

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :26.07.2019

Pronounced on :07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.715 of 2015

and

M.P.No.1 of 2015

1.Kannan
2.Selvi
3.Nallammal

... Appellants/Defendants

Vs

1.Govindan
2.Alagammal

... Respondents/Plaintiffs

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Sub Court, Kallakurichi, in A.S.No.27 of 2014 dated 10.04.2015 partly reversing the judgment and decree of the Principal District Munsif, Kallakurichi, in O.S.No.439 of 2009 dated 14.02.2014.

For Appellants : Mr.P.Valliappan

For Respondents : Mr.V.Manohar

JUDGMENT

The defendants in O.S.No.439 of 2009 on the file of the Principal District Munsif Court, Kallakurichi, are the Appellants herein.

O.S.No.439 of 2009 (The Principal District Munsif Court, Kallakurichi):-

2. O.S.No.439 of 2009 had been filed by the plaintiffs, namely, Govindan and his wife Alagammal against three defendants namely, Kannan, his wife Selvi and his mother Nallammal, seeking a judgment and decree of permanent injunction restraining the defendants from interfering with the peaceful possession of the

plaintiffs in the suit schedule property namely, agricultural land in S.No.216/1 measuring 0.20 cents and S.No.216/3 measuring 0.15 ½ cents and S.No.360/2B measuring 0.60 cents in Madhavacherry Village, Kallakurichi. It is the case of the plaintiffs that the 2nd item of suit property namely, the lands at S.No.216/3 originally belonged to Subramaniam S/o. Natesa Mudaliyar, who had been allotted to the said land by a partition. It was stated that the said Subramaniam, by an oral sale about 20 years prior to the institution of the suit conveyed the said land to one Rangasamy S/o. Maruthamuthu Muthaliyar. It was stated that Rangasamy then dug a well in the 1st item of suit property. It was then stated that Rangasamy had conveyed the 1st and 2nd items of suit property by an oral sale about 10 years prior to the institution of the suit to the 2nd plaintiff, Azhagammal.

3. It was further stated that the plaintiffs were in possession of the said 1st and 2nd items of suit property. It was also stated that since the 1st and 2nd items of suit property were adjacent to the 3rd item of suit property namely, lands in S.No.360/2B which was admitted even in the plaint to be a Government poromboke land, the plaintiffs took possession of the same and continued to enjoy the same. It was stated that the 1st item of suit property was an odai poromboke land. It was also stated that the 2nd item of suit property namely, S.No.216/3 was the subject matter of a compromise decree in an earlier suit in O.S.No.707 of 1998 on the file of District Munsif Court, Kallakurichi. It was stated that the plaintiffs continued to be in possession. It was also stated that the defendants have laid a rival claim over the lands and also produced documents relating to possession and enjoyment. It was under these circumstances, that the suit had been filed seeking permanent injunction restraining the defendants from interfering with peaceful possession.

4. In written statement filed by the 1st defendants which had been adopted by 2nd and 3rd defendants, the facts averred in the plaint were totally denied. It was very specifically stated that the defendants are not interested in item No.3 of the suit property namely, S.No.360/2B. It was further stated that the defendants actually have title over the item Nos.1 and 2. It was stated that the defendants were in possession in their right as owners of the 1st and 2nd items of the suit properties. It was stated the 2nd item of suit property was the subject matter of a registered sale deed, dated 25.05.1999. It was stated that the alleged compromise said to have been entered into with respect to the said property in O.S.No.707 of 1998 on the file of the District Munsif Court, Kallakurichi, was a fraudulent

transaction and no reliance can be placed on the same. The defendants reiterated that they are in possession, exercising their rights as title holders.

5. On the basis of the above pleadings, the learned Principal District Munsif, Kallakurichi, framed the following issues for trial:

- "1. Whether the sale deed dated 25.05.1999, is a true and genuine document?
2. Whether the defendants are in possession of the 1st item of suit property?
3. Whether the plaintiffs are entitled to the relief of permanent injunction?
4. To what other reliefs are the plaintiffs entitled to?"

6. The parties were then invited to adduce evidence. Accordingly, on the side of the plaintiffs, four witnesses namely, 1st plaintiff Govindan as PW-1, 3 independent witnesses Thamizharasan as PW-2, Ramasamy as PW-3 and Annamalai as PW-4, were examined. On the side of the defendants, the 1st defendant, Kannan was examined as DW-1 and another witness, by the same name Kannan but son of Perumal was examined as DW-2. The plaintiffs marked Exs.A1 to A6. These included a rough sketch as Ex.A1, a sale deed in favour of Govindan, dated 30.03.1998 as Ex.A2, the compromise deed dated 22.05.1999 as Ex.A3, a sale deed in favour of Subramanian, dated 25.05.1999, as Ex.A4, and the compromise decree in O.S.No.707 of 1998, dated 28.09.1999 as Ex.A5. On the side of the defendants, a sale deed in the name of the 2nd defendant, Selvi, dated 15.06.2009, was marked as Ex.B1. The land register was marked as Ex.B2. The sale deed in favour of Subramanian, dated 25.05.1999 was marked as Ex.B5 and a settlement deed in favour of Azhagammal, dated 13.05.2008 was marked as Ex.B6. During the course of trial, an Advocate Commissioner had also been appointed and his report was marked as Ex.C1 and the rough sketch as Ex.C2.

