IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
27~02~2019	06~03~2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

S.A.No.477 of 2012

Arulmigu Nithyakalyanaswamy Temple
Thiruvadanthai Village and Post
Chengalpattu Taluk
Rep. By its Executive Officer
... Appellant/Appellant/1st Defendant

Versus

1. Sampath ... 1st Respondent/1st Respondent/Plaintiff

2. Devaraj ... 2nd Respondent/2nd Respondent/2nd Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree of Principal Sub Court, Chengalpattu in A.S.No.13 of 2011 dated 17.12.2011 confirming the Judgment and Decree in O.S.No.271 of 2000 of District Munsif Court, Chengalpattu dated 06.09.2010.

For Appellant .. Mr.V. Raghavachari

For Respondents .. Mr.B. Aravind Srevatsa
for M/s.T.V.Krishnamachari

JUDGMENT

Aggrieved over the concurrent finding of the trial Court and First Appellate Court decreeing the suit for Permanent Injunction in respect of 'A' and 'B' Schedule property the present Second Appeal came to be filed.

2. The brief facts leading to file this Second Appeal is as under:

2.(a) The suit properties are classified as Grama Natham and the Plaintiff is in enjoyment of the same. His predecessor also in enjoyment of the suit property from time immemorial. They put up thatched hut and using the same as residence. The suit properties are continuous and hut of the plaintiffs party covers in 'A' and 'B' Schedule. The Government has issued Patta in favour of the Plaintiff bearing Patta No.595. Therefore, the Plaintiff become the owner of the property. The Village Panchayat assessed house tax to the hut of the Plaintiff and collecting house tax. The Defendants are strangers. Second Defendant is native of Plaintiff village and working under the First Defendant. On 24.09.2000 the Defendants trespassed in the suit properties and attempted to destroy the suit properties and the same was thwarted. Hence the suit.

3. It is the case of the Defendant that the suit properties are neither adjacent nor contiguous. Survey No.390 absolutely belongs to the Temple. It has been recorded as “Thirukkulam” in Revenue records. The Defendant has been in absolute enjoyment of the same and the has renovated the “Thirukkulam” at the cost around Rs.15,00,000/-. The Defendant is performing the float festival every year in the month of “Chithrai” at the time of “Brahmmotsavam”. The vacant land around the temple tank has been fenced. The adjoining survey No.104 belonging to the Defendants. Defendants have no necessity to encroach upon their own land. On the other hand the Plaintiff attempted to trespass upon the Defendants property by put up a fence. Plaintiff has no right over in Survey No.390/2 and the patta issued to him is also illegal. The Revenue authorities have no right to sub-divide the land belong to the Defendants. The Defendants continuously in possession and enjoyment of the property Survey No.390/2 which is part of temple tank, as true owner. The Plaintiff has neither title nor possession. Hence, prays for dismissal of the suit.

4. On the side of the Plaintiff, he himself examined as P.W.1 and Exs.A1 to A10 were marked. On the side of the Defendants two witnesses were examined and Exs.B1 to B13 were marked. The trial Court has framed the following two issues:

1. Whether the Plaintiff is entitled for the relief of Permanent Injunction as prayed for?

2. To what other relief the Plaintiff is entitled to?

5. On the basis of the evidence and materials the trial Court decreed the Suit. The First Appellate Court also confirmed the same, as against which the present Second Appeal has been filed.

6. The learned counsel appearing for the Appellant submitted that the trial Court as well as the First Appellate Court have not appreciated the evidence properly. Exs.B.2 to 5 and 9 indicate that the Appellant has filed Appeal against grant of Patta. Similarly Ex.B.5 Proceedings of the Collector is also clearly indicated that the Patta issued in favour of the Plaintiff would be cancelled within 10 days and the evidence of C.W.1 also shows that the Plaintiff has no possession over the 'B' Schedule Property. Similarly P.W.1 himself admitted that Eastern side of 'A' Schedule property tank is situated. The above fact clearly indicate that 'B' schedule property is "Thirukkulam" belongs to the Temple and the sub-division has been taken place only in the year 1996 without notice to the Temple. Therefore merely on the basis of the Sub-Division when 'B' Schedule property belongs to temple, the lower courts granted decree for Permanent Injuunction in respect of 'B' schedule property cannot be sustained. Hence, the Judgment of the trial Court and First Appellate Court is required to be interfered.

7. The learned counsel appearing for the Respondent submit that the Revenue records clearly show that the Plaintiff is in possession of the property. The trial Court as well as the First Appellate Court clearly considered the documents and decreed the suit for bare injunction.

