

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2019
PRONOUNCED ON : 01.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1194 of 2005

K.Manickam

...Appellant/Plaintiff

Vs.

1. Natanasabapathy
2. Sivasankaran

...Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.11 of 2004 dated 02.07.2004 on the file of the court of subordinate judge, Chidambaram in reversing the judgment and decree in O.S.No.176 of 2000 dated 30.12.2003 on the file of the court of District Munsif, Chidambaram.

For Appellant : Mr.A.Muthukumar

For Respondents : Ms.G.Sumitra.

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 02.07.2004 passed in A.S.No.11 of 2004, on the file of the the Subordinate Court, Chidambaram, reversing the judgment and decree dated 30.12.2003 passed in O.S.No.176 of 2000 on the file of the District Munsif Court, Chidambaram.

2. The Parties are referred to as per their rankings in the trial Court.

3. Suit for Permanent injunction.

4. The case of the plaintiff in brief is that the suit property is a natham house and site assigned by the Government to one Govindaraju, son of Ponnusamy of Thiruvakulam by way of an order dated 08.10.1976 and pursuant to the same, Govindaraju was in the possession and enjoyment of the suit property by putting up a thatched house therein and residing with his wife

Madurambal and after his demise, his wife succeeded to him and became the owner of the suit property and under natham nilavari thittam, the Government had also granted patta in her favour on 31.03.1993 and the house tax for the house in the suit property bearing door No.35 has been assessed in the name of Madurambal by the Panchayat and she has been paying the house tax in respect of the same and also paying electricity charges with reference to the service connection obtained by her and the plaintiff's father Kuttiyandi is the brother of Madurambal and as Madurambal has no issues, the plaintiff's father had been living with Madurambal in the suit property and the family card issued by the Government will disclose that the plaintiff and his family and Madurambal were also residing in the suit house. The thatched house in the suit property became dilapidated and had to be replaced and Madurambal sold the suit property to the plaintiff for a valid consideration by way of the registered sale deed dated 11.04.2000 and the plaintiff has been in the possession and enjoyment of the suit property following the same and thus the plaintiff has title and possession of the suit property and after the purchase, the plaintiff has put up a new thatched roof in the house. The defendants are residing near the suit property and they wanted the suit property from Madurambal, but as Madurambal sold the suit property to the plaintiff, the defendants became inimical and attempted to interfere with the plaintiff's possession and enjoyment of the suit property without any authority or entitlement and in such view of the matter, according to the plaintiff, he has been necessitated to lay the suit for appropriate relief.

5. The defendants resisted the plaintiff's suit denying all the averments putforth by the plaintiff in the plaint in toto and disputed the claim of the title to the suit property by the plaintiff as averred in the plaint and also disputed his claim of possession to the suit property or the possession of his vendor Madurambal by way of the assignment and the enjoyment of the suit property by Madurambal's husband Govindaraju as pleaded in the plaint and according to the defendants, only the first defendant has a valid title and patta in respect of the suit property and according to them with a view to grab the suit property, the plaintiff has come forward with the false case without any cause of action and hence, the suit laid by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings, the parties went for trial and in support of the Plaintiff's case, P.Ws.1 and 2 were examined and Exs.A1 to A7 were marked. On the side of the defendants D.Ws.1 and 2 were examined and EXs.B1 to B4 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. Impugning the same, the defendants preferred the first appeal. On a consideration of the materials placed on record, both orally and documentary and the submissions made, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Challenging the same, the second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

"1) Whether the lower appellate court has committed an illegality in reversing the decision of the trial court without considering the reasoning given by the trial court and without referring to material evidence such as Exs.A1, A3 to A7 and without considering the effect of evidence of D.W.1 who stated that he had no evidence to prove his possession?

