

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03.01.2019

Pronounced on :10.01.2019

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

Second Appeal No.1302 of 2004

1.Pandian  
2.Selvaraj S/o.Varadarajan  
3.Ravi

... Appellants/2 to 4 defendants

/versus/

1.P.Selvaraj S/o.Perumal ..... 1<sup>st</sup> Respondent/Plaintiff

2.Thyagarajan .... 2<sup>nd</sup> Respondent/1<sup>st</sup> Defendant

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 08.07.2003 made in A.S.No.10 of 2003 on the file of the learned District Judge of Salem reversing the judgment and decree dated 28.10.2002 made in O.S.No.774 of 1999 on the file of the learned II Additional District Munsif, Salem.

For Appellants :Mr.S.Parthasarathy

For Respondents :Mr.D.Shivakumaran for R1  
R2-not ready in notice

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J U D G M E N T

The appellants herein are the defendants in the suit filed against them for permanent injunction in respect of the suit property bearing S.No.142/5 to an extent of 40 cents.

2. The case of the 1<sup>st</sup> respondent/plaintiff is that 43-½ cents of land in S.No.142/5 was purchased by his father by a sale deed dated 04.11.1977 and got possession of the property. After the death of his father, he and other legal heirs sold 3-½ cents of land to one Venkatachalam and he is in possession and enjoyment of the remaining 40 cents. The defendants, who hold 3 cents of land on the northern side of the suit property, tried to encroach upon the suit land. Hence, to restrain the

defendants, their men and agents from interfering with the peaceful possession and enjoyment of the suit property to an extent of 40 cents, the relief of permanent injunction has been sought for.

3. In the written statement, the defendants had denied the possession and title of the plaintiff in respect of 43-½ cents in S.No.142/5 in Utharacholapuram. The defendants are the neighbouring land owners on the northern side. The said land was purchased by the defendants' father from one Chinnammal under sale deed dated 26.08.1968. Though 3 cents of land was conveyed under the said deed, their father had been in possession and enjoyment in 5 cents of land. After the death of their father, the defendants and other legal heirs have taken possession of the land and enjoying the said land continuously. In deformation of their 5 cents of land in S.No.142/5, the Revenue Department has issued patta to 5 cents of land in the name of Varatharajan father of the defendants. In turn, S.No.142/5 was sub divided as 142/5C. Having in possession and continuous enjoyment of 5 cents of land with the knowledge of the real owner, no claim over the said land by the plaintiff is sustainable. The 2<sup>nd</sup> defendant sold one cent of land from out of 5 cents to one Kaliammal and the first defendant under sale deed dated 18.04.1994. The remaining 4 cents is in possession and enjoyment of the second defendant.

4. The trial Court has framed the following issued:

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
2. What other relief the plaintiff is entitled to?

5. Two witnesses were examined in support of the plaintiff. Exs.A1 to A5 were marked. Three witnesses were examined in support of the defendants. Exs.B1 to B9 were marked. The trial Court, while dismissing the suit, had observed that 1.33 acres of land in S.No.142/5 was later subdivided and fragmented. In the plaint, the suit schedule is in respect of 40 cents of land out of 1.33 acres of land in S.No.142/5. The father of the plaintiff and his father's brother had purchased 43-½ cents in common, out of 1.33 acres of land in S.No.142/5. The property was not purchased by the plaintiff's father with a specific boundary.

6. The case of the plaintiff is that he sold away 3-½ cents and remaining 40 cents is in his possession and enjoyment. Whereas the defendants have contended that under Ex.B1, though their father had purchased 3 cents of land on 26.08.1968, his predecessor-in-title were in possession and enjoyment of 5 cents

of land and entire land was given in possession of their father. Therefore, when there was a UDR Survey and on subdivision of property, patta was granted to the defendants recognizing their possession of 5 cents of land. Pointing out that under DUR survey conducted in the year 1985, S.No.142/5 was subdivided and the land in possession of the defendants was assigned S.No.142/5C and patta was issued to an extent of 2 hectares equivalent to 5 cents. Whereas, the plaintiff has not produced any patta issued to him during UDR survey to show that he is in possession of 40 cents of land. When the possession is proved by the defendants relying upon the patta issued on the basis of the possession during UDR survey, the failure of the plaintiff to prove the contrary that he is in possession of 40 cents of land in S.No.142/5, the trial Court held that the plaintiff had not taken steps to cancel the patta granted in favour of the defendants in respect of 5 cents of land, but they allowed the defendants for the remaining 5 cents of land, which includes 2 cents of plaintiff's land and 3 cents of land purchased by the defendants' father. Therefore the relief of injunction cannot be granted without proving actual possession.

