

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.07.2019
PRONOUNCED ON : 31.07.2019
CORAM
THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.638 of 2019
and
CMP NO.11222 OF 2019

Palani ... Appellant/Appellant/
Plaintiff

Vs.

Sabapathi ... Respondents/Respondent/
Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 22.01.2019 passed in A.S.No.16 of 2016 by the subordinate judge at Maduranthakam, Kanchipuram District, confirming the judgment and decree dated 05.04.2016 passed O.S.No.278 of 2012 by the District Munsif Judge, Maduranthakkam, Kanchipuram District.

For Appellant : Mr. N.Nagu Sah

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 22.01.2019 passed in A.S.No.16 of 2016 on the file of the subordinate Court, Maduranthakam, Kanchipuram District, confirming the judgment and decree dated 05.04.2016 passed in O.S.No.278 of 2012 on the file of the District Munsif Court, Maduranthakkam, Kanchipuram District.

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

3. Suit for bare injunction.

4. The plaintiff claims to be in the possession and enjoyment of the suit property by contending that he has put up the thatched house in the same and enjoying the same by paying tax, etc., for more than 30 years and the defendant is no way

connected with the suit property and on the other hand, the defendant is found to have wrongly obtained the patta in respect of the entire 0.05 cents including the suit property and the same had been challenged by the plaintiff and taking advantage of the wrong issuance of the patta in his favour, according to the plaintiff, the defendant is attempting to interfere with his possession and enjoyment of the suit property and hence the need for the suit.

5. The defendant resisted the plaintiff's suit contending that the claim of the plaintiff that he has been in the possession and enjoyment of the suit property by putting up a superstructure and paying the tax for more than 30 years is absolutely false and according to the defendant, it is only the defendant who is the owner and has been in the possession and enjoyment of the extent of 0.05 cents including the suit property in grama natham survey No.99/10 and also put forth the case that the plaintiff's father Vedachala Udaiyar had purchased the extent of 0.02-1/2 cents out of the 0.05 cents from the defendant on the strength of the patta granted to the defendant by way of the sale deed dated 19.11.2011 and in the abovesaid sale deed, the suit property has been described as belonging to the defendant and the plaintiff has suppressed the same and preferred the suit as if the suit property is in his possession and enjoyment and therefore, according to the defendant, the plaintiff is not entitled to question the right of possession and enjoyment of the suit property by the defendant and further put forth the case that the defendant had permitted the plaintiff to put up a hut in a small portion of the suit property and thereafter, on demand by the defendant, the plaintiff had agreed to remove the hut but on the other hand, had come forward with the false suit as if the suit property is in his possession and enjoyment and therefore, according to the defendant, the suit laid by the plaintiff is liable to be dismissed.

6. Based on the materials placed on record and the submissions made, the courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been preferred.

7. The suit having been laid by the plaintiff simplicitor for the relief of permanent injunction, at the foremost, the plaintiff has to establish that he has the lawful possession and enjoyment of the suit property and particularly the suit property has been in his lawful possession and enjoyment on the date of the suit and subsequent thereto and the defendant without any entitlement is attempting to disturb his possession

and enjoyment as put forth in the plaint.

8. As could be seen from the materials available on record, even admittedly, it is found that, for the extent of 0.05 cents in the suit survey number, the patta had been granted only in the name of the defendant, which document has come to be marked as Ex.B1. It is not the case of the plaintiff that he has been granted the patta in respect of the suit property as such. Furthermore, on the strength of the abovesaid patta marked as Ex.B1, it is seen that the defendant has sold an extent of 0.02-1/2 cents of land to the plaintiff's father by way of the sale deed dated 19.11.2011 marked as Ex.B2 wherein the suit property has been clearly described as belonging to the defendant. In the abovesaid sale deed Ex.B2, the suit property has been described to be lying to the south of the property acquired by the plaintiff's father. As abovenoted, the plaintiff's father himself has purchased the abovesaid extent of 0.02-1/2 cents of land from the defendant by only placing reliance upon the patta granted in favour of the defendant. In such view of the matter, the case projected by the plaintiff that the defendant has obtained the patta in respect of the suit property without entitlement, as such, cannot be accepted and as rightly determined by the courts below, the suit property being the grama natham property, it is found that on the strength of the possession of the parties concerned, the patta had come to be issued and accordingly, as on date, it is only the defendant who has been issued the patta in respect of the suit property. Though the plaintiff would claim that he had taken steps to challenge the patta issued in favour of the defendant, till date no order has been passed in favour of the plaintiff qua the suit property.