9. The suit has been laid by the plaintiff simplicitor for the relief of permanent injunction against the defendants. Though the plaintiff's counsel would putforth the submission that the suit has been laid by the plaintiff based on the possession of the suit property, on a reading of the plaint, it is seen that the plaintiff claims to be in the legal possession of the suit property on the footing that he had purchased the same from Madurambal. According to the plaintiff, Madurambal had been granted the patta in respect of the suit property under Natham Nilavari Thittam and further according to the plaintiff, Madurambal had acquired title to the suit property as the legal heir of her husband Govindaraju, who is said to have been assigned the suit property by the Government by way of an order dated 08.10.1976. Thus, the plaintiff has putforth his case that following the assignment order issued by the Government abovestated, Govindaraju and his wife had been living in the suit property by putting up the thatched house and the house tax has been assessed in the name of Madurambal after the demise of Govindaraju and she has also obtained service connection and enjoying the property and further according to the plaintiff, Madurambal had subsequently sold the suit property to him by way of the registered sale deed dated 11.04.2000 and thus according to the plaintiff, he has title and possession to the suit property and the defendants, who are the neighbouring residents, failing in their attempt to purchase the suit property from Madurambal, started interfering with the plaintiff's possession and enjoyment of the suit property without any entitlement or authority and hence it is stated by the plaintiff that he has been necessitated to lay the suit for appropriate relief.

10. The Defence has been taken by the defendants in toto disputing the claim of title and possession of the plaintiff to the suit property as put forth by him. Furthermore, the defendants have also challenged the case of the plaintiff that his vendor and her husband had title to the suit property and had been enjoying the same by putting up the thatched house and paying house tax, service tax, etc., and according to the defendants, Madurambal has no entitlement as per law to convey the suit property to the plaintiff and therefore, in toto, challenged the claim of title and possession of the plaintiff to the suit property and per contra put forth the case that it is only the first defendant who has title and possession of the suit property and enjoying the same and accordingly contended that the plaintiff has no cause of action to institute the suit and therefore, the suit should be dismissed.

11. In the light of the abovesaid defence put forth by the defendants, the plaintiff having laid the suit simpliciter for the relief of permanent injunction, at the foremost, the plaintiff has to establish that he is in the possession and enjoyment of the suit property as put forth by him in the plaint. According to the plaintiff, the suit property has been assigned to Govindaraju by the Government by way of an assignment order dated 10.10.1976 and the said assignment order has come to be marked as Ex.A1. However, as rightly pointed out by the first appellate court, when Ex.A1 is found to be corrected with reference to the survey number and the extent of the property assigned and with reference to the abovesaid corrections, there is no authentication by the concerned authority, who had issued the said order and furthermore, when there is no material placed on the part of the plaintiff that following Ex.A1 assignment order, Govindaraju had been in the possession and enjoyment of the suit property along with his wife Madurambal, as pleaded in the plaint, in such view of the matter, merely on the basis of Ex.A1 order, we cannot safely conclude that Govindaraju had been validly issued the assignment order in respect of the suit property by the Government. Despite the challenge thrown to the abovesaid assignment order by the defendants in toto, the plaintiff still has not endeavoured to establish the authenticity of Ex.A1 order by examining the Government officials, who had issued the abovesaid order or who has knowledge about the said order as per law. With reference to the same, there is no proper explanation on the part of the plaintiff. In such view of the matter, the determination of the first appellate court that no safe reliance could be attached to Ex.A1 order for upholding the title, possession and enjoyment of the suit property by Govindaraju, cannot be interfered in any

manner.

12. Now, according to the plaintiff, after the demise of Govindaraju, his wife had succeeded to the suit property and it is pleaded that under Natham Nilavari Thittam, his wife had been assigned patta in respect of the suit property on 31.03.1993. However, no patta issued in favour of Madurambal has been marked by the plaintiff as projected in the plaint, on the other hand, the plaintiff has come forward with the thoraya patta in the name of Madurambal marked as Ex.A2 and when the plaintiff has not placed any other material as to what further action has been taken following the issuance of Ex.A2 thoraya patta and when Ex.A2 thoraya patta cannot, at all, be considered as a document of title and it is only an intimation to one and all to put forth their objection with reference to the grant of patta in respect of the property comprised therein and furthermore, when similar thoraya patta dated 31.03.1993 in respect of the suit property has also come to be marked by the first defendant in respect of the suit property, in such view of the matter, no reliance, at all, could be made on Ex.A2 thoraya patta for holding that Madurambal had a valid title to the suit property.

