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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 30.04.2019
PRONOUNCED ON : 03.06.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.434 of 2007

Sundarambal

...Appellant/Defendant

Vs.

K.V.S.S. College Trust
rep. by its Hereditary Trustee
Sri Kasivasi Muthukumaraswami
Thambiran Swamigal
Aadheenakartha, The Kasi Mutt
Thiruppanandhal

...Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal Subordinate Judge, Mayiladuthurai dated 28.11.2006 in A.S.No. 96/2006 reversing the judgment and decree of the learned Additional District Munsif Court, Mayiladuthurai dated 19.04.2006 in O.S.No.210 of 2001.

For Appellant : Mr.T.M. Hariharan

For Respondent : Mr.S.Sounthar

JUDGMENT

In this Second Appeal challenge is made to the judgment and decree dated 28.11.2006 passed in A.S.No. 96/2006 on the file of the Principal Subordinate Court, Mayiladuthurai, reversing the judgment and decree dated 19.04.2006 passed in O.S.No.210 of 2001 on the file the Additional District Munsif Court, Mayiladuthurai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for permanent injunction, possession and mesne profits.

4. The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff and the same had been leased out to one Rajagopala Chettiar for punja cultivation and on his



demise, the suit property was under the direct management of the plaintiff, and the defendant, without any entitlement, was attempting to encroach into the suit property and cut the coconut tress lying thereon and the same had been objected to by the plaintiff's agent and therefore, the defendant had stopped his encroachment and however, from June 2001 onwards, the defendant is again attempting to trespass into the suit property and put up the construction thereon. The defendant has no title to the suit property, whatsoever, and he is not entitled to put up the construction in the agricultural lands, and left with no other alternative, according to the plaintiff, it has been necessitated to lay the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the plaintiff has no title to the suit property as claimed in the plaint. The properties comprised in survey No.103 is classified as natham and belonging to Tamilnadu Government as poramboke land and in the abovesaid land belonging to the Government five houses are put up and of the five houses, one house belongs to the defendant and the defendant had put up the abovesaid construction in the suit property and enjoying the same for more than 30 years and about 4 years ago, the defendant had demolished the thatched structure put up thereon and put up the terraced structure and also obtained the service connection and enjoying the suit property by paying the taxes, electricity charges, etc., and the plaintiff is not in the possession and enjoyment at any point of time and the claim of the plaintiff that the suit property had been leased out to Rajagopala Chettiar for certain period and thereafter under the direct management of the plaintiff is false and the claim of the plaintiff that the defendant has unauthorizedly put up the construction in the suit property and cut the trees thereon is false. The plaintiff has no cause of action as the plaintiff has no title to the suit property and therefore, the plaintiff's suit is liable to be dismissed.

6. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A3 were marked. On the side of the defendant D.W.1 was examined and Exs.B1 to B28 were marked. Furthermore, Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, granted the reliefs in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred by the defendant.



accordingly, as per the case of the plaintiff, attempting to trespass into the suit property one way or the other.

11. Now, according to the defendant, the plaintiff has no title to the suit property whatsoever and according to the defendant, the suit property belongs to the Government and classified as Natham poramboke and he had put up the superstructure in the suit property and enjoying the same for more than 30 years and about 4 years ago, he had put up the terraced structure in the suit property and enjoying the same by paying the taxes, obtaining the service connection, etc., and therefore, the plaintiff is not entitled to the reliefs prayed for.

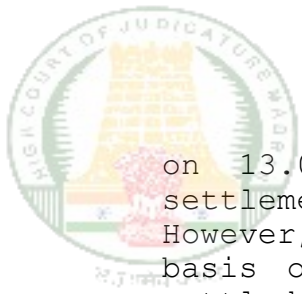
12. In the light of the abovesaid factors, when from the inception, even as per the case of the plaintiff, the defendant is not admitting the title of the plaintiff to the suit property and on the other hand, putting forth the case that the suit property only belongs to the Government, classified as natham poramboke, in such view of the matter, when there are rival claims of title to the suit property one way or the other, the plaintiff should have mainly sought for the relief of declaration of title to the suit property as per law for seeking the reliefs prayed for in the suit. However, conveniently, the plaintiff has failed to seek the relief of declaration of title to the suit property. Considering the stiff challenge to the alleged claim of title of the plaintiff to the suit property, atleast after the written plea on the part of the defendant, the plaintiff should have amended the suit for seeking the relief of declaration as per law. However, the plaintiff has not chosen to seek the relief of declaration of the title to the suit property. Hence, in the light of the decision of the Apex Court reported in (2008) 4 Supreme Court Cases 594 (Anathula Sudhakar vs. P.Buchi Reddy (dead) by Lrs. and others), it is found that the present suit laid by the plaintiff is legally not sustainable.

