

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.Nos.475 and 739 of 2005
and
CMP.Nos.7532 and 10352 of 2005

SA.No.475 of 2005

1. S.Sivakumar
2. S.Raja

... Appellants/Plaintiffs 3 & 4

Vs.

1. Shoba Patnaik
2. Amirthavalli
3. S.Shanthi
4. S.Amudha

... 1st Respondent/Defendant

... Respondents 2 to 4/
Plaintiffs 2, 5 & 6

SA.No.739 of 2005

1. S.Sivakumar
2. S.Raja

... Appellants/Defendants 2 & 3

Vs.

1. Shoba Patnaik
2. S.Shanthi
3. S.Amudha
4. Amirthavalli

... 1st Respondent/Plaintiff

... Respondents 2 to 4/
Defendants 4 to 6

PRAYER in SA.No.475 of 2005 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 13.10.2004 passed by the Principal District Judge, Vellore in A.S.No.125 of 2003 confirming the judgment and decree dated 29.09.2003 passed by the Additional District Munsif, Vellore in O.S.No.334 of 1993.

PRAYER in SA.No.739 of 2005 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 13.10.2004 passed by the Principal District Judge, Vellore in A.S.No.124 of 2003 confirming the judgment and decree dated 29.09.2003 passed by the Additional District Munsif, Vellore in O.S.No.297 of 1993.

For Appellants : Mr.K.S.Gnanasambandan
(in both appeals)

For Respondents : set exparte
(in both appeals)

COMMON JUDGMENT

S.A.No.475 of 2005 has been filed by the plaintiffs 3 and 4 in OS.No.334 of 1993 against the judgment and decree passed by the Principal District Judge, Vellore in AS.No.125 of 2003 dated 13.10.2004.

SA.No.739 of 2005 has been filed by the defendants 2 and 3 in OS.No.297 of 1993 against the judgment and decree passed by the Principal District Judge, Vellore in AS.No.124 of 2003 dated 13.10.2004.

2. One Shoba Patnaik (First respondent in both the second appeals) had filed a suit against one Suseela Ammal in OS.No.411 of 1986 on the file of the District Munsif, Gudiyatham, to declare that she is the absolute owner of the suit property and also to restrain the defendant therein from interfering with her peaceful possession and enjoyment of the same and also to pay a sum of Rs.2,000/- being the value of trees cut and carried away by the defendant viz ., Suseela Ammal. The said suit was transferred to the Additional District Munsif, Vellore and renumbered as O.S.No.297 of 1993. The said Suseela Ammal had filed a suit in OS.No.545 of 1998 on the file of the District Munsif, Gudiyatham against the said Shoba Patnaik to restrain her from interfering with her possession and enjoyment of the suit property. The said suit was also transferred to the Additional District Munsif, Vellore and renumbered as O.S.No.334 of 1993. During pendency of the said suits, the said Suseela Ammal died and her legal representatives have been impleaded as defendants 2 to 6 in OS.No.297 of 1993 and as plaintiffs 2 to 6 in OS.No.334 of 1993.

3. The learned Additional District Munsif, Vellore by the common judgment dated 29.09.2003 had decreed the suit in OS.No.297 of 1993 as prayed for with costs. He dismissed the suit without costs in OS.No.334 of 1993 without costs. Aggrieved by the same, the defendants 2 and 3 in OS.No.297 of 1993 had filed an appeal in AS.No.124 of 2003 and the plaintiffs 2 and 3 in OS.No.334 of 1993 had filed an appeal in AS.No.125 of 2003 on the file of the Principal District Judge, Vellore. The learned

Principal District Judge, Vellore, by the common judgment dated 13.10.2004 had partly allowed the appeal in A.S.No.124 of 2003 and modified the decree passed by the trial court in O.S.No.297 of 1993 to the effect that the plaintiff therein namely Shoba Patnaik is entitled to decree for declaration of title of the suit property, but she is not entitled for the relief of injunction. However, she dismissed the appeal in AS.No.125 of 2003 and confirmed the decree passed by the trial Court in OS.No.334 of 1993. Feeling aggrieved, the plaintiffs 3 and 4 in OS.No.334 of 1993 have filed the second appeal in SA.No.475 of 2005. The defendants 2 and 3 in OS.No.297 of 1993 have filed the second appeal in SA.No.739 of 2005.

