



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON : 08.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.674 of 2019
and
CMP No.12551 of 2019

Durai Kuppuswamy

...Appellant/2nd Defendant

Vs.

1. Abdul Sukur
Veeraraghavalu Naidu (deceased)
2. Vasanthi
3. Hari
4. Vatchala
5. Nalini

....R1/Plaintiff

...Respondents 2 to
6/Defendants 1,3 to 6

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, challenging the judgment and decree passed in A.S.No.95 of 2014 dated 07.02.2019 on the file of the Sub Court, Arakkonam, Vellore District confirming the judgment and decree in O.S.No.452 of 1986 dated 22.10.2010 on the file of the District Munsif Court, Arakkonam, Vellore District.

For Appellant : Mr.T.N. Rajagopalan
for M/s. S.V. Banupriya

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 07.02.2019 passed in A.S.No.95 of 2014 on the file of the Subordinate Court, Arakkonam, Vellore District, confirming the judgment and decree dated 22.10.2010 passed in O.S.No.452 of 1986 on the file of the District Munsif Court, Arakkonam, Vellore District.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.



3. According to the plaintiff, the suit property is a gramamatham poramboke land and the same has been in his occupation for the past 20 years and he had been paying the penal assessment in respect of the suit property and running a vessel business in the suit property by putting up a thatched house and also paying the tax in respect of the superstructure put up by him in the suit property and the defendant has got no manner of title or interest in the suit property and further according to the plaintiff, he has also prescribed his title to the suit property by way of the adverse possession and according to the plaintiff, the defendant owns a vacant site to the west of the suit property and the same had been let out by the defendant in favour of one Janakiraman for running a tea shop and the defendant is attempting to encroach into the suit property without any authority and hence levied the suit for the relief of permanent injunction against the defendants. According to the plaintiff, the first defendant had created a document in the name of the second defendant and taking advantage of the same, it is stated that the second defendant had levied the suit in O.S.No.372 of 1999 on 09.12.1999 and obtained the temporary injunction in I.A.No.414 of 1999 and with the aid of the police, demolished the superstructure put up by the plaintiff in the suit property and raised the new construction and hence, according to the plaintiff, he has been necessitated to seek the reliefs of mandatory injunction and possession of the suit property and hence the suit.

4. According to the defendants, the suit property is not situated in gramamatham poramboke land as alleged by the plaintiff and the same is not in the possession of the plaintiff for several years as put forth by him and also disputed the case of the plaintiff that he is in the possession of the same by paying penal tax, municipal tax, etc., and according to the defendants, the suit property is a part and parcel of the site in Gandhi Road 1, Palanipet in Arakkonam Town, belonged to the first defendant and his brothers and the first defendant's brother Janakiraman had levied the suit in O.S.No.60 of 1959 in the Sub Court, Vellore, for partition of the joint family properties including the suit property and as per the final decree passed in the abovesaid suit, the first defendant was allotted the eastern most portion of the site measuring 18 feet 9 inches east-west and 22 feet north-south with a right of way in the 4 feet lane on the northern side and pursuant to the final decree, the defendant had taken the possession of the same on 25.02.1985 through court process and at that point of time, it was a vacant site and the plaintiff was having his thatched hut in the poramboke land situated to the east of the defendant's site and after the defendant had taken the



possession of his property through court process, it is stated that the plaintiff shifted his hut to the defendant's share of the site at the instigation of the defendant's brother Gopalakrishnan and hence according to the defendant, the plaintiff is not entitled to the relief of permanent injunction and the other reliefs prayed for by him.

5. The second defendant, who had been impleaded subsequently has taken the plea that he had purchased the suit property during the year 1999 for a valid consideration and after reiterating the averments put forth by the first defendant, put forth the case that following the purchase of the suit property, he has been enjoying the same and also levied the suit in O.S.No.372 of 1999 and was granted the relief of temporary injunction in the abovesaid suit and disputed the claim of the plaintiff that he is in the possession and enjoyment of the suit property and accordingly prayed for the dismissal of the plaintiff's suit.

6. Based on the oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to accept the plaintiff's case and granted the reliefs in favour of the plaintiff. Challenging the same, the present second appeal has been preferred by the second defendant.

7. The suit property is found to be measuring about one cent out of 0.22 acres in survey No.318/1A at Arokkonam Town. Now according to the plaintiff, the suit property is the gramamatham poromboke land and he is in the possession and enjoyment of the same and in recognition of his enjoyment of the suit property, it is the case of the plaintiff that he has been paying the penal charges and he had also paid taxes for the superstructure put up by him in the suit property and the defendants have no right, whatsoever, in the suit property and inasmuch as the defendants had disputed the claim of the plaintiff and interfered with his possession, he had been necessitated to institute the suit for the relief of permanent injunction and pending suit, as the defendants had unlawfully intruded into the suit property and dismantled the superstructure put up by him and put up the new construction, he had been necessitated to seek the further relief as claimed in the plaint.

