

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2019

PRONOUNCED ON : 09.01.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1658 of 2004

1.Rajamani Ammal (deceased)
2.Shanmuga Sundaram

(1st appellant died. Memo dated
31.01.2014 is recorded. 2nd appellant
is recorded as LR of the deceased
1st appellant vide order of Court
dated 17.12.2018 made in
S.A.No.1658 of 2004 (GJJ)

...Appellants

Vs

Anbazhagan

... Respondent

सत्यमेव जयते

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.75 of 2003 dated 10.02.2004 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai in modifying the judgment and decree in O.S.No.68 of 1997 dated 20.02.2003 on the file of the Court of Additional District Munsif, Mayiladuthurai.

For Appellants : Mr.A.Muthukumar

For Respondent : Mr.S.Sounthar

JUDGMENT

This second appeal is filed by the plaintiffs in the suit for permanent injunction against the defendant in respect of 'A' schedule property in S.No.413/2 C-1 in Malligaicherri Village, Mayiladurai Taluk, measuring 8 ½ cents but, actual measurement 10 cents and recovery of possession in respect of 'B' schedule property measuring 1 ½ kuzi which is part of the S.No.413/2 C-1 allegedly trespassed by the defendant somewhere in the month of June 1994. According to the plaintiffs, the suit property originally belong to one Kuppusamy Iyer and Meenakshi Ammal. They sold the property to Rathina Padayachi under a registered sale deed dated 020/5/1969. Rathina Padayachi settled the suit property in favour of the second plaintiff who is the grand son of Rathina Padaiyachi born through his daughter who is the first plaintiff. In the settlement deed the survey number of the property inadvertently omitted to be mentioned. Based on the settlement deed, a suit in O.S.121/92 was filed by the plaintiffs. Since, survey number was not mentioned in the suit schedule, that was withdrawn with liberty to file fresh suit on the same cause of action. Hence, the present suit.

2. In the written statement, apart from alleging the present suit is barred by the principle of *res judicata*, the defendant resisted the suit on the ground that the plaintiff was never in possession of 'B' schedule property. The suit Survey property was sub divided as S.No.413/ 2 C-1. The defendant purchased a portion of the property from its lawful owner vide sale deed dated 06/05/1992 and the remaining portion is in his possession pursuant to the partition between his family member which took place of 27/02/1992. Pointing out that the plaintiff cannot claim possession of 10 cents, while admitting that, as per record, it is only 8 ½ cents .

3. Based on the pleadings, the trial Court framed the following issues:

"1 Whether the plaintiffs are entitled for permanent injunction in respect of A schedule property ?;

2. Whether the plaintiffs are entitled for recovery of B schedule property ? And

3. What relief the plaintiffs are entitled for ?

4. Before the trial Court, three witnesses and 7 exhibits on behalf of the plaintiff and one witness and 3 exhibits on behalf of the defendant were relied besides 2 court exhibits. "

5. The specific case of the plaintiffs in their pleadings as well as in their deposition is that, the actual extent of the land in S.No.413/2 C-1 is 10 cents. Though in the document, it is only 9 cents, actually, they are in possession of only 8 ½ cents. The defendant has encroached upon the suit land to an extent of 1 ½ kuzhi and making all attempt to trespass into the remaining portion of the suit property which are in possession and enjoyment of the plaintiffs. The portion of the land alleged to have been encroached by the defendant is shown as 'B' schedule in the plaint. To substantiate their case, the plaintiffs have relied upon Exs.A.1, A.2, A.4 and A.5. These documents are the sale deed executed by Kuppusamy Iyer and Meenakshi Ammal in favour of Rathina Padayachi; the settlement deed executed by Rathina Padayachi in favour of the second plaintiff; Chitta and Adangal, in respect of the suit property.