4. For the sake of convenience, the parties are referred to as described in OS.No.334 of 1993.

5. The averments made in the plaint filed in OS.No.297 of 1993 are as follows:

The plaintiff is the absolute owner of the suit property. The suit property originally belongs to one Santhoji Rao who died intestate leaving behind his daughter viz., Radha Bai. Radha Bai also died leaving behind her daughter namely the sole plaintiff (Shoba Patnaik). The suit property was leased out for Rs.2/- per month to one Narayana Rao who is the husband of the first defendant viz., Suseela Ammal. Subsequently, the said Narayana Rao died and after his death, his wife Suseela Ammal (1st defendant) had continued as tenant. Radha Bai executed a Will dated 13.08.1984 in favour of her daughter (Plaintiff-Shoba Patnaik). In pursuance of the said will, the plaintiff took possession of the suit property, but, subsequently the defendants attempted to disturb the plaintiff's possession and hence, the plaintiff was constrained to file the above suit for the relief of declaration of her title and for permanent injunction.

6. The averments made in the written statement adopted in O.S.No.297 of 1993 are as follows:

It is false to state that the plaintiff is in possession by virtue of the Will dated 13.08.1984 and it is false to allege that the husband of the defendant was inducted as a tenant in the suit property. The suit property is situated in Survey No.138/1 of Mettukulam village which is a Gramanatham Poromboke land in which the defendant put up two thatched houses 16 years ago and the defendant is in possession and enjoyment of the suit property. The defendant is not at all a tenant under the plaintiff. Therefore, the plaintiff is not in possession of the suit property. She cannot get the relief of injunction. Therefore, she prayed to dismiss the suit.

7. The averments made in the plaint in OS.No.334 of 1993 are in brief as follows:

The suit property is a Gramanatham and the plaintiff Suseela Ammal had occupied the same 15 years ago and she put up two thatched houses. She has been in possession and enjoyment of the same without any disturbance from any one, but recently, the defendant tried to evict the plaintiff from the suit property by force and hence the plaintiff was constrained to file the suit for permanent injunction.

8. The averments made in the written statement filed in O.S. 334 of 1993 are in brief as follows:

It is false to state that the suit property is a Gramanatham and the same was occupied by the plaintiff fifteen years ago and she put up two thatched houses. The suit property originally belonged to the defendant's grandfather Santhoji Rao who died intestate leaving behind his daughter Radha Bai and after his death, the said Radha Bai succeeded to the suit property. The said Radha Bai executed a Will on 13.08.1984 in favour of the defendant and subsequently, she died and after her death, the defendant succeeded to the suit property. During the life time of Radha Bai, the plaintiff's husband Narayana Rao occupied the suit property as tenant under the said Radha Bai and therefore, she cannot claim any right over the suit property and hence she prayed to dismiss the suit.

9. Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried both the suits jointly. During trial, evidence was recorded in O.S.No.334 of 193 and the same has been treated as evidence in O.S.No.297 of 1993. On the side of the plaintiff, the plaintiff in O.S.No.334 of 1993 namely Suseela Ammal was examined as PW.1 and one more witness was examined as PW.2 and marked Exs.A1 to A51 as exhibits. On the side of the defendants, three witnesses were examined as D.W.1 to D.W.3 and marked Exs.B.1 to B.24 as exhibits.

10. The learned District Munsif after considering the materials placed before him, found that the plaintiff in O.S.No.297 of 1993 namely Shoba Patnaik is the absolute owner of the suit property and the defendants in that suit are only tenants. Accordingly, he decreed the suit in OS.No.297 of 1993 as prayed for, but, he dismissed the suit in OS.No.334 of 1993. Aggrieved by the same, the defendants 2 and 3 in OS.No.297 of 1993 had filed an appeal in AS.No.124 of 2003, the plaintiffs 3 and 4 in O.S.No.334 of 1993 had filed an appeal in A.S.No.125 of 2003 on the file of the Principal District Judge, Vellore. The

Principal District Judge, Vellore by the common judgment dated 13.10.2004 had allowed the appeal in AS.No.124 of 2003 partly and granted decree for declaration of title, but, she dismissed the suit in respect of injunction. However, she dismissed the appeal in AS.No.125 of 2003 confirming the judgment and decree in OS.No.334 of 1993. Feeling further aggrieved the plaintiffs 3 and 4 in O.S.No.334 of 1993 have filed the second appeal in SA.No.475 of 2005 and the defendants 2 and 3 in O.S.No.297 of 1993 have filed the second appeal in S.A.No.739 of 2005.

