

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.85 of 2010 and
M.P.No.1 of 2010

1. Neelavathi
2. Kumar
3. Vijay

Appellants/Appellants/
Defendants 3 to 5

Vs.

1. Marimuthu .. Respondent No.1/Respondent No.1/
Plaintiff
2. State of Tamilnadu,
Rep. by the District Collector,
Perambalur District,
Perambalur.
3. The Tahsildar,
Kunnam Taluk, Kunnam,
Perambalur District.

Respondents 2 & 3/
Respondents 2 & 3/
Defendants 1 & 2

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 22.04.2009 passed in A.S.No.29 of 2008 by the Subordinate Judge, Perambalur upholding the decree and judgment dated 18.12.2006 passed in O.S.No.254 of 1998 by the District Munsif, Perambalur.

For Appellants : Mr.P.Mani and Sivakumar

For Respondents : Mr.N.Manikandan
Government Advocate (Civil)
(for R2 and R3)
No appearance for R1

JUDGMENT

The defendants 3 to 5 in O.S.No.254 of 1998 on the file of the District Munsif, Perambalur are the appellants herein.

2. The 1st respondent Marimuthu filed the above suit directing the defendants (1) the State of Tamil Nadu, represented by the District Collector, Perambalur, (2) the Tahsildar, Kunnam Taluk to cancel the existing entries in the revenue records for the B schedule properties and to include the name of the plaintiff in the revenue records and to pass a decree for permanent injunction restraining the defendants 3 to 5 (present appellants) from interfering with his peaceful possession and enjoyment over the B schedule properties and also for awarding of costs.

3. The parties are referred to as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

3. The case of the first respondent/plaintiff in nutshell:

The suit A schedule properties were purchased by the plaintiff's paternal grandmother Silambayee through a sale deed dated 19.10.2014. Silambayee had 4 sons by names 1. Palanimuthu, 2. Chellamuthu, 3. Marimuthu and 4. Muthusamy. Muthusamy died issueless. Thiru Chellamuthu after getting certain amount from the plaintiff's father Palanimuthu, relinquished his share in A schedule properties. Thereafter, there was an oral partition between Palanimuthu and Marimuthu in respect of A schedule properties in the ratio 2:1. The plaintiff's father constructed a house in a portion of A schedule property. Palanimuthu had three sons by name 1. Marimuthu (plaintiff), 2. Chinnaiyan and 3. Subramanian. In a family arrangement that took place about a decade back, Subramanian was allotted some other properties and Chinnaiyan was allotted a house in Adidravida Colony. The entire A schedule property was allotted to the share of Marimuthu, the plaintiff. Recently, under Nilavari Thittam, the A schedule properties were sub divided as (i) SF 634/5, (ii) SF 634/29, (iii) SF 634/30, (iv) SF 634/3, (v) SF 634/32, (vi) SF 634/33 and (vii) SF 634/31. The plaintiff's brother was allotted the properties in SF 634/32, SF 634/33 and SF 634/31. In a family division, SF 634/31 was allotted to Duraisamy and SF 634/32 and 634/33 were allotted Ammasi and pattas were also issued to them. However, the Revenue Officials issued patta only for SF 634/29 to the plaintiff and failed to issue patta for S.F.634/5, 634/30 and 634/34 by mistake. They have also classified the said properties as a lane. The defendants 3 to 5 on the basis of wrong entires, are attempting to interfere with the plaintiff's

possession. Hence, the plaintiff filed the suit for the reliefs stated above.

4. The written statement filed by the 2nd defendant and adopted by the first defendant runs as follows:

The S.F 634/31 belongs to Neelavathi, the 4th defendant and patta was issued to each and every person based on their possession. The plaintiff was issued patta in S.F.No.63/29 based on an enquiry. Since no one was in possession of S.F 634/5, 634/34, they were classified as Natham land in the revenue records and S.F 634/30 was classified as pathway, since the same branches out from the public pathway and joins the pathway in SF 634/1. Since the above said classifications were done after conducting due enquiry under Natham Nilavari Thittam, the plaintiff cannot ask for a direction to cancel the classification done by the revenue department.

5. The 5th defendant in his written statement has raised the following points and the same were adopted by the defendants 3 and 4.

(i) The genealogy list filed by the plaintiff is wrong.

(ii) It is true that the suit A schedule property originally belonged to Silambayee.

(iii) On the southern side of SF 634/5, a portion was allotted to Marimuthu and the same is sub divided as SF 634/29 and since the plaintiff is residing in the said property, patta was issued to him

(iv) The plaintiff, taking advantage of the fact that patta was not issued to vacant site (B schedule properties), is claiming right over the same.

(v) The plaintiff did not adduce any evidence to show that A schedule properties were divided the ratio 2:1.

(vi) It is also not stated as to where the legal heirs of Chellamuthu were residing during the division of properties in the ratio 2: 1.

(vii) Since the defendants are denying the title of the plaintiff, the plaintiff, without seeking the relief of declaration of title to the suit properties, cannot file a suit for a bare injunction.

(viii) Chellammal, daughter of Chellamuthu has not been impleaded as a party to the suit.

(ix) Similarly, the brothers of the plaintiff and the 3rd defendant's husband's brother Ammasi, who were also allotted a share in the properties, have not been impleaded as parties to the suit.

6. The trial court after framing necessary issues and after full contest, concluded that

(i) The plaintiff is entitled for a permanent

injunction restraining the defendants from interfering with his peaceful possession and enjoyment over the SF 634/29 and SF 634/5.

