

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.09.2019

Delivered on: 16.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.803 of 2006

1.Kandan (Deceased)

2.Marimuthu

3.Sakthivel

4.Karuppayee

5.Palaniammal

6.Shanthi

7.Pavalayee

... Appellants/Defendants

(Appellants 4 to 7 brought on record as LRs of the deceased first appellant vide order of Court dated 14.10.2014 made in MP.No.1/2014 in S.A.No.803 of 2006.)

Vs.

1.Pappan @ Duraiyan

2.Madhan

... Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.11.2004 made in A.S.No.31 of 2004 on the file of the Subordinate Judge, Bhavani, confirming the judgment and decree dated 04.02.2004 made in O.S.No.142 of 2003 on the file of the Principal District Munsif Court, Bhavani.

For Appellants

: Mr.T.Murugamanickam

Senior Counsel for Mr.V.Rajesh

For Respondents

: Set ex-parte by this Court order dated 19/9/2019 in SA 803/2006

JUDGMENT

This Second Appeal has been filed by the defendants against the judgment and decree passed by the Sub-Judge, Bhavani, in A.S.No.31 of 2004, dated 30.11.2004, confirming the judgment and decree passed by the Principal District Munsif, Bhavani, in O.S.No.142 of 2003 dated 04.02.2004.

2. The respondents herein had filed a suit in O.S.No.142 of 2003, on the file of the Principal District Munsif, Bhavani for the relief of permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the suit property. The learned Principal District Munsif, Bhavani, by the judgment dated 04.02.2004 had decreed the suit as prayed for with costs.

3. Aggrieved by the same, the defendants had filed an appeal in A.S.No.31 of 2004, on the file of the Sub-Judge, Bhavani. The learned Sub-Judge, Bhavani, by the judgment dated 30.11.2004, had dismissed the said appeal, confirming the judgment and decree passed by the trial Court. However, he directed the parties to bear their respective costs. Feeling aggrieved, the defendants have filed the present Second Appeal.

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

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

The second plaintiff is the son of the first plaintiff's brother. The defendants 2 and 3 are the sons of the first defendant. In the suit property there are two houses. The first plaintiff is residing in the house which is situated on the southern side and the second plaintiff is residing in the house which is situated on the northern side. Recognizing their possession, on 30.09.1990 under the Natham Land Tax Scheme, pattas were issued to the plaintiffs by mentioning the joint patta No.1175. In May 2003, the defendants asked the plaintiffs to sell the suit property for a lesser price to them and for that the plaintiffs did not agree and hence, the defendants attempted to trespass into the suit property. Therefore, the plaintiffs were constrained to file the suit for the relief of permanent injunction to restrain the defendants from interfering with their peaceful possession and enjoyment of the suit property.

6. The averments made in the written statement filed by the first defendant and adopted by the second and third defendants are, in brief, as follows:-

The first plaintiff, the first defendant and the second plaintiff's father Kuppan are brothers and their father's name is Kali. The suit property is ad-measuring 38 feet X 66 feet and the same was assigned to the said Kali by the proceedings of the Special Thasildar, Adi dravidar Welfare Department, Erode dated 09.10.1962. Thereafter, the first defendant and his father had constructed a thatched shed in the suit property and his father was residing in the suit property till his life time. His father died 20 years ago and thereafter, his mother was residing there. The first defendant and the first plaintiff alone maintained their mother by providing food. Their mother died 15 years ago and thereafter, the first defendant alone was enjoying the suit property. Their elder brother Kuppan and the father of the second plaintiff was staying in mother-in-law's house at Malai Karuppusamy Temple 16 years ago, he came to Olagadam Village and the first defendant permitted the said Kuppan to reside in his house. In the suit property, the first defendant is residing. The first plaintiff and the said Kuppan were allotted three cents each on the east of the old house in which they constructed a tiled house and they have been residing there. The second plaintiff's father had purchased a property from one Palani and only in that property, the second plaintiff had constructed a terraced house and residing there. The suit property was assigned to the first defendant's father Kali and after his death, the first defendant alone is in the possession and enjoyment of the same and he only paying the house tax. The door number allotted to the said house was 48. The said house is in dilapidated condition in respect of which, no partition had taken place among the legal heirs of the said Kali. All the legal heirs are entitled to get share in the suit property and therefore, the defendants prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the learned Principal District Munsif, Bhavani, had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the first plaintiff examined himself as PW1 and Exs.A1 to Ex.A3 were marked. On the side of the defendants, the first defendant was examined as DW1 and Exs.B1 to Ex.B4 were marked.