11. This Court at the time of admitting the second appeals has formulated the following substantial questions of law:

" 1. Whether the Courts below were right in rejecting the claim of the appellants that they and their mother were in possession and enjoyment of the suit property for a long time and they were paying the property tax and the electricity bill in their name?

2. The respondents having admitted that she had foregone the alleged rent and failed to claim possession of the suit property are no sufficient indication that she had no title to the suit property?

3. Is the first appellate court right in rejecting the claim of the appellants though it found that the appellants were in possession of the suit property and the prayer of the respondents for injunction was declined."

12. After receipt of notice, the first respondent alone initially appeared through Advocate but, subsequently her advocate reported no instructions and hence she was called and set ex-parte. After receipt of notice, the other respondents not at all appeared and hence they were also set ex-parte. Hence, after hearing the arguments of M/s.K.S.Gnanasambandan, the learned counsel for the appellants and perusing the records, the judgment is being passed in these second appeals.

13. Substantial Questions of Law 1 to 3:

The learned counsel for the appellants has submitted that the courts below failed to consider that the suit property is the Gramanatham Poramboke land. The person who occupies the same has to be presumed that he is the owner of the property. He further submitted that absolutely there is no evidence that the first respondent is the owner of the suit property and the original plaintiff Suseela Ammal's husband Narayana Rao was a

tenant under the first respondent. He further submitted that the first appellate court though came to the conclusion that the appellants herein are in possession of the suit property as tenants, but refused to grant injunction to protect their possession. He further submitted that the oral and documentary evidence adduced by the appellants would clearly show that the appellants herein are in possession of the suit property and therefore their possession has to be protected by means of injunction and he prayed to allow the second appeals and set aside the judgments and decrees passed by the courts below and decree the suit in OS.No.334 of 1993 as prayed for and dismissed the suit in OS.No.297 of 1993.

14. The Trial court after taking into consideration oral and documentary evidence came to the conclusion that the plaintiff in OS.No.297 of 1993 is the absolute owner of the suit property and that the plaintiffs in OS.No.334 of 1993 are only tenants under the plaintiff in OS.No.297 of 1993. The first appellate court also concurrently found that the plaintiff in OS.No.297 of 1993 is the absolute owner of the suit property and the defendants therein (plaintiffs in OS.No.334 of 1993) are only tenants under her. In the said concurrent findings, this court cannot interfere. However, though the first appellate court categorically held that the appellants are in possession of the suit properties and it ought to have granted decree atleast for a limited period i.e., until they are evicted by due process of law. But the appellate court had dismissed the suit totally. Therefore, the judgment and decree passed by the first appellate court in AS.No.124 of 2003 has to be confirmed. But in so far as the judgment and decree passed in AS.No.125 of 2003, are concerned, they have to be modified to the effect that the plaintiffs therein can be evicted only by due process of law. Accordingly, these substantial questions are answered.

15. In the result,
SA.No.475 of 2004 is partly allowed. The judgment and decree passed by the Courts below are set aside and the suit in OS.No.334 of 1993 is decreed to the effect that the plaintiffs therein are entitled to the relief of permanent injunction until they are evicted by due process of law.

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SA.No.739 of 2005 is dismissed confirming the judgment and decree passed by the first appellate court in AS.No.124 of 2003. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Vv

To

1. The Principal District Judge,
Vellore
2. The Additional District Munsif,
Vellore

+1 cc to Mr.P.Chandrasekar Advocate sr87191

S.A.Nos.475 and 739 of 2005
and
CMP.Nos.7532 and 10352 of 2005

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