7. On the basis of the oral and documentary evidence adduced and let in, the learned Principal District Munsif, Kallakurichi, thought it fit to dismiss the suit primarily holding that since the defendants have raised an issue regarding their title over the lands, a suit for bare injunction was not maintainable and the plaintiff should have sought the relief of declaration of title also. It was specifically found that though the defendants have not claimed any right over the item No.3 of the suit property since, it was a Government poromboke land, a relief of permanent injunction cannot be granted. It was also found that the defendants have set up a specific rival title

over the item No.2 of the suit property. It was also found that item no.1 was odai poromboke over which there was also rival claims of title and consequently, it was finally held that the suit should suffer an order of dismissal and accordingly, it was dismissed.

A.S.No.27 of 2014 (The Sub Court, Kallakurichi):-

8. The plaintiffs, aggrieved by the said judgment of the learned Principal District Munsif, Kallakurichi, preferred a first appeal before the Sub Court, Kallakurichi. The learned Sub Judge, took up the appeal suit for consideration on 10.04.2015 and by judgment of even date re-appraised the evidence available. The learned Sub Judge, took into consideration an application filed under Order 41 Rule 27 of CPC to mark the certified copy of the sale deed, dated 25.05.1999, and a series of kist receipts in the name of the plaintiff and proceeded to examine those documents also. Those two documents were marked as Exs.A7 and A8.

9. On re-appraisal of the evidence, the learned Sub Judge partly allowed the appeal and held that the appellants / plaintiffs were entitled to an order of injunction with respect to item Nos.1 and 3 of the suit property, but negatived the relief sought with respect to item No.2 of suit property. The primary reason for reaching that conclusion was that the defendants have failed to prove that they were in possession of item Nos. 1 and 3. Further, the learned Sub Judge also took into consideration, the kist receipts which were marked as Ex.A8 during the course of first appeal proceedings and held that the said kist receipts established that the plaintiffs were in possession. Further, it was also held that as a fact that, the plaintiffs were also in possession of item No. 3 of the suit property. In view of the said finding, the Trial Court was interfered with and a judgment and decree in favour of the plaintiffs / appellants was passed only with respect to item Nos. 1 and 3 of the suit property.

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10. The Second Appeal had been preferred by the defendants and was admitted on 28.08.2015 on the following Substantial Question of Law:

"Whether the respondents can maintain the suit for bare injunction especially when the appellants have set up title in themselves and there is a serious title dispute?"

The plaintiffs did not file any appeal questioning denial of any relief over item No.2 of the suit property.

11. Heard Mr.P.Valliappan, learned counsel for the appellants / defendants and Mr.V. Manohar, learned counsel for the respondents / plaintiffs.

12. Mr.P.Valliappan, learned counsel for the appellants questioned the rationale of the findings of the First Appellate Court in modifying the Judgment passed by the Trial Court and in granting a decree of permanent injunction with respect to item Nos.1 and 3 of the suit property. The learned counsel specifically pointed out that the appellants / defendants have never laid a claim over the 3rd item of suit property and even otherwise, it was for the respondents / plaintiffs to establish title and possession with respect to the 1st item of suit property. It was pointed out that reliance placed by the learned First Appellate Court on the kist receipts, which were marked as Ex.A8 series, was inappropriate since the kist receipts had been obtained subsequent to the suit and also related to a period subsequent to the suit namely from the year 2010 onwards whereas, the suit had been instituted in the year 2009. It was therefore argued that since the respondents / plaintiffs have not established either title or possession and particularly, when the appellants / defendants have raised a dispute regarding title and had also set up an alternate plea of title on themselves, a suit for permanent injunction should have been dismissed as not maintainable.

13. Per contra, Mr.V.Manohar, learned counsel for the respondents / plaintiffs supported the judgment under the appeal. It was specifically pointed out that respondents / plaintiffs have established not only possession but also title and have also in the plaint traced the line of succession relating to the title of item No.1 of the suit property.

14. I have carefully considered the arguments advanced.

15. The plaintiffs originally filed the suit with respect to 3 items of suit property namely, S.No.216/1 measuring 0.20 cents and S.No.216/3 measuring 0.15 ½ cents and S.No.360/2B measuring 0.60 cents in Madhavacherry Village, Kallakurichi. Even in the plaint, it had been stated that S.No.360/2B was Government poramboke land. It had been stated that the 1st item of suit property namely, S.No.216/1 was an odai poramboke land. The plaintiffs also claimed title through an oral sale deed. Conveying immovable property of a value of more than Rs.100/- by an allege oral sale is impermissible in law.

