

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.478 OF 2014

Angamuthu

.. Appellant/Plaintiff

Vs.

1.Muthammal
2.Ranganathan
3.Kuppan

...Respondents/Defendants

Prayer:

Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 26.02.2014 made in A.S.No.42 of 2011 on the file of the Principal Sub-Ordinate Judge, Villupuram confirming the judgment and decree dated 18.06.2010 made in O.S.No.348 of 2007 on the file of the Additional District Munsif, Villupuram.

For Appellant : Mr.R.Arundattan
for M/s.C.Munusamy

For Respondents : Mr.R.Abdul Mubeen for R1
R2 & R3 set Ex-parte

J U D G M E N T

The plaintiff in O.S.No.348 of 2007, whose suit for injunction was dismissed by the Trial Court upon its confirmation by the lower Appellate Court has come up with this second appeal.

2. The plaintiff's sued for injunction on the allegation that he was granted Patta for the suit property on 09.09.1992 in Patta No.499 and he has been in the continuous possession of the property on the basis of the said Patta. Since the defendant attempted to interfere with his possession, he has come up with the suit for bare injunction. The defendants filed a written statement contending that the no Patta was granted to the plaintiff in Survey No.18/6B. According to her, the entire extent of land in Survey No.18/6B was allotted to people belonging to Irular Community and the defendant has been residing in the area near by the said Irular Colony. It is the

further claim of the defendant that the plaintiff was never in possession of the property and as such he is not entitled to injunction.

3. At trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A16 were marked on the said of the plaintiffs. The sole defendant has examined as D.W.1 and the Village Administrative Officers were examined as D.W.2 and D.W.3. Exs. B1 to B10 were marked on the side of the defendants. The property was assessed with House tax and the payment registers for a period of 2002-2003, 2007-2008 and 2009-2010 were marked as Exs.X1 to X3.

4. The Courts below, upon a consideration of the evidence on record had come to the conclusion that the documents relied upon by the plaintiffs namely, Exs. A2 to A16 did not prove the possession of the plaintiff on the date of the suit. Though the plaintiff has produced Ex.A1(Patta), Ex.A2 (Adangal Extracts) they having been issued by the Village Administrative Officer, who had no authority to issue the same cannot be relied upon as evidence of possession of the plaintiff. The Courts below also adverted to the evidence of D.W2 and D.W.3, who had specifically deposed that the plaintiff was not in possession of the property on the date of the suit. The House Tax payment registers produced as Exs.X1 to X3 also did not reveal that the plaintiff had paid House Tax for the property. The Trial Court also concluded that the plaintiff has to fail on yet another ground that despite the denial of his title by the defendants the plaintiff has not sought for the relief of declaration of title. The lower Appellate Court had concurred with the Trial Court only on the question of possession. The following substantial question of law has been framed at the time of the admission of the appeal:-

"a) Whether the Courts below are right in not considering the document marked as Ex.A1 when there is no dispute that the same was issued by the competent authority ?"

5. I have heard Mr.R.Arundattan, learned counsel appearing for the appellant.

6. Mr.R.Arun Dattan appearing for the appellant to elaborating on the question of law would contend that the Courts below have overlooked Ex.A1 (Patta) granted as early as in 1992. He would also point out that the House Tax receipts have been produced by the plaintiff in the form of Exs.A6 to A11. Therefore, according to the learned counsel, the Courts below were not right in concluding that the plaintiff has not right in

establishing his possession. The suit has been filed in the year 2007. The plaintiff in the suit for bare injunction has to prove that he was in possession of the property on the date of the filing of the suit. The evidence of D.W.2 and D.W.3 coupled with failure of the plaintiff to prove his possession on the date of the suit has also been taken note to reject the claim of the plaintiff for decree for permanent injunction. The plaintiff had not chosen to examine any independent witness to prove his possession on the date of the suit. The evidence on record also shows that Patta has been issued to the Irular community and they are in possession of the property. The Courts below have adverted to Ex.A1 and the lower Appellate Court had specifically stated that in the absence of any evidence on the possession of the plaintiff on the date of the suit, Ex.A1 issued in the year 1992 cannot be taken as evidence of possession on the date of the suit.

7. In view of the above, I find that the factual conclusions reached by the Courts below cannot be termed as perverse to enable me to re-appreciate the evidence and substitute my conclusions in their place. I find that the lower Appellate Court had specifically adverted to Ex.A1 and has rejected the claim of the plaintiff on the basis of Ex.A1. Hence, I do not find any error in the judgments and decree of the Courts below in order to enable me to interfere with them in this appeal. Hence, this appeal fails and accordingly dismissed. No costs.

Sd/-

Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Principal Sub-Ordinate Judge, Villupuram.
2. The Additional District Munsif, Villupuram.
3. The Section Officer, VR Section, High Court, Madras

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.94321

+1cc to M/s.C.Munusamy, Advocate, S.R.No.94150

S.A.No.478 of 2014

GP(CO)
CS/18/11/2020