.2006.

For Appellants : Mr.A.Sundaravadhanan
for Ms.P.T.Ramadevi

For Respondents : Mr.C.P.Sivamohan
for Mr.S.A.Shanmugam [RR1 & 2]

JUDGMENT

The plaintiffs in O.S.No.441 of 1999 on the file of District Munsif Court, Gobichettipalayam are the appellants here. The suit is laid by them for bare injunction that their possession over the suit property should not be disturbed by the defendants. They tasted success before the trial Court, but on an appeal preferred by the defendants in A.S.No.6 of 2007 before the Principal Sub Judge, Gobichettipalayam, they were non-suited. Aggrieved by the decree of the first Appellate Court, the plaintiffs are now before this Court in this appeal. Parties would be referred to by their rank before the trial Court.

2. The material facts which are necessary for understanding the case of the rival parties may be briefly stated :

- The suit property is described as a block of land with some dilapidated building in Survey Nos.164/6, 164/4 and 164/11 of Nanjangoundampalayam Pariyur Village, Erode District.

- The first plaintiff has obtained title to the property in Survey No.164/6 under a sale deed dated 30.5.1996. He claimed to be in possession of the property in Survey No.164/11 for quite a while, and has been granted Natham patta under Ext.A3 for the same. As far as the property in Survey No.164/4 is concerned, the second plaintiff claims that he has been granted Natham patta under Ext.A4. Ever since, the plaintiffs have been in continuous possession of this property.
- The defendants herein are posing a threat to their possession and hence the plaintiffs came forward with a suit for injunction.

3. The suit is essentially resisted by the first defendant, and in his written statement, he disputed plaintiffs' title to the suit properties and then proceeded to allege that he has been in long possession of the same. The second defendant has adopted his written statement.

4.1 The dispute went for trial before the trial Court. The first plaintiff alone entered the witness box, and was examined as P.W.1. He has produced his sale deed in Ext.A-1 for Survey No.164/6, followed by Ext.A-2 chitta, and also Ext.A-5 to Ext.A-7, which are the receipts issued for penal charges (B- Memo charges) imposed on the first plaintiff under the Land Encroachment Act, before he was assigned with patta in Ext.A-3. Ext.A-4 is the patta granted to the second plaintiff as concerning the property in Survey No.164/4.

4.2 For the defendants, the first defendant was examined as D.W.1 and besides him, he examined first plaintiff's vendor as D.W.2. He has also produced as many as six documents which are marked as Ext.B-1 to Ext.B-6, of which Ext.B1 is a copy of Ext.A-1 which D.W.2 has executed in favour of the first plaintiff. Ext.B3 is a patta issued in favour of first defendant pertaining to the property in Survey No.164/5. The other documents are not particularly relevant, as they did not relate to suit property per se.

4.3. D.W.2 was caused to produce three documents and they came to be marked as X-1 to X-3, of which Ext X-1 is same as Ext.B-1 and X-3 is a patta pertaining to Survey No.164/4 as regards the property conveyed under Ext.A1. Ext.B6 is a Will stated to be executed by the defendant's cousin, but at any rate, it has not been proved and hence its relevancy for resolving the dispute is immaterial. The trial Court has also appointed a Commissioner, whose report was marked as Ext.C-1 to Ext.C-3.

4.4. The trial Court decreed the suit and challenging the same, the defendants have moved the first Appellate Court. The first Appellate Court Vide its judgment dated 12.09.2007 has reversed

the judgment of the trial Court and allowed the appeal. Its primary line of reasoning are: (a) As regards the plot of land in Survey No.164/6 and 164/11 are concerned, P.W.1 in his cross-examination has testified that he was living in the near by Anthiyur Village and not in the suit property and hence he has not proved possession of the property (b) So far as the property in Survey No.164/4 is concerned, the second plaintiff who claims title and possession to the same was not examined.

5. This appeal is now admitted on the following substantial questions of law :

- 1) Has not the Lower Appellate Court committed an error of law in not holding that in view of Ext.A-2 to A-7 being public documents there is a presumption in favour of the plaintiff which is not disproved by the defendants.
- 2) Has not the Lower Appellate Court committed an error of law to the fact and circumstances of the case, in not holding that in view of Ext.A-1, the respondents are estopped from claiming title.

6. During the pendency of the appeal, the second appellant/second plaintiff is dead and steps were not taken to bring his legal representatives on record, hence the appeal was abated as concerning the second appellant. This leaves this Court with a need to consider the right of the first appellant/first plaintiff, and the right he claims over the property in Survey No.164/6 and 164/11.