6. Admittedly, the suit Survey number not mentioned in Ex.A.1 - sale deed. A perusal of Ex.A.1 – sale deed dated 22.05.1969 executed by Kupusamy Iyer in

favour of Rathina Padayachi, only 9 cents of land has been conveyed to Rathina Padayachi in S.No.413/2C. In the settlement deed – Ex.A.2 dated 27.07.1981, through which the plaintiffs claim title, S.No.413/2C was not mentioned and only S.No.413/2A 9 mentioned and only 9 cent of land conveyed. The Chitta and Adangal which are Exs.A.4 and A.5 will not convey any title. Therefore, from the documents relied by the plaintiffs title is only to an extent of 9 cents and not more than that.

7.The trial Court, while considering the above fact as well as the sale deed relied by the defendant and the Commissioner report has held that the defendant has purchased 1 ½ kuzhi land in S.No.413/2C1 for valuable consideration from Ramanuja Naidu and Sadagopa Naidu vide sale deed dated 06.05.1992. The trial Court has further observed that the defendant has not disturbed the possession of the plaintiffs in respect of 9 cents which is in their possession and enjoyment. In respect of 1 ½ kuzhi land is absolutely owned by the defendant and enjoyed by him peacefully. Hence, the plaintiffs are not entitled for the relief as claimed in the suit.

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8.Aggrieved by the said judgment, the plaintiffs have preferred an appeal before the learned Principal Subordinate Judge, Mayiladuthurai in A.S.No.75/3 contending that the trial Court has erred in dismissing the suit of the plaintiffs

disallowing the claim of permanent injunction restraining the defendant from interfering the peaceful possession and enjoyment of the plaintiff in respect of 9 cents of land morefully described under 'A' schedule of property. The tiral Court ought not to have relied upon Ex.B.1 - partition deed between the family members of the defendant which took place pending suit.

9.The First Appellate Court rejected the contentions raised by the appellants/plaintiffs and held that the title deed relied by the plaintiffs only confers 9 cents of land in S.No.413/2C. The plaintiffs have not proved their continuous possession over the remaining land. The plaintiffs have failed to prove that the defendant has trespassed into 1 ½ kuzhi land. The evidence of P.W.3, who has spoken about the Chitta, Adangal and kist receipts marked as Exs.A.4 to A.7, neither confer title nor proves the possession of the plaintiffs in respect of the disputed portion in S.No.413/2C.

10.Thus, after considering the evidence of P.W.3 and Exs.C.1 and C.2, the First Appellate Court has re-affirmed the trial Court judgment holding that the plaintiffs are not entitled for recovery of possession in respect of 'B' schedule property. However, the First Appellate Court deferred with the view of the trial Court in respect of injunction prayer to an extent of 9 cents of land which according to the First Appellate Court, the defendant himself has not claimed any

right of title or enjoyment over the same. Accordingly, partly allowed the appeal granting injunction in respect of 9 cents of land in S.No.413/2C1 in favour of the plaintiffs/appellants and dismissed the relief in respect of recovery of 'B' schedule property, by confirming the judgment of the trial Court.

11.The plaintiffs aggrieved by the dismissal of his prayer regarding the recovery of possession, in respect of 'B' schedule property, have preferred the second appeal.

12.This Court at the time of admission, has formulated the following substantial questions of law :-

"1.Whether the lower appellate court erred in law in holding that the plaintiffs are not entitled to the relief of recovery of possession of B-Schedule property when the plaintiffs have derived title to 10 cents under Ex.A1, which was admitted by the defendant and their possession is proved by Ex.A4 and A.5?

2.In the absence of any documentary evidence to show the defendant's possession, whether the lower appellate Court not erred in law in rejecting Ex.A.4 and Ex.A.5 particularly when the defendant admits the plaintiffs' title to the A-Schedule property ? "

13.As pointed out by the Courts below, under Ex.A.1 sale deed dated

22.05.1969, in S.No.413.2C, only 9 cents has been conveyed to Rathina Padayachi by his vendor.

14.Under Ex.A.2, Settlement deed dated 27.07.1981, though the plaintiffs claim that the property was settled by Rathina Padayachi to him, the schedule of the property in the settlement deed does not include property under S.No.413/2C. What is shown in the schedule of the settlement deed Ex.A.2 is 9 cents of land which falls under S.No.413/2A. The Commissioner Report and plan indicate that under S.No.413/2C1, the plaintiffs are in possession of 9 ½ cents of land. This is over and above the extent mentioned in the documents relied by the plaintiffs and also in excess of the extent admittedly in possession of the plaintiffs in their plaint.