13. Inasmuch as the plaintiff's claim of title to the suit property has been challenged in toto, it is for the plaintiff to establish its case that it has a valid title to the suit property. In this connection, the plaintiff relies upon Exs.A1 to A3. Ex.A1 is found to be the settlement deed executed by the plaintiff in favour of the University of Madras. However, when the plaintiff has not produced any anterior title deed for tracing the title to the suit property and when Ex.A1 settlement deed does not disclose as to in what manner the plaintiff has derived the title to the suit property, in such view of the matter, as rightly determined by the trial court, Ex.A1 alone, cannot be the basis for upholding the alleged claim of title to the suit property put forth on the part of the plaintiff.



Merely on the basis of Ex.A1 settlement deed, we cannot hold that the plaintiff has the competency to settle the same in favour of the University of Madras. Therefore, no reliance could be attached to Ex.A1 settlement deed for upholding the plaintiff's claim of title to the suit property. Ex.A2 is the account book maintained by the plaintiff recording the income therein and the name of the cultivating tenants of the various survey numbers and the extent entrusted to them had been furnished. By way of the said document, it is put forth that the suit property had been leased out to Rajagopala Chettiar. However, as rightly found by the trial court, the plaintiff has not placed the lease deed said to have been entered into between it and Rajagopa Chettiar concerning the suit property. When Ex.A2 document is found to be the document maintained by the plaintiff through its employees, merely on the basis of certain entries contained therein, we cannot hold that the suit property belongs to the plaintiff. Ex.A2 is not a document of title as such and the same would not serve to sustain the legal claim of title to the suit property by the plaintiff. Ex.A2 does not disclose as to how the plaintiff claims or traces title to the suit property. Merely because there is an entry contained therein that the suit property had been entrusted to Rajagopala Chettiar as the cultivating tenant, on that score alone, we cannot accede to the plaintiff's case. The trial court has rightly refused Ex.A2 and not placed reliance upon the said document for accepting the plaintiff's claim of title to the suit property. Ex.A3 is found to be the RTR register copy and when the abovesaid document cannot be construed as the document of title and when it has been admitted by the plaintiff during the course of evidence through P.W.1 that the tenants referred to therein are not paying any paguthi till date and with reference to the same, no action has been initiated against them by the plaintiff in any manner and when the claim of the plaintiff that they had been granted the permission to occupy the partitions on the part of the plaintiff, however, without any material pointing to the same being placed, in such view of the matter, merely on the basis of Ex.A3 document, it cannot be construed that the plaintiff is the lawful owner of the suit property and therefore, the trial court is fully justified in not placing reliance upon Ex.A3 for accepting the plaintiff's case.

14. In the light of the abovesaid factors, when the documents projected by the plaintiff marked as Exs.A1 to A3 do not show the claim of entitlement to the suit property on the part of the plaintiff, it does not stand to reason as to how the first appellate court had proceeded to grant the reliefs in favour of the plaintiff. In this connection, the plaintiff's agent examined as P.W.1 would claim that inclusive of the suit property the settlement had been made in favour of the plaintiff