(ii) The revenue officials should include the names of plaintiff's son and his wife, if the name of the plaintiff is not shown as owner of SF 634/5.

Aggrieved over the same, the defendants 3 to 5 filed an appeal in A.S.No.29 of 2008 before the file of the Subordinate Judge, Perambalur. The learned Subordinate Judge, Perambalur dismissed the appeal and upheld the findings rendered by the trial court.

7. Now the present second appeal is filed on the following substantial questions of law.

a. Whether the courts below erred in law in granting the relief of permanent injunction with respect to the land comprised in S.Nos.634/29 and 634/5, when the S.No.634/29 is not the subject matter of the suit and no relief was sought for with respect to the said survey number and when admittedly the plaintiff failed to prove title and possession?

b. Whether the courts below erred in law in granting a mandatory injunction against the revenue authorities to mutate patta in the name of the plaintiff's son and wife when they are not parties to the suit and no relief was sought for in their favour?

c. Whether the judgment and decree passed by the courts below are sustainable in law when they have partly decreed the suit on mere surmises and conjectures and upon no evidence?

8. Mr.P.Mani, learned counsel appearing for the appellants would contend that when the appellants/defendants 3 to 5 had denied the title of the plaintiff, the plaintiff did not take steps to amend the plaint for the relief of declaration of his title to the suit properties and therefore, the suit filed by the plaintiff for bare injunction is not maintainable. His further contention is that when the plaintiff had sought for inclusion of his name in revenue records, both the courts below had directed the revenue officials to include the name of his son and his wife, in respect of S.No.634/5 and that such a direction to the revenue officials cannot be sustained in the absence of a specific prayer. He also drew the attention of this court to the observations of both the courts below, wherein it is held that the defendants did not dispute the title of the plaintiff in respect of suit A schedule properties. His contention is that the said observation is totally wrong.

9. A perusal of the written statement filed by the appellants/defendants clearly shows that the appellants had denied the title of the plaintiff to the suit properties and also had averred that the plaintiff did not state as to when the

partition in the family took place and further questioned the whereabouts of daughter of Chellamuthu during the alleged partition. Their specific contention is that when they have disputed the title of the plaintiff to the suit properties, the suit for bare injunction filed by the plaintiff is not maintainable.

10. Both the courts below, however, had held that the plaintiff did not adduce any evidence to show his title and possession in respect of S.No.634/30, and 634/34. Based on an assignment order (Ex.A8) in respect of S.No.634/5 in favour of the plaintiff's wife and son, the courts below had directed the revenue officials to mutate the records in the name of the plaintiff's son and wife, when especially no such pleading and prayer were found in the plaint. The first appellate court went one step further and observed that since S.No.634/5 in B schedule property was assigned in favour of plaintiff's wife and his son, the plaintiff is in possession of the said property. The case of the plaintiff is that S.No.634/5 was sub divided from the A schedule property. Curiously enough, the plaintiff did not mention the survey number of the A schedule property. Only the boundary description and measurements are indicated. The plaintiff also did not adduce any revenue records to show that his property in suit A schedule was sub divided as 634/5, 634/29, 634/30, 634/3, 634/32, 634/33 and 634/31, as contended by him in the plaint.

11. The learned Government Advocate (civil) would contend that after due enquiry, under the relevant scheme, pattas were issued to various persons and that S.No.634/5, 630/30 are classified as vacant land, while S.No.634/34 is classified as a pathway. He also contended that the suit filed by the plaintiff is not maintainable.

12. Both the courts below had concurrently erred in decreeing the suit by directing the revenue officials to include the name of plaintiff's son and his wife in the revenue records in respect of S.No.634/5, when the plaintiff claims that S.No.634/5 was allotted his share in the family partition. He did not adduce sufficient evidence to prove his continuous possession over the same. The defendants 3 to 5 had denied the title of the plaintiff to A and B schedule properties. Except the mere pleadings in the plaint that the plaintiff has been in possession of B schedule property, no acceptable evidence is adduced by the plaintiff. In a suit for bare injunction, title of the plaintiff cannot be gone into incidentally. In the instant case, as already observed, the survey number of the A schedule property is not indicated and no records were filed to show that only A schedule property was subdivided into various survey numbers as indicated in the plaint. Therefore, the suit

filed by the plaintiff fails. The decision of both the courts below directing the revenue officials to mutate the revenue records in the name of the plaintiff's son and his wife in respect of survey No.634/5 cannot be sustained, as the same is contrary to the pleadings and prayer of the plaintiff. The observation of both the courts below that the defendants did not dispute the title of the plaintiff to A schedule property is also not factually correct. Therefore, the findings recorded by both the courts below are not only wrong but also perverse and the second appeal is liable to be allowed.

13. In the result,

(1) The second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The decree and judgment dated 22.04.2009 passed in A.S.No.29 of 2008 by the Subordinate Judge, Perambalur is set aside.

(iii) The suit in O.S.No.254 of 1998 on the file of the District Munsif, Perambalur is dismissed with costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Subordinate Judge, Perambalur.
2. The District Munsif, Perambalur.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mr.P.Mani, Advocate, S.R.No.51537

+1cc to the Government Pleader, S.R.No.51987

S.A.No.85 of 2010 and
M.P.No.1 of 2010

MR(CO)
CS/20/11/2019