9. For sustaining his claim of lawful possession and enjoyment of the suit property, the only document relied upon by the plaintiff are the house tax receipts marked as Ex.A1. However, when the house tax receipts marked as Ex.A1 do not contain the survey number or the door number for correlating the same with the suit property and when the plaintiff has failed to establish that the tax receipts marked as Ex.A1 relate to the suit property, in such view of the matter, the courts below are found to be justified in not placing reliance upon Ex.A1 house tax receipts for upholding the plaintiff's claim of lawful possession and enjoyment of the suit property. The other documents marked as Exs.A2 to A4 on the side of the plaintiff do not advance his claim of possession and enjoyment of the suit property in any manner and the same had been rightly assessed and determined by the courts below.

10. The only argument that has been projected by the plaintiff's counsel is that the defendant has admitted in the written statement as regards the occupation of the suit property by the plaintiff. On a perusal of the averments contained in the written statement, it is found that the defendant would only state that he has permitted the plaintiff to put up a hut in a small portion of the suit property and further on a reading of the entire pleas set out in the written statement, it is found that the plaintiff, on the request of the defendant, had agreed to remove the same, on the other hand, the plaintiff having failed to comply with the same, according to the defendant, he has launched a criminal complaint against the plaintiff and also put forth the case that with a view to squat in the suit property endlessly without entitlement, the plaintiff has come forward with the suit. Therefore, the pleas set out in the written statement by the defendant, cannot be held that he has accepted the possession of the suit property on the part of the plaintiff being lawful. On the other hand, the written pleas would only go to disclose that, on the permission granted by the defendant, the plaintiff has been allowed to put up the superstructure in the portion of the suit property and the same would further go to disclose that the abovesaid permission had been rescinded by the defendant and in such view of the matter, when as abovenoted, the plaintiff has not shown his entitlement to the suit property and also failed to show his lawful possession and enjoyment of the suit property and when the permission granted to him to occupy the small portion thereof has been revoked by the defendant and thereafter, the plaintiff would not be entitled to continue his alleged possession and enjoyment of the suit property in any manner, suppressing the abovesaid factors and as abovenoted when the plaintiff has also not come forward disclosing the purchase of a portion of the property by his father from the defendant on the strength of the patta issued in favour of the defendant, in such view of the matter, the relief of permanent injunction, being an equitable and discretionary relief, only to be extended to the party who is in the lawful possession and enjoyment of the suit property and in the light of the abovesaid discussions, when the materials available on record do not disclose the alleged possession and enjoyment of the suit property by the plaintiff is lawful and the materials available on record go to show that it is only the defendant who has the entitlement to the suit property, in such view of the matter, the courts below are found to be justified in declining the relief of permanent injunction sought for by the plaintiff and I do not find any valid reason to interfere with the concurrent judgment and decree of the courts below.

11. The reasoning and conclusions of the courts below for non suiting the plaintiff being based on the proper appreciation of the materials available on record and not suffering from any perversity and irrationality in any manner, in such view of the matter, there is no reason to interfere with the same, accordingly, the second appeal is found to be devoid of merits.

12. In conclusion, no substantial question of law is found to be involved in this second appeal and resultantly, the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge
Maduranthakam, Kancheepuram

2.The District Munsif
Maduranthakam, Kancheepuram

+1cc to Mr.N.Nagusah Advocate sr65719

S.A.No.638 of 2019

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