

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2019

PRONOUNCED ON :05.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1015 of 2005

Natarajan ... Appellant/ Appellant /Defendant

Vs.

Nagarathinam ammal ... Respondent/ Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 23.03.2005 passed in A.S.No.14 of 2004 on the file of the Subordinate Court, Thiruvarur, confirming the judgement and decree dated 23.01.2004 passed in O.S.No.54 of 2002 on the file of the District Munsif Cum Judicial Magistrate Court, Nannilam.

For Appellant : Mr.S.Sounthar

For Respondent : Mr.A.Muthukumar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 23.03.2005 passed in A.S.No.14 of 2004 on the file of the Subordinate Court, Thiruvarur, confirming the judgement and decree dated 23.01.2004 passed in O.S.No.54 of 2002 on the file of the District Munsif Cum Judicial Magistrate Court, Nannilam.

2.The second appeal has been admitted on the following substantial question of law:

"Whether the bare injunction suit of respondent is maintainable when his title is specifically denied by the appellant in his written statement?"

3.Considering the scope of the issues involved in the second appeal between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5.The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction on the footing that the suit property as described in the plaint is in her possession and enjoyment and the defendant, who is residing on the western side of the suit property, without any entitlement, is attempting to interfere with the plaintiff's possession and enjoyment of the suit property, particularly, the lane portion lying in between the plaintiff's property and the defendant's property and by way of the same, attempting to put up a fence inclusive of the suit property belonging to the plaintiff, hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate relief.

6.The defendant disputed the claim of title, possession and enjoyment of the suit property as described in the plaint and according to the defendant, the plaintiff has never been in the possession and enjoyment of the east-west lane as described in the plaint, other than the house comprised therein and in particularly, disputed her claim of possession and enjoyment of the lane portion lying between the defendant's property and the plaintiff's property and according to the defendant, the lane in dispute is only in the possession and enjoyment of the defendant and according to the defendant, taking advantage of the demolition of the construction in the defendant's property, the plaintiff has come forward with the false suit with a view to grab the lane portion in dispute and hence, according to the defendant, the plaintiff is not entitled to secure the relief prayed for and accordingly, prayed for the dismissal of the suit.

7.In support of the plaintiff's case, PWs 1 to 3 were examined and Exs.A1 to 32 were marked. On the side of the defendant, DWs 1 & 2 were examined and no document has been marked. Further, Exs.C1 & C2 were marked.

8.The Courts below, on a consideration of the materials placed on record, both oral and documentary and the submissions made, were pleased to grant the relief in favour of the plaintiff as prayed for. Impugning the same, the defendant has come forward with the present second appeal.

9.The plaintiff claims that the suit property as described in the plaint belongs to her and she has been in the possession and enjoyment of the same and according to the plaintiff, the suit property is only a river poramboku land and the suit property includes the lane portion lying in between the plaintiff's property and the defendant's property and alleging that the defendant, without any entitlement to the suit property, attempted to interfere with her possession and enjoyment and hence, according to her, she has been necessitated to lay the suit for the relief of permanent injunction.

10.Per contra, the defendant, in toto, has disputed the plaintiff's title, possession and enjoyment of the suit property as described in the plaint and according to the defendant, other than the house property, the plaintiff cannot

lay any claim of title, possession and enjoyment in respect of the suit property inclusive of the lane in between the plaintiff's property and the defendant's property and only with a view to grab the property belonging to the defendant, it is stated that the plaintiff has come forward with the suit and hence, the suit is liable to be dismissed.