8. The Appellants have raised the following Substantial Questions of Law in this Second Appeal:

> "i. Whether the Courts below are justified in decreeing the suit for injunction in the absence of possession of suit 'B' Schedule property?
>
> ii. Whether the courts below are justified in shifting the burden of proof on the defendant when it is the duty cast upon the Plaintiff to establish possession?
>
> iii. Whether the courts are justified in decreeing the suit for bare injunction in the absence of declaratory relief, when the defendant specifically denied the title of the Plaintiff over the suit 'B' Schedule property?
>
> iv. Whether the courts below are justified in constructing the Gramanatham as Government property when this Hon'ble court stated

contrary in 2010(1) L.W.123?

v. When the Plaintiff admitted that eastern side of 'A' Schedule property is Thirukkulam, is the court below right in decreeing the suit in respect of 'B' schedule property?

vi. Whether the courts below are justified in presuming possession of the Plaintiff under Exs.A2 to A8, when the P.W.1 admits that the documents are did not identify 'B' Schedule property?

vii. In respect of the pleadings and evidence, that the Plaintiff has in possession part of 'B' schedule property, is the courts below are justified in decreeing the suit in respect of entire 'B' schedule property?

viii. Whether the Courts below are justified in decreeing the suit as that no appeal filed against Ex.A.1, when the documents under Exs.B.2 to B.5 and B.9 and C.W.1 evidence clearly establish the appeal against Ex.A.1?

ix. Are the Courts below justified in decreeing the suit, when the plaintiff failed to establish his possession within the specified boundaries?"

9. I have perused the materials and documents. The suit has been laid on the basis of the the Patta. On perusal of the pleadings and finding of the trial court and First Appellate Court there is no dispute with regard to 'A' schedule property. 'A' schedule property is in New Survey No.281/21 and old Survey No.127/4 measuring 4 ½ cents. 'B' Schedule property is in different Survey No.390/3 and Old Survey No.127/4 measuring about 3 ½ cents. It is the contention of the Plaintiff that both the properties are contiguous and they built a house. Whereas it is the main contention of the Defendants 'B' Schedule property is "Thirukkulam" belongs to the Temple. Though the Patta originally issued in the name of the Plaintiff, the same was challenged and merely issuance of Patta to the Temple tank, the Plaintiff cannot claim injunction. Exs.B.2 to B.5 and B.9 were filed to show that challenge has been made for issuance of Ex.A.1 Patta in the name of Plaintiff in respect of the temple land. C.W.1 evidence also clearly show that he has filed Appeal against Ex.A.1. Ex.A.10 encumbrance certificate when carefully seen, Eastern Boundary and Southern Boundary is in Survey

No.389/21 shown as temple “Thirukkulam”. Plaintiff has also admitted that Eastern side of 'A' schedule property is “Thirukkulam”. It is also admitted in his evidence that vacant land is available in the southern side of “Thirukkulam”. His evidence also indicate that in between 'A' schedule property and Temple Thirukkulam no property is available. When the eastern boundary at the 'A' schedule property shown as "Thirkkulam" the claim of the Plaintiff that he is in possession of the Eastern side viz., 'B' schedule property, is highly improbable.

10. Further, the trial Court and First Appellate court relied upon the House Tax receipts. Though there were House Tax receipts they do not identify the 'B' schedule property. There is no reference that the receipts relate only to the 'B' schedule property. Ex.B.1 Patta issued only in the name of the Temple. Patta also issued in the name of the Plaintiff only in the year 1996 dividing the old survey No.127/4(New Survey No.389/2). The documents Exs.B2, B4 and B9 letters addressed by the Revenue officials clearly indicate that issuance of Patta is not according to law. Ex.B.1 Patta in fact issued in the name of the temple. Executive Officer examined as D.W.1, has admitted in his cross examination that except Ex.D.1 there was no document available for temple. It cannot be presumed that the Plaintiff has a possession over "Thirukkulam" which shown as Eastern Boundary in Ex.A.1. Ex.B.7 and B8 the temple tank shown situated in Survey No.390 and there are several other tanks also shown in the old survey No.127. When the sub-division itself doubtful and the Revenue Department entertained legality of the issuance of patta and started proceedings to cancel the Patta as could be seen from Ex.B.9. Certainly, there is a cloud over the title of the Plaintiff. Plaintiff claims to be the owner of the property. When the Defendant has shown cloud over the title of the Plaintiff and 'B' schedule property said to be the Thirukkulam. It is also shown in the old documents Ex.B.7 and Ex.B.8 FMB Sketch. Merely on the basis of Patta issued by the Revenue authorities in the year 1996 without proper notice to the temple, the Plaintiff cannot claim that he has absolute ownership and also possession of the property.

11. Therefore, merely on the basis of Ex.A2 to Ex.A8 House Tax receipts and Chitta issued by the Revenue officials which are not correlated with the 'B' schedule property, the Injunction cannot be maintained particularly in the light of the admission of P.W.1 that Eastern portion of the property is a temple tank. If at all Plaintiff relies the patta and claims his title, he has to file suit for declaration and to establish his title first. When the temple document particularly FMB Sketch and other documents indicate that 'B' Schedule property is only shown as "Thirukkulam" no injunction can be granted. Accordingly the Substantial Questions of Law answered in favour

of the Appellant. Accordingly Second Appeal is allowed in part, with regard to 'B' Schedule property alone.

12. In the result, The Second Appeal is partly allowed. The Decree and Judgment of the Courts below are set aside only in respect of 'B' Schedule property. As far as 'A' Schedule property is concerned the decree and judgment of the Courts below are confirmed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

ggs.

To

1. The Principal Sub Judge, Chengalpattu

2. The District Munsif, Chengalpattu

+1cc to Mr.V. Raghavachari, Advocate SR.No.20629

+1cc to M/s.T.V.Krishnamachari, Advocate SR.No.21156

S.A.No.477 of 2012

RK(CO)
GMY(15/10/2019)