



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.03.2019

Delivered on: 29.03.2019

CORAM

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THE HONOURABLE Mr. JUSTICE P. RAJAMANICKAM

S.A.No.136 of 2014

and

M.P.No.1 of 2014

T. Kumarasamy

...Appellant/defendant

Vs.

1. A. Jagannathan

2. Amsa

...Respondents/plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 16.12.2013 passed in A.S.No.73 of 2012 on the file of the Sub-Court, Vellore in reversing the judgment and decree dated 05.03.2012 passed in O.S.No.562 of 2009 (V.O.S.No.167 of 2004) on the file of the District Munsif Court, Katpadi, Vellore District.

For Appellant : M/s.P. Mani

For Respondents : M/s.J. M. Hariharan

JUDGMENT

This Second Appeal has been filed by the defendant against the judgment and decree passed by the Sub-Court, Vellore, in A.S.No.73 of 2012 dated 16.12.2013 reversing the judgment and decree passed by the District Munsif, Katpadi, Vellore District in O.S.No.562 of 2009 dated 05.03.2012.

2. The respondents herein had filed a suit in O.S.No.562 of 2009 on the file of the District Munsif, Katpadi, Vellore District, for the relief of permanent injunction restraining the defendant, his men, agents, etc., from interfering with their peaceful possession and enjoyment of the plaint schedule property marked as 'ABCD' and coloured red in the plaint plan. The learned District Munsif, Katpadi, by the judgment dated 05.03.2012 had dismissed the said suit without costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.73 of 2012 on the file of the Sub-Judge, Vellore. The learned Sub-Judge, Vellore by the judgment dated 16.12.2013 had allowed the said appeal and set aside the judgment and decree passed by the trial court and granted injunction till the disposal of the writ



petition in W.P.No.14649 of 2011 on the file of this court. Feeling aggrieved, the defendant had filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:

The plaintiffs are the owners of 8 cents situated in S.No.569/8 of Dharapadavedu village which was originally having Door No.56 in Tiruvalluvar street now having Door number as 51 in Gandhi Street. Adjoining the house in S.No.569/8 of the plaintiffs, on the northern side, there is a poramboke land in S.No.536/B. For the said survey number, the defendant is given patta to an extent of 21 feet East-West and 51 feet North-South on the western side of the common lane. The said common lane has been used by the plaintiffs for reaching their house. The remaining land in the same survey number is in the possession of the plaintiffs and the same is shown in the plaint plan as 'ABCD' and coloured in red. The said portion is in possession of the plaintiffs for more than 30 years and they have perfected title even against the Government by adverse possession. The defendant had set up one Narayanasamy and Subramani and they filed a suit against the plaintiffs in respect of the suit property and common lane in O.S.No.309 of 1984. In the said suit, the defendant was examined as one of the witnesses on the side of the plaintiffs therein. Finally, disbelieving the evidence of the defendant herein, the said suit was dismissed. As against the same, an appeal was filed before the Sub- court, Vellore in A.S.No.41 of 1993 and the same was also dismissed on 27.02.2002 confirming the judgment and decree of the District Munsif, Katpadi. Hence, the defendant is estopped from claiming any right over the suit property. Having lost all his attempts, the defendant is now making attempts to trespass into the suit property. In fact, the defendant has stealthily got patta in respect of the entire S.No.536/B including the passage which was declared as common passage by the District Munsif, Katpadi. Hence, the plaintiffs are constrained to file the above suit for permanent injunction.

5. The averments made in the written statement are, in brief, as follows:-

The allegation that the plaintiffs are the owners of 8 cents in S.No.569/8 of Dharapadavedu village is denied. It is also denied that the plaintiffs are using the common lane from Thiruvalluvar street, as shown in the plaint plan. It is also denied that adjoining the house in S.No.569/8 of the plaintiffs, on the northern side, there is a poramboke land in S.No.536/B and the defendant is given patta in the said survey number to an



extent of 21 feet East-West and 51 feet North-South on the western side of the common lane. There is no poramboke land in S.No.536/B on the northern side of the plaintiffs' house as alleged in the plaint. The property shown as poramboke land by the plaintiffs forms part of the absolute property of the defendant in S.No.689/27. The plaintiffs are not in possession of any poramboke land as mentioned in the plaint. It is false to allege that the plaintiffs have perfected title by adverse possession. It is also false to allege that the defendant had set up one Narayanasamy and Subramani and filed a suit claiming the property of the plaintiffs as well as the common lane in O.S.No.309 of 1984 on the file of the District Munsif, Katpadi. There was no necessity for the defendant to set up the aforesaid persons to file a suit against the plaintiffs. It is true that the defendant was examined as one of the witnesses in that suit, but it is false to allege that the evidence of the defendant herein was disbelieved by the court. The dismissal of the suit and the appeal will not bind upon the defendant. It is false to allege that the defendant stealthily got patta in respect of the entire S.No.536/B (New S.No.689/27) including the passage which was declared to be a common passage by the District Munsif, Katpadi. Patta has been granted for the entire new S.No.689/27 in favour of the defendant based on possession and enjoyment of the said property, by the defendant and his forefathers. It is false to allege that the defendant has attempted to trespass into the suit property. The plaintiffs are not in possession of the suit property at any point of time. Therefore, the defendant prayed to dismiss the above suit.