13. According to the plaintiff, Madurambal had put up the thatched structure in the suit property bearing door No.35 and also obtained service connection to the same and accordingly enjoying the suit property by paying the house tax, service charges, etc., and in this connection, the plaintiff seems to have relied upon the house tax receipt marked as Ex.A3 and EB bills marked as Exs.A4 and A5. No doubt, the plaintiff has mentioned in the plaint that the house lying in the suit property bears door No.35, however, merely on that premise, we cannot hold that the house bearing door No. 35 is actually located in the suit property. When the defendants had thrown a challenge to the authenticity of Ex.A3 house tax receipt and put forth the case that it does not relate to the house said to be lying in the suit site, it is for the plaintiff to establish, without doubt, that the house structure put up by Govindaraju or Madurambal in the suit property bore door No.35 and the same had been assessed in the name of Madurambal as pleaded by the plaintiff. With reference to the same, other than Ipse dixit testimony of the plaintiff, the plaintiff had not endeavoured to correlate that the house tax receipt marked as Ex.A3 pertains only to the house said to have been put up in the suit property and in such view of the matter, no safe reliance could be made on Ex.A3 for holding that Madurambal has been enjoying the suit property by paying house tax, etc. When the plaintiff has failed to establish that Madurambal had a valid title to the suit property and when with reference to the abovesaid case of the plaintiff, he relies only Ex.A2 thoraya patta when the abovesaid document cannot, at all, be relied for any purpose, in such

view of the matter, merely on the production of Ex.A3 ipso facto, we cannot conclude that the same pertains only to the alleged house structure said to have been put up in the suit property by Govindaraju or Madurambal as the case may be.

14. Similar is the case with reference to EB bills marked as Exs.A4 and A5. As regards the service connection, as rightly pointed out by the first appellate court, the plaintiff has not mentioned the service connection number in the plaint. Be that as it may, when the plaintiff has failed to establish that Madurambal had been enjoying the suit property based on the patta said to have been issued in her favour by putting up the thatched construction and paying tax, service charges, etc., and when the defendants are challenging the genuineness of Exs.A4 and A5 in toto, it is for the plaintiff to correlate the abovesaid EB bills with the alleged super structure said to have been put up in the suit property and in such view of the matter, merely on the basis of Exs.A4 and A5 receipts, we cannot conclude safely that Madurambal had been in the possession and enjoyment of the suit property as put forth in the plaint.

15. According to the plaintiff, his father is the brother of Madurambal. On account of the close relationship, he and his father had been residing with Madurambal in the suit property and enjoying the same and in specific, the plaintiff has pleaded that the family card that had been issued by the Government would go to show that the plaintiff and his family members and Madurambal were living in the suit property. Despite the denial of the abovesaid case of the plaintiff by the defendants, to hold that the plaintiff and his family members had been residing with Madurambal in the suit house as pleaded, absolutely, there is no material put forth by the plaintiff. The so called family card said to have been issued in their favour has not seen the light of the day. Furthermore, no other proof like the voters identity card or other documents evidencing the possession and enjoyment of the plaintiff and his family members with Madurambal qua the suit property has been placed for consideration. When the plaintiff has failed to establish that Madurambal had a valid title to the suit property, as above discussed, the claim of the plaintiff that he and his family members had been residing in the suit house along with Madurambal and enjoying the same by obtaining family card etc., cannot be accepted, particularly sans any material pointing to the same.