16. The learned First Appellate Court Judge had placed reliance on the compromise decree in an earlier suit in O.S.No.707 of 1998. The subject matter of that suit was 2nd item

of suit property namely, S.No.216/3. However, on the basis of the compromise deed, the learned First Appellate Court Judge had granted a decree with respect to 1st item of suit property namely, S.No.216/1. On the face of it, the judgment of the learned First Appellate Court cannot be sustained on facts. Even otherwise with respect to item No.3 of the suit property, the appellants in their written statement had very categorically stated that they are not laying any claim over the said land, and that the said lands are Government poramboke lands. When any order is passed either in the nature of declaration or in the nature of injunction over a Government poramboke land, necessarily the Revenue authorities should have been parties to the suit. Quite, unlike of mis-joinder of parties, non-joinder of parties would render the suit bad in law.

17. It is also seen that reliance is placed by the First Appellate Court on documents presented under Order 41 Rule 27 CPC, namely, kist receipts, Ex.A8. The suit was instituted in the year 2009, whereas, kist receipts were of the year 2010 onwards. They can never, by any stretch of imagination, prove in possession from the year 2009 onwards, because the documents themselves are of the year 2010 onwards.

18. In their written statement, the appellants/defendants have also set up a rival claim of title. They claim that the property was originally assigned to one Ponnusamy from whom, his son Subramanian obtained the property, who had settled the same in favour of his wife and daughter, who in turn sold the property to the defendants. When these complicated sets of facts tracing title are presented before this Court naturally, the issue relating to title arises for consideration and when no relief has been sought to declare that title, no relief granting injunction can be granted.

19. In view of the above reasons, I hold that the reasonings of the learned First Appellate Court Judge have to be interfered with and I answer the substantial question of law that a suit for permanent injunction is not maintainable, particularly when the appellants / defendants have set up title on themselves. Accordingly, the Second Appeal is allowed. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Court,
Kallakurichi.

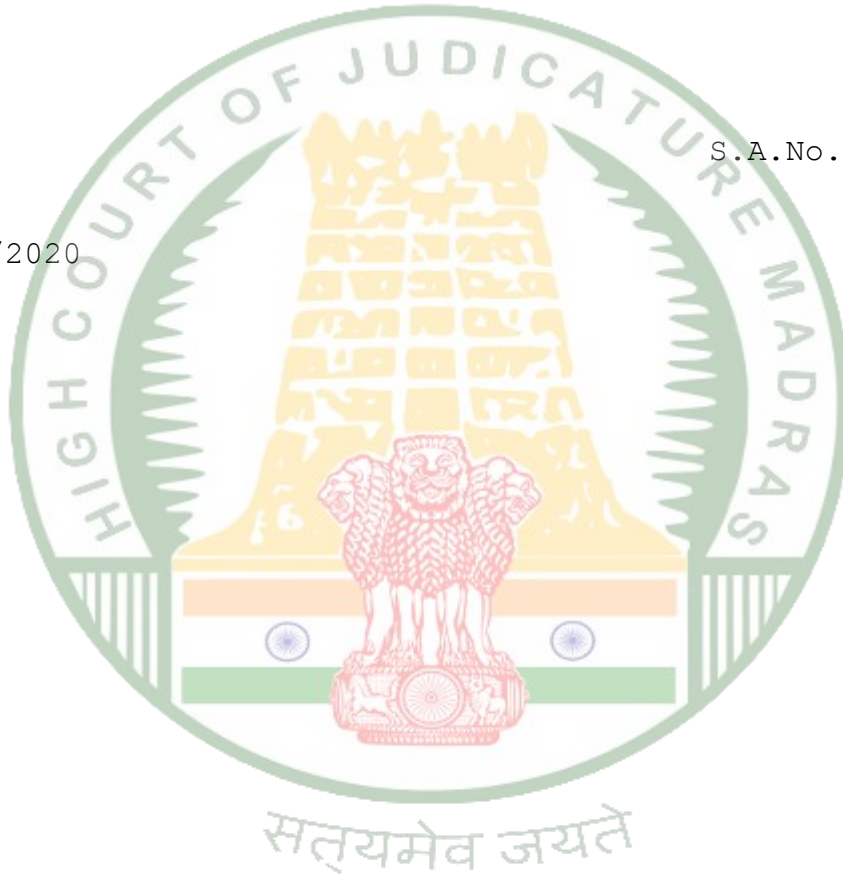
2.The Principal District Munsif,
Kallakurichi.

+lcc to Mr.P.Valliapan, Advocate Sr.67958

+lcc to Mr.V.Manohar, Advocate Sr.67856

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