Arguments:

7.1 The learned counsel for the first appellant/first appellant would argue that the first Appellate Court has egregiously erred in ignoring the title documents of the first appellant, as evidenced in Ext.A-1, sale deed as well as Ext.A3 patta, which pertains respectively to the property in Survey No.164/4 and 164/11. The defendants at any rate have not made a claim to the title of this property, but only contend that they have been in long possession. This implies that the defendants admit the title of the plaintiffs to the properties in Survey Nos.164/6 and 164/11. However, the first Appellate Court while considering the plaintiffs' entitlement to secure possession by an order of injunction has appeared to have entertained a misconception that possession always implies physical possession of the property and has overlooked that a person can be in constructive possession, if he is not physically available. In other words, if a person is not in actual physical possession of the property for time being, does not ipso facto imply that someone with no title in himself can interfere with such possession.

7.2 Secondly, the learned counsel for the appellants argued, that the defendants do not contend that they are in actual physical possession of the property but only claim that they only dump their domestic garbage in the properties of the appellants, and

that the same cannot be said to be in settled physical possession of the property and he has relied on the authority in Rame Gowda (Dead) by Lrs Vs. M.Varadappa Naidu (Dead) by Lrs and Another [(2004) 1 SCC 769]. He further argued that the defendants have pleaded long continuous possession over this plot of property belonging to the first plaintiff and he have not adduced any evidence pertaining to the same.

8.1 Responding to the same, Mr.C.P.Sivamohan, the learned counsel appearing for the defendants/respondents would argue that the defendants do not dispute first plaintiff's title to the property in Survey No.164/6, which he had obtained under Ext.A1. This would imply, the entire dispute confines to only Survey No.164/11.

8.2 Admittedly, the plaintiff has been granted Natham patta in Ext.A3 as regards the property in Survey No.164/11. The learned counsel for the respondents would now contend that according to the plaintiff, they were granted patta based on previous occupation in this property, and for which they have relied on Ext.A7, B-memo charges raised on them, which shows that the property that they claim to be in occupation at that relevant time is stated in Survey No.164/4. This would imply that granting Natham patta under Ext.A3 for the property in Survey No.164/11 is fraudulent, and the Court shall not countenance the same. So far as Ext.A7 is concerned, it can never be termed as a document of title.

Of discussion & decision

9. The patta in Ext.A3, is an assignment patta, and hence is a document of title, and if according to the defendants, this was obtained fraudulently, they ought to have challenged it independently with the Government in the party array. It is close to 20 years now, and it is too late in the day for the defendants to persuade this Court to hold that Ext.A3, patta was fraudulently obtained, and that the first plaintiff had not derived any title under it to defend their possession through a decree of injunction. Therefore, this Court does not find merit in that.

10.1 The next point is, if the defendants have perfected title by adverse possession over the property in Survey No.164/11. This Court finds that plaintiff (who was examined as P.W.1) was not cross-examined pointedly. In fact, there is no reference even to the property in Survey No.164/11 nor is there any suggestion that the defendants are in possession continuously. Here, it may have to be noted that the patta was granted in 1999, and the suit was laid in the same year. This in fact would have given the defendants a cause of action to challenge Ext.A3, patta even in the year 1999, but then, they did not do so. And it is not their case that they have perfected title by adverse possession even when the title to the property vested with the Government.

10.2 Turning to defendants' allegation of possession of the property per se, they contend that they have been dumping some garbage in the suit property, which implies, they are not in physical possession, but using the property merely for dumping garbage. This is a kind of licence not granted by owner of the property, but appropriated by non-owners, when the owners of the property are not in actual physical possession. It is the manifestation of societal irresponsibility that some believe in indulging, and that cannot be elevated to the status of a right in law to deny the right of a lawful owner.

11. When the defendants have no right in themselves to deny or interfere with the right of the first plaintiff/first appellant, it has to be held that the first appellate court has gone wrong in misconceiving the right of the parties, and in misconstruing the nature and quality of possession of a garbage-dumper as signifying their settled possession of a property.

12. In the result, this appeal is partially allowed and the order of the trial Court in O.S.No.441 of 2019, is hereby confirmed, restraining the defendants from interfering with the property of the first plaintiff/first appellant in Survey Nos.164/6 and 164/11 alone. The appeal by the second appellant/plaintiff shall stands abated. The judgment and decree passed in A.S.No.6 of 2007 on the file of Principal Sub Court, Gobichettipalayam, Erode District, dated 12.09.2007 is hereby modified to the extent indicated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

ds

To:

1.The Principal Sub Judge
Gobichettipalayam
Erode.

2.The District Munsif
Gobichettipalayam
Erode.

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

+1cc to Ms.P.T.Ramadevi, Advocate SR.No.2087

+1cc to M/s.S.A.Shanmugam, Advocate SR.No.2257

S.A.No.474 of 2008

PM(CO)
GMY(31/01/2020)



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