8. The learned Principal District Munsif, Bhavani, after considering the materials placed before him, found that the properties mentioned in Exs.B2 and B4 are totally different from the suit property and the said documents are relating to some other property. He further found that as per Exs.A1 and A2, pattas were granted in favour of the plaintiffs 1 and 2 under the Natham Land Tax Scheme and as such, they are the owners of the suit property. He further found that the defendants are not having any right over the suit properties and accordingly, he decreed the suit as prayed for with costs. Feeling aggrieved, the defendants had filed an appeal in A.S.No.31 of 2004, on the file of the Sub-Judge, Bhavani. The learned Sub-Judge, Bhavani, had dismissed the said appeal and thereby confirmed the judgment

and decree passed by the trial Court. However, he directed the parties to bear their respective costs. Feeling aggrieved, the defendants have filed the present Second Appeal.

9. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1. Whether a suit for permanent injunction can be decreed in the absence of documents to prove possession on the date of the suit?

2. Whether a permanent injunction can be granted in a suit in respect of a plaint schedule which does not contain any boundaries?

3. When there is a dispute regarding the ownership of the suit property, whether a suit for mere permanent injunction should be dismissed for not having sought the relief of declaration of title?"

10. Eventhough notices were sent to respondents 1 and 2 and their names have also been printed in the cause list, they did not appear either in person or through their counsel. Hence, the respondents 1 and 2 were called absent and set ex-parte. After hearing the arguments of the learned Senior Counsel for the appellants/defendants and perusing the records, judgment is being passed.

11. Question No.1:

The learned senior counsel for the appellants has submitted that the Courts below failed to consider that the respondents/plaintiffs did not produce any documentary evidence to prove their exclusive possession over the suit properties. He further submitted that Ex.B4 would show that the suit property was originally assigned by the Government to the father of the first plaintiff, the first defendant and grandfather of the first plaintiff namely, Kali and after his death, all the three sons are equally entitled to get share in the suit property and in such a case, no injunction can be granted against the co-owner and therefore, he prayed to set aside the judgment and decree passed by the Courts below and dismiss the suit.

12. The suit property is situated in Olagadam Village, Natham R.S.No.71/11, ad-measuring 196 square meters, having Plot No.1175 with two thatched houses. According to the plaintiffs, the Government granted patta to them on 30.09.1990 under the Natham Land Tax Scheme(Ex.A2) and subsequently, it was confirmed under another patta dated 27.05.2003 (Ex.A1). In support of their claim, they produced the pattas and marked as Exs.A1 and A2 respectively. In Ex.A2, it is stated that under the Natham Land Tax Scheme, patta has been granted in favour of the second plaintiff and another in respect of the property situated in Natham R.S.No.71/11 admeasuring 196 square meters. According to the plaintiffs, another person denotes the first plaintiff. The said patta was granted on 30.09.1990. Subsequently, on 27.05.2003 a revised patta (Ex.A1) was issued in the name of the plaintiffs 1 and 2 in respect of the same property. So, it is clear that in respect of the suit property, pattas were granted in favour of the plaintiffs. In Ex.A1, at page No.2, there is a plan in which two houses have been mentioned. So, it is clear that the plaintiffs 1 and 2 are in possession and enjoyment of the suit property by constructing houses thereon as alleged in the plaint. Though the first defendant claimed that the suit property was assigned to his father under Ex.B4 on 09.10.1962, a perusal of the said document would show that the said property is situated in S.No.681/AB admeasuring 5 cents. So, it is clear that Ex.B4 is not related to the suit property.