16. Now according to the plaintiff, the house structure put up in the suit property became dilapidated and required to be replaced. As to when the house structure became dilapidated and what steps have been taken by Madurambal to restore the same, etc., there is no plea or proof projected on the part of the

plaintiff. Now, according to the plaintiff, Madurambal had sold the suit property in his favour by way of the registered sale deed dated 11.04.2000, which document has come to be marked as Ex.A6. In the abovesaid sale deed, madurambal claims title to the suit property on the footing that she had been issued the patta in respect of the property comprised therein. However, to evidence the same, the plaintiff has not endeavoured to produce the said patta other than Ex.A2 thoraya patta. When thoraya patta cannot, at all, be relied for any purpose, both with reference to the title as well as the possession, it is found that without any basis Madurambal has claimed to have been issued patta in respect of the suit property in the sale deed marked as Ex.A6. In addition to that, when it is not the case of the plaintiff that the house structure put up in the suit property had completely been dilapidated and the suit property remained only a vacant site at the time of the execution of Ex.A6 sale deed and when according to the plaintiff, Madurambal had been enjoying the suit property even after the execution of Ex.A6 sale deed in his favour along with the plaintiff, if really, Madurambal had conveyed the suit property in favour of the plaintiff and been enjoying the same by putting up the house structure and if the house structure had been assessed in her name, etc., while conveying the property in favour of the plaintiff under Ex.A6 sale deed, Madurambal would have disclosed about the existence of the super structure in the said document, on the other hand, the document recites that by way of the same, Madurambal had conveyed only the vacant site and not consisting of any super structure as such. In such view of the matter, as rightly determined by the first appellate court, when the suit property has been described only as a vacant site by Madurambal in Ex.A6, to say that she had put up the house structure in the suit property and the same had been assessed in her name and she had been enjoying the same by paying the house tax, electricity bills, etc., and when the documents projected in connection with the same had not been correlated by the plaintiff that the same pertains to the suit property as such, in all, it is seen that when the possession and enjoyment of the suit property by Govinda Raju and Madurambal has not been established clearly by the plaintiff, as determined by the first appellate court and when under Ex.A6, only a vacant site is found to have been conveyed by Madurambal in favour of the plaintiff and when Madurambal had not been shown to be competent to convey the suit property in favour of the plaintiff by way of Ex.A6 sale deed as per law, it is found that based on Ex.A6 sale deed also, we cannot hold that the plaintiff is in the legal possession and enjoyment of the suit property.

17. Now according to the plaintiff, following the sale deed under Ex.A6, he had put up the new thatched roof in the existing house property and enjoying the same along with

Madurambal. Thus, even as per the case of the plaintiff, on the date of Ex.A6 sale transaction, the super structure has been in existence and only the roofing portion had become dilapidated, if that be so, it does not stand to the reason as to how come the suit property had been described as vacant site in Ex.A6 sale deed and not described as consisting of a super structure thereon. The abovesaid factor only go to reveal that inasmuch as neither Govindaraju nor Madurambal or the plaintiff and his family members had been residing in the super structure alleged to have been put up in the suit property at any point of time, the abovesaid contradictions are found to have occurred in the case of the plaintiff and accordingly it is seen that despite the challenge projected by the defendants to the documents projected by the plaintiff, the plaintiff is unable to correlate the same with the alleged super structure put up in the suit property and in such view of the matter, the first appellate court is wholly justified in not placing reliance upon the abovesaid documents projected by the plaintiff for upholding his case.