6. Based on the aforesaid pleadings, the learned District Munsif, Katpadi, had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the first plaintiff examined himself as PW1 and also examined two more witnesses as P.W.2 and P.W.3. They have marked Ex.A1 to A11 as exhibits. On the side of the defendant, the defendant examined himself as DW1 and he has marked Ex.B1 to B7 as exhibits.

7. The learned District Munsif, Katpadi, after considering the materials placed before him, found that the suit property is not a poramboke land as contended by the plaintiffs and on the contrary, a patta has been granted in favour of the defendant. He further found that the plaintiffs failed to prove that they are in possession and enjoyment of the suit property. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.73 of 2012 on the file of the Sub-Court, Vellore. The learned Sub-Judge, Vellore, had allowed the said appeal and set aside the judgment and decree passed by the trial court and granted injunction till the disposal of the writ petition in W.P.No.14649 of 2011. Feeling aggrieved, the defendant has filed the present second appeal.



8. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

1) Whether the lower Appellate Court erred in law in granting injunction decree against the defendant who is the owner of the suit property and when the plaintiff's have no title and claimed possession as if the suit property is a poramboke land?

2) Whether the lower Appellate Court erred in law in granting injunction decree against the defendant till the disposal of the writ petition No.14649 of 2011 by the Hon'ble Court, when the said writ petition relate to the common lane and not related to the suit property and more over the said writ petition has been already disposed of?

3) Whether the judgment and decree passed by the lower Appellate Court are sustainable in law when it has failed to consider and appreciate the oral and documentary evidence on record in proper perspective and decreed the suit on near surmises and conjectures?

9. Heard Mr.P.Mani, learned counsel for the appellant and Mr.J. M. Hariharan, learned counsel for the respondents.

10. Substantial Questions Nos.1 to 3:

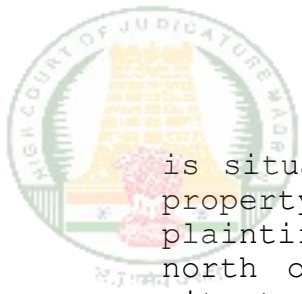
Learned counsel for the appellant has submitted that the first appellate court erred in reversing the well considered judgment of the trial court. He further submitted that the plaintiffs have not produced any documentary evidence to show that they are in possession and enjoyment of the suit property. He further submitted that on the contrary, the defendant has produced Ex.B2 to Ex.B4 to prove his possession. He further submitted that in Ex.B6, the District Revenue Officer (DRO) has observed that the patta in favour of the defendant should not be given for the entire extent of S.No.689/27 including the common pathway and hence he directed the Tahsildar, Katpadi to measure the said common pathway and sub-divide the same and make a pathway for the use and enjoyment of the plaintiffs. He further submitted that as against the said order, the defendant has filed a writ petition in W.P.No.14649 of 2011 before this court and in that writ petition, this court by the order dated 05.09.2011 has passed an order to the effect that the status quo as regards the entries of the revenue records to the property in S.No.689/27 shall be maintained. He further submitted that subsequently the said writ petition has been dismissed as



withdrawn and that the Tahsildar, Katpadi also measured the aforesaid pathway and sub-divided the same and granted patta in respect of the remaining land in favour of the defendant. He further submitted that the plaintiffs have relied upon the judgment and decree passed in O.S.No.309 of 1984 on the file of the District Munsif, Katpadi, but the trial court has categorically held that the property mentioned in the said suit is totally different property and the said property is in noway connected with the property of the present suit, but the first appellate court failed to consider the said facts. He further submitted that plaintiffs have pleaded adverse possession, but have not proved the same and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