8. The main contention put forth by the defendants is that the suit property belonged to the first defendant and his brothers as the joint family property along with the other properties and it is stated that the first defendant had been allotted the suit property by way of the partition decree in O.S.No.60 of 1959 and since then, it is only the first defendant who has been in the possession and enjoyment of the suit property and further according to the first defendant, the suit



property had been purchased by the second defendant and it is only the second defendant who has been in the possession and enjoyment of the suit property and it is only the plaintiff, who is attempting to intrude into the property of the second defendant, without any basis, and therefore, prayed for the dismissal of the plaintiff's suit.

9. From the documents projected by the plaintiff, particularly, the 'B' memos and the other documents, it is seen that the suit property being the gramanatham poromboke land and the plaintiff is in the occupation of the same, accordingly, it is found that as determined by the courts below, the plaintiff had been assessed to the penal charges and accordingly, the documents pertaining to the same have come to be marked on the part of the plaintiff as Exs.A1 to A3 and Exs. A31 and A32. No doubt, the 'B' memos projected by the plaintiff bear not only the suit survey number but the other survey number also. Be that as it may, as found and determined by the courts below, on a perusal of the 'B' memos projected by the plaintiff, the same is pertaining to survey No.318/1 and accordingly, the plaintiff having established his possession and enjoyment of the same and when there is no material on the part of the defendants evidencing their claim of possession and enjoyment at any point of time, particularly, pursuant to the partition decree said to have been passed in O.S.No.60 of 1959 and when it is found that the defendants have only come forward with the final decree proceedings and the delivery receipt marked as Exs.B1 and B2 and when there is no acceptable and reliable material on the part of the defendants that indeed the suit property in particular had been taken possession of by the first defendant pursuant to the alleged decree passed in O.S.No.60 of 1999 and furthermore, when there is no material on the part of the defendants holding that the suit property also forms part of the properties covered in O.S.No.60 of 1959 and when it is found that from the evidence of the defendants that the suit property is only a poromboke land and not a patta land, as determined by the courts below, if really the suit property is a patta land, the documents of possession would have been projected by the defendants one way or the other pursuant to the alleged final decree passed in O.S.No.60 of 1959 and on the other hand, inasmuch as the suit property is not involved in O.S.No.60 of 1959, accordingly it is found that the defendants are unable to place any proof, whatsoever, evidencing their claim of possession and enjoyment of the suit property.

10. Per contra, as could be seen from the reasonings and conclusions of the courts below, in particular, the documents projected by the plaintiff, when it has been established by the plaintiff beyond doubt that the suit property, as described in



the plaintiff, is only in his possession and enjoyment, it is found that as found by the courts below, the plaintiff would be entitled to the relief of permanent injunction as prayed for.

11. Pending suit, it is found that, according to the plaintiff, the second defendant in particular had intruded into the suit property unlawfully based on the purchase of the same from the first defendant and further according to the plaintiff, on the basis of the orders obtained in O.S.No.372 of 1999, the second defendant had demolished the superstructure put up by the plaintiff and put up a new superstructure and hence, the plaintiff has been necessitated to seek the relief of mandatory injunction and possession.

12. As found and determined by the courts below, there is no material on the part of the defendants to hold that the suit property also forms part of the properties involved in O.S.No. 60 of 1959 and when it is seen that as per the decree passed in the said suit, the same is pertaining only to patta No.144 and when the said patta has not been produced by the defendants and furthermore, when there is no material on the part of the defendants to hold that the suit property is a patta land and not a poramboke land and on the other hand, when from the documents filed by the plaintiff it is found that the plaintiff has been assessed to penal charges in respect of the suit property and when the defendants have failed to established that the suit property is also comprised in patta No.144 by placing reliable materials and on the other hand when it is seen that the plaintiff has established his possession and enjoyment of the suit property for several years by placing 'B' memos and other tax receipts, the courts below are found to be wholly justified in upholding the possession and enjoyment of the suit property by the plaintiff and when the defendants are also found to be projecting that they have title and interest only in respect of the property in survey No. 319 and the second defendant also claims to have purchased the property in survey No.319 and not comprised in suit survey No.318/1 and considering the materials available on record, the same pointing only to the possession and enjoyment of the suit property by the plaintiff and not by the defendants and inasmuch as pending lis, the second defendant had intruded into the suit property without any authority and demolished the construction put up by the plaintiff and raised a new construction in the guise of the suit in O.S.No.372 of 1999, in such view of the matter, the courts below are found to be correct in granting the reliefs in favour of the plaintiff as prayed for.

13. Considering the issues involved in the matter between the parties, the same centering only on factual matrix and on an analysis of the same, when the courts below are found to be



justified, in upholding the plaintiff's case, based on the appreciation of the materials put forth in the matter and when the reasonings and conclusions of the courts below for upholding the plaintiff's case and rejecting the defence version do not suffer from any perversity and irrationality, in all, it is found that the no substantial question of law is involved in the second appeal.

14. In conclusion, the second appeal fails and is accordingly dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Subordinate Court,
Arakkonam, Vellore District.
- 2.The District Munsif Court,
Arakkonam, Vellore District.
- 3.The Section Officer,
VR Section, High Court, Madras.

+2 cc to M/s.S.V.Banupriya, Advocate Sr.56777
+1cc to Mr.S.Raveendran, Advocate Sr.56778

S.A.No.674 of 2019
and
CMP No.12551 of 2019

rv[col
srg 15/10/2019