- 18.No doubt, the first appellate court has not considered the letter marked on the side of the plaintiff as Ex.A7. Ex.A7 is said to be the letter sent to the plaintiff by his relative and according to the plaintiff, it has been addressed to door No. 35 in his name and on that basis, the first appellate court should have come to the conclusion that it is only the plaintiff who residing in the house put up in the suit property. Admittedly, the defendants are not the parties to Ex.A7 letter. The defendants are not admitting the abovesaid document. The letter marked as Ex.A7 is dated 27.12.1994. It has not been established by the plaintiff that he had been residing in the super structure alleged to have been put up in the suit property along with Madurambal as put forth in the plaint. The relative, who had addressed the said letter to the plaintiff, has not been examined to establish that at the relevant time of Ex.A7 letter, the plaintiff had been residing in door No.35 and that door No.35 is located in the suit property. There is no other proof with reference to the same on the part of the plaintiff as above discussed. In such view of the matter, merely on the basis of Ex.A7 letter, it is seen that no reliance could be placed upon the same for accepting the plaintiff's case that he has been in the possession and enjoyment of the suit property. If that be so, the best document, which could have been produced by the plaintiff to evidence the possession and enjoyment of the suit property at the relevant point of time is the family card or the voters identity card. Those documents are not forthcoming on the

part of the plaintiff. But the plaintiff has endeavoured to establish his case based upon the letter Ex.A7, but particularly, when the sender of the letter has not been examined and the defendants are not the parties to the same, no reliance could be attached to the said document for accepting the plaintiff's case.

19. When according to the plaintiff, he has been enjoying the suit property by renovating the roof of the super structure put up in the suit property pursuant to Ex.A6 sale transaction, even though the plaintiff had come forward with the present suit immediately after Ex.A6 sale transaction, still nothing prevented the plaintiff from placing the documents to establish that pursuant to the institution of the suit also, he continued to be in the possession and enjoyment of the suit property comprising of the door No.35 by paying house tax, service charges etc. With reference to his abovesaid claim of possession and enjoyment of the suit property, there is absolutely no material on the part of the plaintiff and the abovesaid aspects of the case had also been considered by the appellate court in the proper manner and rightly held that the plaintiff has miserably failed to establish his possession and enjoyment of the suit property at any point of time or the possession and enjoyment of his predecessors in title at any point of time and in such view of the matter, I do not find any valid reason to interfere with the well considered judgment and decree of the first appellate court declining the relief sought for by the plaintiff.

20. The failure of the defendants to establish their title, possession and enjoyment of the suit property, would not automatically lead to the conclusion that it is only the plaintiff who is in the possession and enjoyment of the suit property as pleaded. The plaintiff having come forward with the lis claiming the relief on a certain set of facts and when the abovesaid case projected by the plaintiff has been seriously impugned by the defendants, it is for the plaintiff to establish his case for placing acceptable and convincing proof or materials. When the plaintiff has failed to establish his case, he cannot be allowed to pick the holes in the defence version and thereby endeavour to succeed in his case. In such view of the matter, the contention put forth by the plaintiff's counsel that the defendants had failed to establish their claim of title, possession and enjoyment of the suit property and therefore, the plaintiff's case should be upheld, as such, cannot be countenanced.

21. In the light of the above discussions, when the first appellate court had gone into the rival claims of the respective parties threadbare and assessed the materials placed on record,

both oral and documentary, in the right perspective and after discussing the same in detail and by giving proper reasonings for declining the same and thereby rightly concluded that the plaintiff has failed to establish his claim of possession and enjoyment of the suit property and also his alleged claim of a valid title to the suit property as well as the alleged claim of title and possession and enjoyment of the suit property by his predecessors in title as putforth in the plaint. In such view of the matter, the plaintiff cannot be allowed to sustain his suit based on the loop holes or the weakness of the defence version. In all, it is seen that no interference is warranted in the judgment and decree of the first appellate court and accordingly the substantial question of law formulated in this second appeal is accordingly answered against the plaintiff and in favour of the defendants.

22. For the reasons aforesaid, the second appeal is found to be devoid of merits and accordingly is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

bga

1. The Subordinate Judge, Chidambaram
2. The District Munsif, Chidambaram.
3. The Section Officer, V.R. Section,
High Court, Madras.

+1 CC to Mr. A. Muthukumar, Advocate sr 19596.

+1 CC to M/s. G. Sumithra, Advocate sr 19020.

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SP(10/06/2019)

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