

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.934 OF 2019

AND

C.M.P.NO.19842 OF 2019

1.Janaki
2.Selvakumar
3.Ravikumar
4.Suresh Kumar

.. Appellants/
Appellants/Plaintiffs 1 to 4

Vs.

1.Angammal
2.Raman @ Ramasamy

.. Respondents/
Respondents/Defendants

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 29.03.2019 made in A.S.No. 18 of 2015 on the file of the Sub-Court, Harur confirming the judgment and decree dated 29.06.2015 made in O.S.No. 56 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Pappireddipatty.

For Appellants : Mr.T.Murugamanickam,
Senior Counsel for Ms.Zeenath Begum

J U D G M E N T

The plaintiffs in O.S.No. 56 of 2009 on the file of the District Munsif-cum-Judicial Magistrate Court, Pappireddipatty, who lost their suit for bear injunction upon its confirmation by the Sub-Court, Harur in A.S.No. 18 of 2015 have come forward with this appeal.

2. According to the plaintiffs, the first plaintiff's husband/father of the plaintiffs 2 to 4 Arumugam was in possession of the property and in recognition of his possession "Natham Patta" was granted to him even on 19.10.1990. The said Arumugam died on 30.03.2007 leaving behind the plaintiffs as his legal representatives. Claiming that the plaintiffs are in possession of the property by paying house tax, the plaintiffs sought for permanent injunction, since the defendants attempted to interfere with their possession of the property.

3. The suit was resisted by the defendants, contending that the suit property did not belong to Arumugam or his ancestors. The said Arumugam was working as a teacher in the Government school. Being related to the defendants father, he was permitted to take tuition for the students in the suit property for rent of Rs.100/- per month. Taking advantage of the permission so granted, Arumugam had obtained "Natham Patta" by misrepresentation. It is also claimed that even in the police complaint which was lodged in the Kadathur Police Station, the first plaintiff had stated that Arumugam had purchased the property for a sum of RS.8,000/- from the father of the second defendant, Chinnasamy about 25 years ago. It was also claimed that after the death of Arumugam, the plaintiffs are residing in cities like Chennai, Coimbatore, Bangalore and therefore they are not in possession of the property on the date of the suit. On the above pleadings, the defendants sought for dismissal of the suit.

4. The Courts below, upon consideration of the evidence on record concluded that the plaintiffs have come out with a different case in the evidence to claim that the property was purchased from Chinnasamy. It was also found that the plaintiffs are not in possession of the property after the death of Arumugam in the year 2007. The plaintiffs, who had claimed to have purchased the property from Chinnasamy for a consideration of Rs.8,000/- are not able to prove the said sale by acceptable documentary evidence. The Courts below also took note of the fact that the plaintiffs in their evidence had admitted that they are not in possession of the property as on date of the suit. The Village Administrative Officer, who was examined as P.W.2 had also deposed that the construction in the suit property was put up by Chinnasamy, father of the second defendant. On the above findings, the Courts below dismissed the suit concluding that the plaintiffs are not entitled to relief for permanent injunction. Aggrieved, the plaintiffs have come forward with this second appeal.

5. I have heard Mr.T.Murugamanickam, learned Senior Counsel appearing for the appellants.

6. Learned Senior Counsel would strenuously contend that the defendants had admitted the possession of the plaintiffs and therefore, the Courts below were not justified in dismissing the suit for injunction. Drawing my attention to the pleadings in Para 7 of the written statement, wherein the defendants have stated that the possession of the plaintiffs is permissive possession and they were not in possession as owners therefore, they cannot claim any right over the property, Mr.T.Murugamanickam, learned Senior Counsel would submit that the Courts below overlooked a specific admission on the said

statement of the defendants regarding possession of the property dismissed the suit. I am unable to countenance the said contention of the learned Senior Counsel. Though a reading of Para 7 of the written statement would give an impression that there is some sort of admission on possession of the plaintiffs by the defendants, the written statement read as a whole would show that the defendants had contended that the plaintiffs were not in possession of the property on the date of the suit and therefore they are not entitled to injunction. The grant of "Natham Patta" alone would not confer any right on the plaintiffs to seek a decree for permanent injunction. They must prove the possession on the date of the suit by tangible evidence.

7. Both the Courts below, upon consideration of the evidence on record had concluded that the plaintiffs were not in possession on the date of the suit. The house tax receipts that were filed by the plaintiffs are not related to the suit property. Being factual conclusions with regard to the question of possession, I do not think I can interfere with the conclusions of the Courts below, which are based on evidence more particularly, sitting in second appeal. I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. Hence, this second appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkn

To

1. The Subordinate Judge, Harur.
2. The District Munsif-cum-Judicial Magistrate, Pappireddipatty.

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.79981

S.A.No. 934 of 2019
and

C.M.P.No. 19842 of 2019

VD(CO)
CS/03/03/2020