11. Per contra, the learned counsel for the respondents/plaintiffs has submitted that the patta (Ex.B2) which was granted in favour of the defendant has been set aside by the DRO by the order dated 07.04.2011 and hence the defendant cannot rely upon Ex.B2 patta. He further submitted that already one Narayanasamy and Subramani had filed a suit in O.S.No.309 of 1984 on the file of the District Munsif, Katpadi, against the plaintiffs herein in respect of the suit property and the said suit was filed only at the instigation of the defendant herein and in the said suit, the defendant herein also gave evidence by examining himself as one of the witnesses on the side of the plaintiffs therein, but the trial court has rejected his evidence and dismissed the suit. He further submitted that as against the dismissal of the said suit, the plaintiffs therein have filed an appeal in A.S.No.41 of 1993 on the file of the Sub-Judge, Vellore and the same was also dismissed and hence, the defendant cannot claim any right over the suit property. He further submitted that the oral evidence of the PW1 to PW3 would clearly establish that the plaintiffs are in exclusive possession of the suit property for more than 30 years and that the said fact was not properly considered by the trial court, however, the first appellate court has appreciated the evidence in a proper perspective and rightly set aside the judgment and decree passed by the trial court and decreed the suit and hence in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

12. The suit property is measuring North-South 25 feet; East-West 21 feet marked as 'ABCD' in the plaint plan and the same is situated in S.No.536/B of Dharapadavedu Village, Katpadi Taluk. According to the plaintiffs, S.No.536/B is a natham poramboke and on the south of the said property, their house



is situated. In the plaint plan also, it is shown that the suit property is situated on the north of the house of the plaintiffs. It is further mentioned in the said plan that on the north of the suit property, the property of the defendant is situated. It is further stated that in the said plan, on the east of the suit property, a common lane to a width of 6 feet is situated.

13. Though the plaintiffs have pleaded in the plaint and also stated in their evidence that in respect of the suit property, already at the instigation of the defendant, one Narayanasamy and Subramani have filed a suit in O.S.No.309 of 1984 on the file of the District Munsif, Katpadi, the trial court has held that the property mentioned in the said suit is totally a different property. A certified copy of the decree passed in O.S.No.309 of 1984 has been produced by the plaintiffs and marked as Ex.A2. In Ex.A2 not even survey number has been mentioned. Only boundaries have been given. Further, the said boundaries also not tallied with the property mentioned in the present suit. So, it cannot be said that the property mentioned in O.S.No.309 of 1984 and the property mentioned in the present suit are one and the same. Therefore, based on Ex.A2, it cannot be said that the plaintiffs are in possession of the suit property.

14. Though the plaintiffs have claimed that they are in possession of the suit property for more than 30 years, they have not produced any documentary evidence to substantiate the said plea. On the contrary, the defendant has produced Ex.B2 patta to show that the Government has issued patta in his favour in respect of the entire extent of the land situated in S.No.536/B (New S.No.689/27). The plaintiffs also admitted in their plaint that the defendant has got patta in respect of the entire S.No.536/B. The DRO, Vellore, in the order dated 07.04.2011 (Ex.A9 = Ex.B6) has observed that the defendant has obtained patta including the pathway which runs in S.No.689/27 and the said pathway has to be measured and sub-divided. But he has not stated that the patta should be cancelled in respect of the remaining area also.

15. The learned counsel for the appellant has submitted that in pursuance of the aforesaid order of the DRO, the Tahsildar, Katpadi has measured the said pathway and sub-divided the same and thereafter in respect of the remaining land including the suit property the Tahsildar, Katpadi, has granted patta in favour of the defendants. In such a case, it is open to the plaintiffs to challenge the said patta before the competent authority.



16. It is to be pointed out that the first appellate court has granted injunction only till the disposal of writ petition in W.P.No.14649 of 2011. The learned counsel for the appellant has submitted that the said writ petition has been dismissed as withdrawn on 06.03.2013. The said fact has not been disputed by the learned counsel for the respondents. In fact the first appellate court has disposed of the appeal only on 16.12.2013, but even prior to that, W.P.No.14649 of 2011 was disposed of on 06.03.2013 itself. It appears that the disposal of the W.P.No.14649 of 2011 was not brought to the knowledge of the first appellate court.

17. The trial court taking into consideration of the evidence adduced by both the parties has rightly come to the conclusion that the plaintiffs have failed to prove that they are in possession of the suit property, but the first appellate court has set aside the said judgment and decree and granted injunction till the disposal of the writ petition. The approach of the first appellate court is totally contrary to law. The plaintiffs have not proved that they are in possession of the suit property by producing documentary evidence. Therefore, the second appeal has to be allowed. Accordingly, substantial questions of law are answered in favour of the appellant.

18. In the result, the second appeal is allowed. No costs. The judgment and decree of the first appellate court are set aside and the judgment and decree of the trial court are restored. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

gv

Sub Assistant Registrar

To

1. The Sub-Court,
Vellore.
2. The District Munsif Court,
Katpadi, Vellore District.

plus one cc to M/s.P.Mani, Advocate SR 31246.
plus one cc to M/s.T.M.Hariharan, Advocate SR. 31483.

S.A.No.136 of 2014
and M.P.No.1 of 2014

AP(CO)
SSM(22/08/2019)