13. It is also to be pointed out that the defendants have stated in their written statement that in the property which was assigned under Ex.B4, the first defendant's father Kali constructed a thatched house and was residing for 20 years and thereafter, he died and after his death, his wife was residing there and she also died 15 years ago and as on date, the said house is in a dilapidated condition but, they have produced a house tax receipt and marked as Ex.B1. In Ex.B1 it is stated that the first defendant had paid house tax for the house bearing D.No.47 and the said receipt is dated 01.10.1990. Admittedly, according to the defendants, in the plot which was assigned to the father of the first defendant, a house was constructed and subsequently the said house was allowed for dilapidation and in such a case, the first defendant would not have paid the house tax to the suit property. So, Ex.B1 also might have been related to some other property. The plaintiffs have produced pattas and house tax receipt and marked as Exs.A1 to A3 and proved their possession. The Courts below, taking into consideration of the aforesaid facts, had rightly held that the plaintiffs are in possession of the suit property and in the said factual concurrent findings, this Court cannot interfere. Accordingly, question No.1 is answered against the appellants.

14. Question No.2:

The learned senior counsel for the appellants has submitted that in the plaint schedule, boundaries are not given and hence, the property has not been properly described. As per Order VII Rule 3 of Civil Procedure Code, where the subject-matter of the suit is an immovable property, the plaint shall contain a description of the property sufficient to identify it and in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers. So it is clear that for identifying the suit property either boundaries or Survey numbers can be mentioned. In this case, Survey number has been mentioned and with the help of the said Survey number, the suit property can be easily identified. Further, it is not the case of the defendants that since the boundaries are not given, the suit property could not be identified. They are also claiming right over the suit property and therefore, there is no irregularity or illegality committed by the plaintiffs in describing the suit property. Accordingly, this question is also answered against the appellants.

15. Question No.3:

The learned senior counsel for the appellants has submitted that since the defendants are disputing the title of the plaintiffs, the plaintiffs should have amended the suit for the relief of declaration of title to them but they have not amended the plaint and therefore, the judgment of the Courts below have to be set aside. In support of the aforesaid contentions, he relied upon the decision in Arasappan Karayalar and another Vs. Subramania Karayalar, 2001-1-L.W.724. In the said judgment this Court has held that the plaintiffs cannot claim the relief of injunction unless it is established that they have got title to the disputed property. Further, it was held that it is no doubt true that in a suit for injunction, the question of title can be incidentally gone into. सत्यमेव जयते

16. In this case, the plaintiffs have proved their title by producing Exs.A1 and A2. In view of the aforesaid decision, in a suit for injunction, the question of title can be incidentally gone into. Further, as already pointed out, the defendants are claiming right over the suit property based on Ex.B4 but Ex.B4 does not relate to the suit property and the said document relates to some other property. So, the defendants have not produced any material to show that they also have right over the suit property. Merely because the defendants deny the title of the plaintiffs, it cannot be said that the plaintiffs should have asked for declaration of title. The contention of the defendants should be based on the materials, but in this case,

the documents produced by the defendants do not relate to the suit property at all.

17. The Courts below concurrently found that the plaintiffs proved their possession over the suit property and hence, they are entitled to the relief of permanent injunction. In the said concurrent factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are also answered against the appellants.

18. In the result, the Second Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

dna

To

1.The Subordinate Judge, Bhavani.

2.The Principal District Munsif, Bhavani.

Copy To
The Section Officer,
VR Section,
High Court, Madras 600 104.

+1cc to Mr.V.Rajesh, Advocate SR.No.86732

S.A.No.803 of 2006

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