7. On appeal preferred by the plaintiff, the lower appellate Court has held that DW1 has admitted that the property purchased by the plaintiff under Ex.A1 is in possession of the plaintiff, except  $3\frac{1}{2}$  cents of land sold by them. Without framing any issue regarding adverse possession claimed by the defendants, the trial Court ought not to have declined to grant permanent injunction in respect of the suit property to an extent of 40 cents. The lower appellate Court has also pointed out that the suit was laid in respect of S.No.142/5D and 142/5E. Whereas the patta for 5 cents produced by the defendants is in respect of S.No.142/5C. From out of 5 cents in S.No.142/5C, the defendants have sold one cent to Kaliammal. In the said sale deed Ex.B6, the defendants had mentioned only 3 cents of land purchased by them in the year 1968 and had mentioned the one cent land sold to Kaliammal is south of the balance 2 cents of land as one of the boundary to the land sold. Also, pointing out the different sub division in the Survey number(S.Nos.142/5D and 142/5E) claimed in the suit by the plaintiff and the different sub division in the survey number(S.No.142/5C) is shown in the patta relied on by the defendants, the lower appellate Court has held that the house tax receipts and patta do not indicate that the plaintiff is in enjoyment or possession of the land falling under S.Nos.142/5D and 142/5E. Therefore, the first appellate Court has allowed the appeal and granted injunction as prayed by the plaintiff by setting aside the judgment and decree of the trial Court.

8. Aggrieved by the reversal judgment, the defendants who suffered injunction have preferred the present second appeal.

At the time of admission this Court has formulated the followed Substantial Questions of Law:

1. Whether the mere suit for bare injunction is maintainable in law when the defendants has disputed the title of the plaintiff?

2. Whether the judgment and decree of the first appellate Court is sustainable in law, when the burden of proof is erroneously shifted on the defendant, while the plaintiff himself has admitted that the defendant is in possession of his land measuring 2 cents out of 40 cents right from 1985 till the year of filling the suit in 1999?

3. Whether the learned appellate Judge is correct in decreeing the suit for injunction, when the plaintiff has not produced any documentary evidence to prove possession of the entire extent of 40 cents?

4. Whether the learned appellate Judge is correct in brushing aside the documentary evidence Ex.B5 UDR patta, produced by the appellants, in an injunction suit vis-a-vis the oral evidence let in by the plaintiff?

9. Admitted case of the contesting parties is that they are the adjacent land owners. While the plaintiff claims title and possession in respect of 40 cents, which is part of larger extent of land in S.No.142/5, the defendants, based on the sale deed Ex.B1 and patta Ex.B5, claim that their father purchased 3 cents of land. However, they were in possession and enjoyment of 5 cents of land and the same has been continued to be in possession and enjoyment of the defendants, after the demise of their father. The lower appellate Court, while reversing the finding of the trial Court, has observed that the plaintiff claims title and possession in respect of S.Nos.142/5D and 142/5E. Whereas the defendants claim title and possession in respect of 142/5C. When the parties claim title and possession in respect of different properties, the relief of injunction against the defendants as prayed for by the plaintiff should be granted. While holding so, the lower appellate Court has failed to note that the plaintiff relies upon the documents of the year 1977 wherein, the plaintiff father Perumal Gounder had purchased 43 ½ cents in the undivided 1.33 acres of land in S.No.142/5. After purchase, the land in S.No.142/5 had been alienated in bits and piece, which has invited sub division of the property during the UDR survey held in the year 1985. While

the defendants had produced their patta issued under UDR in respect of 5 cents of land which falls under the sub divided S.No.142/5C, the plaintiff, who has laid the suit for possession alleging that the defendants tried to trespass into the portion of the land, had not produced the patta for S.No.142/5E and S.No.142/5D or mentioned the extent of land in each of these sub-divided survey numbers. Ex.A1 is the registered sale deed executed by Perumal Nadar in favour of Perumal Gounder and Mani under this document through which 43 ½ cents of undivided portion in 1.33 acres under S.No.142/5 has been purchased. The plaintiff traces his title only through this document.

10. Admittedly, out of 43 ½ cents of land, the plaintiff has sold 3 ½ cents. Ex.A2 (series) are the kist receipts, indicating the plaintiff has paid land tax. This does not indicate anything about the possession or enjoyment of the suit schedule property. Except these two documents, the plaintiff has not placed any evidence to show the title over the suit schedule property as described in the plaint. Therefore, the trial Court has rightly dismissed the suit. Whereas the first appellate Court without adequate proof for possession and enjoyment of the entire 40 cents of land merely based on the pleadings and inadequate description of property, had granted injunction. The lower appellate Court ought to have taken note of the failure on the part of the plaintiff omitting to place the patta or other revenue documents in respect of S.No.142/5D and S.No.142/5E, when the plaintiff has specifically claimed that 40 cents of land which falls under these two survey numbers.

11. For the above said reasons, the judgment and decree of the lower appellate Court are liable to be set aside and the judgment and decree of the trial Court have to be restored.

12. In the result, the Second Appeal is allowed. No costs.

Sd/-

सत्यमेव जयते  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The learned District Judge,Salem.

2.The learned II Additional District Munsif, Salem.

Copy to:

The Section Officer,  
VR Section,  
High Court Madras.

+lcc to Mr.D.Shivakumaran, Advocate sr.no.2958

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