11. The suit property as described in the plaint is shown to be lying in Mandapathadi village, in survey No.128/4 measuring about 7 cents of river porambokku land comprising of the tiled house, thatched structure inclusive of the east-west lane and the fence on the western side with the trees and backyard portion etc., bearing Door No.2/36A within the specific boundaries as mentioned in the plaint. Thus, according to the plaintiff, the suit property measures about 7 cents of land and the same includes the east-west lane and western fence inclusive of the trees etc., and backyard portion within the specific boundaries. It is not in dispute that the defendant's property is lying to the west of the plaintiff's property. To establish that the plaintiff has a valid title to the suit property as described in the plaint, absolutely, there is no proof placed on the part of the plaintiff. The plaintiff has averred in the plaint itself that there is no document available to establish that she has purchased the suit property from her vendors or the previous occupants of the suit property and it is pleaded that from time immemorial, the occupants of the river porambokku land used to convey the same to the others based on the possessory right and thus, it is found that absolutely there is no proof to hold that the suit property as described in the plaint lawfully belongs to the plaintiff. The plaintiff examined as PW1, during the course of cross examination, has admitted that it is true to state that she has not filed any document to establish that the suit property belongs to her and also further admitted that she does not know the classification of the suit property and also would state that only with reference to the portion lying on the western side of her house, the dispute is existing between her and the defendant and further, has averred that she does not know the length and breadth of the suit property/site owned by her and also admitted that her vendor has not given any plan with reference to the construction of the structure available in the suit property and according to the plaintiff, only the fence with the trees divides her property and the defendant's property. Therefore, when from the abovesaid case projected by the plaintiff in the plaint as well as her admission made during the course of her evidence, when she is unable to point out as to the extent of the property owned by her and would only plead that the dispute is only as regards the lane portion lying in between her property and the defendant's property and when with reference to her alleged claim of ownership, possession and enjoyment of the lane portion, when there is no material projected on the part of the plaintiff in any manner, it is seen that the Courts below should have in the normal

course of events only dismissed the plaintiff's suit on the footing that the plaintiff has failed to establish her claim of title, possession and enjoyment in respect of the lane portion in dispute. Though the plaintiff has come forward with the certain documents marked as Exs.A1 to A32, it is seen that Exs.A1 to 17 are the letters sent to the plaintiff and Exs.A18 to 30 are the electricity bills and Exs.A31 and 32 are the house tax receipts, therefore, when the abovesaid documents would only go to show that the plaintiff is in the possession and enjoyment of the house property in the suit survey number and the abovesaid documents would not be useful to uphold the plaintiff's case that an extent of 7 cents of land in the suit survey number inclusive of the lane portion, the western fence with trees, backyard etc., are in her lawful possession and enjoyment as claimed by her, it is found that no credence could be placed on the abovesaid set of documents for coming to the conclusion that the plaintiff is in the possession and enjoyment of the suit property as described in the plaint.

12.From the materials placed on record, both oral and documentary, it is seen that the dispute between the parties is only as regards the lane portion lying to the west of the plaintiff's property and the east of the defendant's property. However, when as above pointed out, when the plaintiff has not filed any document to establish that she is in the possession and enjoyment of the suit property inclusive of the lane portion and the western fence with standing trees etc., as well as the backyard portion, in such view of the matter, the Courts below are found to have erred in upholding the plaintiff's case only based on the features noted by the advocate commissioner at the time of the inspection of the plaintiff's property and the defendant's property. It is seen that an advocate commissioner had been appointed in the matter and he has visited the property in dispute and filed his report and plan and noted certain features seen by him in his report and plan, which documents have come to be marked as Exs.C1 & C2. When the commissioner's report and plan cannot be the basis for determining as to which party is in the possession and enjoyment of the property in dispute, in such view of the matter, the Courts below are found to have committed a patent error in upholding the plaintiff's case merely on the assumptions and presumption taken by them with reference to the features noted by the advocate commissioner as seen by him at the time of the inspection of the plaintiff's property and the defendant's property. No doubt, in the commissioner's report and plan, the commissioner had noted the existence of thorn fence + fence with trees standing adjacent thereto and also the lane portion shown as ADKL in his plan and described the plaintiff's house portion as ABCD and the defendant's land as KLMN. However, on the basis of the same, i.e. on the basis of the abovesaid features noted by the advocate commissioner and pointed out in his report and plan, it could only be gathered that the features are available on the land, and by way of the same, it cannot be

construed or held that the plaintiff is already in the possession and enjoyment of the lane portion and put up the thorn fence inclusive of the trees etc., as noted by the advocate commissioner and therefore, it is seen that, in my considered opinion, the judgment and decree of the Courts below are liable to be set aside for the sole reason that they had proceeded to accept the plaintiff's case merely placing reliance upon the commissioner's report and plan, which cannot be the basis for determining the possession of either the plaintiff or the defendant, particularly, as regards the property in dispute i.e. the lane portion.

