

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.1264 of 2005

K.Pandian

.... Appellant /Plaintiff

Vs

1.Kuppusamy Padayachi (Died)

..... 1st respondent / Defendant

2.K.Rathinambal

3.M.Annapoorani

4.P.Jothi Gowri

5.S.Sivanathavalli

6.K.Mangalam

7.K.Arunagiri

8.K.Sampath

(Respondents 2 to 8 are brought on record as L.Rs of the deceased

sole respondent viz., D.Kuppusamy Padayachi Vide order of Court

dated 18.07.2019 made in CMP.Nos.14175 to 14177/2019 in S.A.No.1264/2005)

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 13.12.2004 passed in A.S.No.9 of 2004 on the file of II Additional Sub Court, Cuddalore by reversing the judgment and decree in O.S.No.446 of 2002 dated 29.08.2003 on the file of the Additional District Munsif Court, Cuddalore.

For Appellant : Mr.R.Sunil Kumar

For Respondents : Mr.J.Raja Mohan [R2 to R8]

JUDGMENT

The plaintiff/appellant has laid a suit for bare injunction. The suit came to be decreed, but in the first appeal preferred by the defendant, the suit was dismissed. Parties would be referred to by their rank before the trial Court.

2. The suit property is described as vacant plot measuring 28' x 19' in R.S.No.177/14. According to the plaintiff, the suit

property belonged to a certain Nataraja Padayachi, that he was married to Vridhambal, that the couple did not have any issues, that the plaintiff is Vridhambal's sister's grandson and that Nataraja Padayachi Vide Ext.A1 dated 25.10.1985 had executed a Will in favour of the plaintiff bequeathing the suit property. He also discloses that the defendant herein had earlier laid a suit in O.S.No.324 of 1996 for declaration and injunction of his right to a plot of land in original Survey No.369/7, that he had obtained under Ext.B1 dated 17.03.1986. That suit was laid against the plaintiff, his father Kalia Perumal and his brother and that suit came to be decreed Vide Ext.B3 and came to be confirmed in S.A.No.1476 of 2002. Thereafter, the plaintiff faced some obstructions to his peaceful possession. Hence, he laid the suit.

3. The defendant in his written statement has taken twin ground of descriptions: (a) that the plaintiff is not in possession of the suit property and (b) that the present suit is barred by res-judicata.

4.1 Before the trial Court, the plaintiff examined himself as P.W.1, besides he examined one Ramalingam. For the defendant, he examined himself as D.W.1 and his adjacent owner Kaliasamurthy as D.W.2. Both sides produced necessary documentary evidences, and in the context of the present suit, the judgment and decree in O.S.No.324/96 have been marked as Ext.B3. Appreciating the evidence before it, more particularly the decree passed in O.S.No.324/96 (Ext.B3), the trial Court decreed the suit.

4.2 The plaintiff claims title to the suit property on the basis of the Will, marked as Ext.A1. The trial Court found that this Will is genuine. So far as the sale deed dated 17.03.1986 (Ext.B1) in favour of the defendant, in concerned, the trial Court has specifically framed an issue, but opted not to investigate it on the ground that inasmuch as the suit is laid only for bare injunction, the dispute has to be resolved on the basis of settled possession. For this, it relies on Ext.A2 patta granted in favour of the plaintiff. So far as all crucial plea of the defendant in concerning res judicata, the trial Court has held that the subject matter of the suit in O.S.No.324/96 and present suit are different and hence the suit is not barred by res judicata. Ultimately the trial court decreed the suit.

4.3. When the matter reached the first appellate Court in A.S.No.9 of 2004, the first appellate Court found that while the title deeds of the parties refer to their respective properties as enblooked in old Survey No.369/7, in the patta, it is correlated to Survey No.96/13. Hence, it found patta is a less

reliable document, more so because it stands jointly in the names of the plaintiff and the defendant, and it reversed the decree of the trial Court and allowed the appeal, and dismissed the suit.

4.4 Aggrieved by the decree of the first appellate Court, the plaintiff is before the second appeal.

5. The second appeal is admitted on the following substantial questions of law :

- 1) Whether the learned Judge is right in reversing the findings of the learned trial Judge without adverting to Ex.A-2 patta and the admission made by the defendant in his cross-examination?
- 2) Whether the learned Judge erred in not considering the law laid down in 1999 (3) CTC 650, wherein, it was observed mutation of entries are done to enable the state to collect revenue from persons who are in possession of the property?
- 3) Whether the learned Judge is right in dismissing the suit, forgetting the fact that the suit is only for a bare injunction and that the plaintiff has been in possession and enjoyment of the suit property not only on the date of the suit, but also prior to the suit?