15.The learned counsel for the appellants would contend that the defendant has admitted the possession of the plaintiffs in respect of 'B' schedule property. The written statement as well as the deposition of the defendant nowhere indicate such admission. In a suit for recovery of possession, the plaintiffs are bound to prove their possession through admissible evidence. In this case, Ex.B.2, title deed in favour of the defendant as well as the Commissioner report proves otherwise. Therefore, the First Appellate Court has rightly restricted the injunction relief to the plaintiffs to an extent of 9 cents of land in S.No.413/2C1.

Since, they had neither title nor possession with them as far as 'B' schedule property is concerned, the Courts below have rightly dismissed the case of the plaintiffs regarding recovery of possession. This Court finds no merit in the second appeal to interfere the finding of the First Appellate Court. The substantial questions of law are answered accordingly.

16. In the result, the second appeal is dismissed. The judgment and decree passed by the First Appellate Court is confirmed. No costs.

jbm

*Index: Yes/No
Speaking order/non speaking order*

09.01.2019

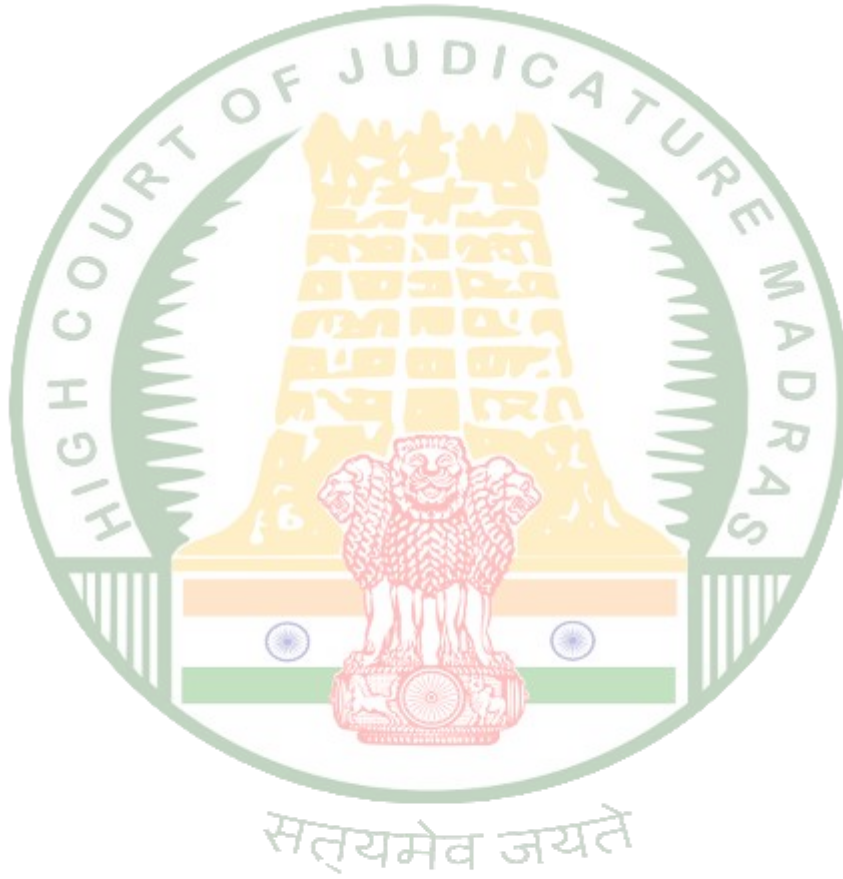
The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a background of horizontal stripes (green, white, and green). The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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To

1.The Principal Subordinate Judge,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.



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Dr.G.JAYACHANDRAN.J.,

jbm



Pre Delivery judgment made in

Second Appeal No.1658 of 2004

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