13. Furthermore, the Courts below are also found to have accepted the plaintiff's case and refused to accept the defence version on the footing that the defendant has not filed any document to establish that his property includes the lane portion as well as the fence lying on the eastern side of his property and accordingly, on the basis of the admission of the defendant that his property is lying to the west of the fence, on that premise proceeded to hold that the lane portion as well as the fence only belongs to the plaintiff and the same is in her possession and enjoyment and on that footing also accepted the plaintiff's case. The Courts below had forgotten for the movement that it is for the plaintiff, who had come forward with the suit to establish her case for seeking the necessary relief against the defendant as claimed in the plaint. The defendant has disputed the plaintiff's case in toto. In such view of the matter, it is expected of the plaintiff to establish at least prima facie that the suit property as described in the plaint is in her possession and enjoyment and that, she has acquired a valid title to the suit property in the manner known to law. When the plaintiff is unable to place any document whatsoever to establish the ownership of the suit property as described in the plaint inclusive of the lane portion, the fence and the standing trees adjacent thereto and when the commissioner's report and plan cannot be the basis for upholding the plaintiff's claim of possession and enjoyment of the suit property as described in the plaint, the approach of the Courts below in accepting the plaintiff's case based on the failure of the defendant in producing his title deeds to show that the extent of the property owned by him, in my considered opinion, is nothing but a perverse and illogical approach which cannot be sustained in the eyes of law. If the abovesaid logic adopted by the Courts is to be accepted, in that event, the Court should at the first instance, have called upon the plaintiff to produce the necessary documents of title with reference to the suit property to evidence that she owns the property inclusive the lane portion, the fence and the standing trees adjacent thereto and the backyard portion. When the plaintiff is unable to place any document of proof evidencing the abovesaid claim of title, possession and enjoyment of the suit

property as described in the plaint, it is found that the Court in stead of rejecting the plaintiff's case proceeded to pick holes in the defence version one way or the other based on the evidence adduced by he defendant during the course of his cross examination and endeavoured to uphold the plaintiff's case without there being any proof placed on the part of the plaintiff to establish her claim of title, possession and enjoyment of the suit property. When the plaintiff has failed to establish her claim of title, possession and enjoyment of the suit property, merely on the basis of the unreliable and interested evidence adduced by PWs2 and 3 examined on behalf of the plaintiff, we cannot safely conclude that the plaintiff is in the legal possession and enjoyment the suit property inclusive of the disputed lane portion, western fence standing trees thereto etc., and therefore, the evidence of PWs2 & 3 cannot at all be relied upon for upholding the plaintiff's case.

14. Furthermore, when the defendant has disputed the plaintiff's claim of title, possession and enjoyment of the suit property as described in the plaint, particularly, the lane portion in dispute as rightly put forth by the defendant's counsel, the plaintiff should have endeavoured to seek the relief of declaration of title as regards the suit property or at least as regards the lane portion in dispute one way or the other. Despite the stout denial of her claim of title, possession and enjoyment of the suit property in entirety by the defendant, for the reasons best known to the plaintiff, she has not endeavoured to institute the suit claiming the relief of declaration of title to the same, and when as above noted, the plaintiff has failed to establish her claim of title, possession and enjoyment of the suit property as described in the plaint. On the above score alone, the plaintiff's suit should fail. Resultantly, it has to be held that inasmuch as the plaintiff has no right of possession and enjoyment of the suit property as described in the plaint, particularly, the lane portion, she is unable to place any document evidencing the same and would endeavour to establish her case by placing absolute reliance upon the commissioner's report and plan however, as above noted, when the commissioner's report and plan could not be the bass for determining the claim of the possession of the rival parties of the property in dispute one way or the other and furthermore, the physical features as noted by the commissioner at the time of the inspection of the properties concerned do not denote in any manner that it is only the plaintiff, who owns the disputed lane portion inclusive of the fence, the standing trees etc., the Courts below are found to have totally erred in granting the relief in favour of the plaintiff as prayed for, particularly, without the plaintiff in any manner establishing her claim of title, possession and enjoyment of the suit property as described in the plaint.

15.In the light of the above discussions, the substantial question of law formulated in the second appeal is accordingly answered against the plaintiff and in favour of the defendant.

For the reasons aforesated, the Judgement and Decree dated 23.03.2005 passed in A.S.No.14 of 2004 on the file of the Subordinate Court, Thiruvarur, confirming the judgement and decree dated 23.01.2004 passed in O.S.No.54 of 2002 on the file of the District Munsif Cum Judicial Magistrate Court, Nannilam, are set aside and resultantly, the suit laid by the plaintiff in O.S.No.54 of 2002 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Subordinate Court, Thiruvarur.
- 2.The District Munsif Cum Judicial Magistrate Court, Nannilam.
- 3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr. A.Muthukumar, Advocate SR.No. 20285

in S.A.No.1015 of 2005
A.SK(04/06/2019)

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