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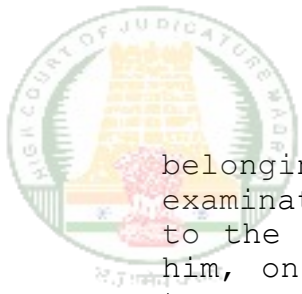
on 13.06.1946 and according to him the abovesaid deed of settlement had been marked in the other suit proceedings. However, the alleged deed of settlement dated 13.06.1946 on the basis of which P.W.1 would claim that the plaintiff had been settled the suit property has not been produced. If the said document had been marked in the other proceedings, nothing prevented the plaintiff from obtaining the certified copy of the same and produce the same in the court. The suit property is found to be comprising a small extent in survey No.103. As could be seen from the commissioner's report and plan, it is found that the suit property is lying in survey No.103/4B and that it is only the defendant who is residing in the abovesaid survey number. On a perusal of the plaint, it is noted that originally the endeavour had been made by the plaintiff to describe the suit property by giving the sub division number. However, for the reasons best known to the plaintiff, the sub division number had been scored off and the suit property has been described as only comprising in survey No.103 of an extent of 5 cents within the boundaries. The materials placed on record go to show that survey No.103 had been sub divided into various sub divisions and in such view of the matter, when the plaintiff has come forward with the case claiming title to the suit property as described in the plaint and when the plaintiff is aware of the various sub divisions effected in survey No.103, it is for the plaintiff to clearly point out as to where the extent of 5 cents in respect of which it claims the reliefs is lying i.e., in which sub division the same is lying. The above factor assumes importance because the materials placed on record go to show that the total extent available in survey No.103 is nearly 25 cents. P.W.1 has pleaded ignorance as to whether the survey No.103 had been sub divided. Though he would also claim that the plaintiff had produced the settlement deed for sustaining the claim of title to the suit property, the said settlement deed has not been placed other than Ex.A1 settlement deed. The suit property is described as lying to the south of main road, to the north of cauvery bed, to the east of the plaintiff's property in the occupation of Krishnamurthy and the west of plaintiff's property. However, P.W.1 would state that to the east of suit property, the property in the occupation of Arunachalam is lying and to the west of the suit property, the property in the occupation of Kalyanasundaram is lying. There is no material placed on record to show that the properties in the occupation of Arunachalam and Kalyana Sundaram belong to the plaintiff. As above noted, the suit had been originally laid by the plaintiff seeking the relief of permanent injunction. Now according to P.W.1, when the defendant had started putting up the terraced construction, they had instituted the suit. In such view of the matter, when as per P.W.1's admission, the defendant had already encroached into the suit property and put up the construction by denying the title of the plaintiff as



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above noted, in such view of the matter, the plaintiff should have come forward with the relief of declaration of title to the suit property. If really, the plaintiff had come forward with the suit seriously and immediately on the endeavour of the defendant to put up the structure, the plaintiff would have evinced interest to take out the commission to note out the stage of the construction put up by the defendant at the time of institution of the suit. However, no such endeavour had been made by the plaintiff at the earliest point of time for appointing the commission. P.W.1 has admitted that in between the suit property and the road, the poramboke land is lying and also admitted that to the south of the suit property, the river bed is lying, however, would claim that the poramboke lands are also in the occupation of the plaintiff and P.W.1 would further claim that in the land belonging to the plaintiff of an extent of 27 cents, 10 persons are enjoying the same by putting up the superstructures and also would admit that the plaintiff had not executed any lease deed in respect of the abovesaid persons and the abovesaid persons are enjoying the property by putting up the superstructures on their own and according to P.W.1, inasmuch as the defendant put up the superstructure recently, they had chosen to levy the suit. On the other hand, according to the defendant, he had already put up the superstructure long back and enjoying the property for more than 30 years. Therefore, it is found that the suit property and the other properties being vested with the Government, accordingly, the defendant and the others had put up the superstructures thereon and enjoying the same and inasmuch as the plaintiff has no title to the suit property, whatsoever, it is found that the plaintiff had remained a silent spectator to the abovesaid developments. P.W.1 has further admitted that in the description of the suit property in the plaint, the sub division number has been scored off. Furthermore, admitted that they had not taken out the survey examination to ascertain whether the suit property forms part of the 25 cents of land belonging to the plaintiff. Furthermore, also admitted that other than Ex.A1 settlement deed, he cannot show whether any other title deed is available for sustaining the claim of title to the suit property by the plaintiff. Therefore, considering the abovesaid evidence of P.W.1, when it is found that he is unable to place any material whatsoever to sustain the plaintiff's claim of title to the suit property whatsoever, it is found that as determined by the trial court, other than Exs.A1 to A3, the plaintiff is unable to place acceptable proof for holding that it has a valid title to the suit property.