6. The learned counsel for the appellant submitted: Admittedly, there was an earlier suit in O.S.No.324 of 1996. The A-schedule property in this suit is a plot measuring 60.75' x 43.5' in S.No.369/7. So far as the plaintiff's property is concerned, he claims title under Ext.A1-Will of Nataraja Padayachi, wherein the property bequeathed was described as a plot measuring 28' X 19' in S.No.369/7. In the property covered under Ext.A1-Will, the owner of the northern property is stated to be one Rajamanickam. According to the learned counsel for the defendant, Rajamanickam is one of the vendors of the defendant's vendor Ponnammal. This apart, the eastern boundary appears to be the same, and it is described as the property of one Anthonysamy. This Court finds that, on the face of it, it appears that the property covered under Ext.A1 and the property covered under A-schedule in Ext.B3 are not identical.

7. However, the learned counsel for the respondents submitted that the same Ext.A1-Will was also produced in O.S.No.324 of 1996 and after considering all the evidences before it, the

trial Court has declared the defendant's title to A-schedule property in Ext.B3, the decree passed in that suit. Even on the side of the plaintiff, he examined himself as PW1, and admits that the property covered under Ext.A1 is part of A-schedule property in the very suit. Inasmuch as the defendant's title in the entire A-schedule property has been declared, the plaintiff cannot make any claim of possession over any portion of A-schedule property in O.S.No.324 of 1996. He further added that present suit is barred by res judicata in view of the earlier suit filed by the defendant against the plaintiff, his father and his brothers in O.S.No.324/96.

8. As stated earlier, the suit property in the present suit and the suit property in the earlier suit in O.S.No.324/96 are not identical, as a scrutiny of Exts.A-1 and B-3, more particularly the boundaries of the respective properties covered by them, would reveal that the property covered under Ext.A1, under which the plaintiff claims title lies to the south of the property covered under Ext.B3 decree passed in O.S.324/96. Inasmuch as the decree in Ext.B3 has become conclusive and binding on the plaintiff, the plaintiff cannot seek any right within the property covered by Ext.B3, decree. However, as already stated, the property of the plaintiff that he claims under Ext.A1 lies only to the south of the property covered under Ext.B3 decree.

9. Here, the learned counsel for the defendant/respondent would submit that the western boundary of the plaintiff's property covered under Ext.A1 is described as a property of one Thaiyanayagiammal. She is the relative of the plaintiff and submitted that the defendant's vendor has already purchased Thaiyanayagiammal's property and has already sold the same and this is also covered under Ext.B1, sale deed.

10. Still, the submissions made by the learned counsel for the appellant is significant. Even though the correlation regarding survey numbers given in the patta may have shown some discrepancy, the fact remains that going by the title deed, the defendant's property and the plaintiff's property are distinct and therefore remedy should not be denied to the plaintiff, based on the title deed.

11. This Court finds merit in the said statement of the counsel for the appellant. So far as the questions of law are concerned, necessarily questions 1 and 2 have to be decided in favour of the plaintiff/appellant, since it is too well settled that patta is not a document of title. Here this Court records that while it is an indisputable fact that the correlation given for the old Survey No.369/7 in Ext.A2 is different from the one in the suit property, yet, as indicated earlier this Court has

decided the issue based on the title of the parties. Even in suit for bare injunction what is significant is not mere possession, but legality or lawfulness of such possession.

12. In conclusion, this Court allows this appeal and sets aside the judgment and decree dated 13.12.2004 passed in A.S.No.9 of 2004 on the file of II Additional Sub Court, Cuddalore, passes restrains the defendants from trespassing into any area beyond the southern and eastern boundary of their property as covered under Ext.B3 and thereby No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

- 1.The II Additional Sub Judge,
Cuddalore.
- 2.The Additional District Munsif,
Cuddalore.
- 3.The Section Officer
VR Section, High Court, Madras.

+1cc to M/s.R.Sunil Kumar, Advocate Sr.66257
+1cc to Mr.J.Rajmohan, Advocate Sr.66707

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S.A.No.1264 of 2005

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