15. The advocate commissioner who had inspected the properties concerned had been examined as P.W.2. P.W.2 has admitted that the property in the occupation of the defendant is lying in survey No.103/4B. Though he would claim that as per the Government records, the said property is shown to be



belonging to the plaintiff, during the course of cross examination, he has admitted that he is unable to ascertain as to the total extent available in survey No.103 and according to him, on the basis of the measurements taken by them, he is able to ascertain the sub divisions 1, 2 and 11 in the abovesaid survey number and unable to identify the other sub divisions in the abovesaid survey number and also admitted that he has not examined the surveyor as to what had happened to the other sub divisions. On being confronted as to how he claims that the plaintiff is shown as the owner of the suit property in the Government records, he would state that he was shown the A register extract with reference to the same and quite inconsistent to the same further also admitted that he has not seen any record as to how the plaintiff has derived title to the survey No.103/4B. Therefore, when the suit property i.e., the property in the occupation of the defendant is found to be lying in survey No.103/4B and to the north and south of the abovesaid survey number poramboke lands belonging to the Government are lying and when the plaintiff has not placed any material to sustain its claim of title to the suit property whatsoever other than marking Exs.A1 to A3, when Exs.A1 to A3, as above discussed, could not be relied upon for upholding the plaintiff's claim of title to the suit property and when the advocate commissioner as well the surveyor are unable to ascertain the various sub divisions effected under survey No.103 and determine the claim of title by the plaintiff to the various portions in survey No.103 and when the plaintiff has failed to establish that the suit property had been in its management at any point of time other than marking Exs.A2 and A3 and when Exs.A2 and A3 are found to be the records created by the plaintiff on its own and when the entries available in Ex.A3 are not shown to be validly made as per law and when the entries in the revenue records cannot be the basis for determining the title of the rival parties one way or the other, in such view of the matter, the plaintiff, being the suitor, having failed to establish its claim of title by placing acceptable proof and when the documents projected by the plaintiff cannot be held to be the documents of title, as such as, also cannot be upheld merely on the footing that they are the ancient documents and when the presumption cannot be raised as regards the truth of the contents of the documents, in all, when it is seen that the defendant, on his own, is in the possession and enjoyment of suit property for several years by putting up the superstructure thereon and enjoying the same by paying the kists, taxes, electric service charges, etc., in such view of the matter, the first appellate court is found to have erred in accepting the plaintiff's case without any basis and on that ground alone, the judgment and decree of the first appellate court accepting the plaintiff's case are liable to be set aside.



16. The argument has been put forth by the plaintiff's counsel that the mere fact that the suit property has been described as the poramboke land cannot be the basis for disentitling the plaintiff to seek the reliefs prayed for. However, when it is seen that the plaintiff having come forward with the suit, having failed in its endeavours to establish its entitlement to the suit property by placing acceptable and reliable materials, in such view of the matter, when the defendant is found to be in the possession and enjoyment of the suit property and when the plaintiff has failed to establish that it has a better claim of title to the suit property than the defendant, resultantly, it has to be held that the reliefs prayed for cannot be granted in favour of the plaintiff as erroneously determined by the first appellate court.

17. The counsel for the defendant placed reliance upon the following decisions reported in

1. (2005) 9 Supreme Court Cases 359 (Gangamma and others vs. Shivalingaiah)
2. (2009) 15 Supreme Court Cases 429 (Ramesh Dutt and others vs. State of Punjab and others)
3. (2014) 2 Supreme Court Cases 269 (Union of India and others vs. Vasavi Cooperative Housing Society Limited and others)
4. 2014 SCC Online Mad 1416 (Kalavathy vs. A.Pandian)
5. 2013-2-L.W.781 (A.S.Vedhagiri vs. Govindammal and another)
6. (2008) 4 Supreme Court Cases 594 (Anathula Sudhakar vs. P.Buchi Reddy (dead) by Lrs. and others)
7. 59 L.W.268 (Jagdish Narain vs. Nawab Said Ahmed Khan)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

18. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendant.



19. In conclusion, the judgment and decree dated 28.11.2006 passed in A.S.No. 96/2006 on the file of the Principal Subordinate Court, Mayilaaduthurai, are set aside and the judgment and decree dated 19.04.2006 passed in O.S.No.210 of 2001 on the file the Additional District Munsif Court, Mayiladuthurai, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Principal Subordinate Court, Mayilaaduthurai
2. The Additional District Munsif Court, Mayiladuthurai.
3. The Section Officer, V.R.Section, High Court, Madras.

+1 cc to Mr.S.Sounthar Advocate sr44672

+1 cc to Mr.T.M.Hariharan Advocate sr45294

S.A.No.434 of 2007

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