

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on: 31.10.2019 | Delivered on: 23.01.2020 |
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CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.431 of 1999

1.Ramachandran (Deceased)  
2.Mariammal  
3.Rukmani  
4.R.Venkatesan  
5.R.Krishnan  
6.R.Arumugam ... Appellants/Plaintiff  
(Appellants 2 to 6 brought on record  
as LRs of the deceased sole appellant  
vide order of Court dated 08.02.2018  
made in CMP.No.1950 to 1952/2017 in  
S.A.No.431 of 1999)

Vs.

1.Elumalai (Deceased)  
2.Natesan  
3.Ezhural  
4.E.Kamaraj  
5.E.Kumar ... Respondents /Defendants

(RR3 to 5 brought on record as  
LRs of the deceased R1 vide order  
of Court dated 08.02.2018 made  
in CMP.No.1953 to 1955/2017  
in S.A.No.431 of 1999)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Lower Appellate Court made in A.S.No.10 of 1995 dated 06.08.1998 on the file of the Additional Subordinate Court, Chengalpattu, partly reversing the judgment and decree made in O.S.No.350 of 1992 dated 27.01.1995 on the file of the District Munsif Court, Maduranthakam and allow the appeal with cost throughout.

For Appellants : Mr.K.Hariharan

For Respondents: Mr.V.V.Sai Ram for R2 to R5

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the Additional Sub-Judge, Chengalpattu in A.S.No.10 of 1995 dated 06.08.1998 partly reversing the judgment and decree passed by the District Munsif, Maduranthakam in O.S.No.350 of 1992 dated 27.01.1995.

2. The appellant herein had filed a suit in O.S.No.350 of 1992 on the file of the District Munsif, Maduranthakam, for the relief of permanent injunction to restrain the defendants, their men, etc., from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif, Maduranthakam by the judgment dated 27.01.1995 had decreed the suit as prayed for without costs. Aggrieved by the same, the defendants had filed an appeal in A.S.No.10 of 1995 on the file of the Additional Sub-Judge, Chengalpattu. The learned counsel for the Additional Sub-Judge, Chengalpattu by the judgment dated 06.08.1998 had partly allowed the said appeal and modified the judgment and decree passed by the trial Court to the effect that the plaintiff is entitled to the relief of permanent injunction only to the extent of the property mentioned in Ex.C2 plan as 'CDEIHG' and in respect of the remaining portion of the suit property, he dismissed the suit. However, he directed the parties to bear their respective costs. Feeling aggrieved, the plaintiff has 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 plaintiff is in possession and enjoyment of the suit property for the past 40 years. He has been in possession of the said property openly and to the knowledge of the entire Villagers and hence, he has also acquired possessory title over the suit property. The Panchayat has assessed house tax for the hut put up by the plaintiff. About 20 years ago, the Tahsildar has granted a patta assigning in favour of the plaintiff for a portion of the suit property. The plaintiff requested to grant patta to the entire extent but he was told that patta could be granted under the Scheme only for an extent of 5 cents. However, the plaintiff is enjoying the entire suit property as one block. The plaintiff had planted several trees on the western ridge of the suit property to demarcate his extent of possession. Apart from his house, the plaintiff has stored waste in the suit property and has also stacked hayrick in the suit property. The defendants are having no right or title over the suit property and they are not in possession of the same. But they are trying to trespass into the suit property and hence, the plaintiff was constrained to file a suit for permanent injunction.

5. The averments made in the written statement filed by defendants 1 and 2 are, in brief, as follows:-

It is false to say that the plaintiff has been in possession and enjoyment of the suit property for the past 40 years and he acquired possessory title over the entire suit property. The plaintiff is in possession and enjoyment of the 5 cents only in S.No.140 of Lathur Village. The plaintiff has purposely given false description of the suit property. The boundaries mentioned in the suit property are incorrect. The defendants have filed rough sketch to show the present position of the suit property. The plaintiff's property is situated on the northern side. In the southern side there is a temple by name Gengaiamman Temple with a compound wall. The plaintiff is not in possession of the said portion. The plaintiff is having separate entrance from the Colony Street, which runs on the eastern side. There is a clear demarcation between the plaintiff's 5 cents and the temple land. The plaintiff is trying to grab the temple's land and hence, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif, Maduranthakam had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined his son as PW1. He had marked Exs.A1 to A11 as exhibits. On the side of the defendants, the first defendant was examined as DW1 and one more witness was examined as DW2. They had marked Exs.B1 to B12 as exhibits. The Advocate Commissioner was examined as CW1 and his report and rough plan were marked as Exs.C1 and C2 respectively.

7. The learned District Munsif, Maduranthakam, after considering the materials placed before him found that the plaintiff has proved his possession through oral and documentary evidence. He further found that the defendants have not proved that the temple is in possession and enjoyment of a portion of the suit property. Accordingly, he decreed the suit as prayed for without costs. Aggrieved by the same, the defendants 1 and 2 had filed an appeal in A.S.No.10 of 1995 on the file of the Additional Sub-Judge, Chengalpattu. The learned Additional Sub-Judge, Chengalpattu had partly allowed the appeal and modified the judgment and decree passed by the trial Court to the effect that the plaintiff is entitled for the relief of permanent injunction only in respect of the portion of the property marked as 'CDEIHG' in commissioner's rough plan (Ex.C2). He dismissed the suit in respect of the remaining portion of the suit property. However, he directed the parties to bear their respective costs. Aggrieved by the same, the plaintiff 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. In a suit for bare injunction can the Courts below go into the question of title of the plaintiff when the plaintiff solely bases his claim for injunction to protect his possession while the government is the owner and when the patta proceedings are pending and whether the plaintiff's title, to possess the land is relevant for getting the relief of injunction against third party?

2. In a suit for bare injunction based on possessory rights, on the question of title be gone into by the Court below at the instance of utter strangers to the property namely the defendants and is not the plaintiff entitled to protect his possession against all the world including the defendants utter strangers except against the true owners the government before whom the patta proceedings are pending after having granted the rough patta in favour of the plaintiff to the disputed land?"

9. During pendency of the second appeal, the original appellant/plaintiff died and hence, his legal representatives have been impleaded as appellants 2 to 6 and the first respondent/first defendant also died and his legal representatives have been impleaded as respondents 3 to 5.

10. Heard Mr.K.Hariharan, learned counsel for the appellants and Mr.V.V.Sairam, learned counsel for the respondents 2 to 5.

11. Substantial Questions of law 1 and 2:

The learned counsel for the appellants has submitted that the first Appellate Court erred in modifying the well considered judgment and decree of the trial Court. He further submitted that the first Appellate Court failed to consider the oral and documentary evidence adduced by the plaintiff in a proper perspective. He further submitted that the first Appellate Court failed to see that the defendants have not claimed any right for themselves and on the contrary, they have claimed that the portion of the suit property is in possession of the temple, but they have not produced any documentary evidence to show that the temple is in possession of a portion of the suit property.

12. He further submitted that the first Appellate Court erred in coming to the conclusion that the plaintiff is in possession of a portion of the suit property only based on the Advocate Commissioner's report and plan. He further submitted that the trial Court after considering the evidence in a proper perspective had rightly decreed the suit in respect of the entire extent of the suit property, but the first Appellate

Court had erroneously modified the judgment and decree of the trial Court and restricted the relief only for a portion of the suit property 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.

13. The learned counsel for the appellants in support of his contention, relied upon the decision in:-

The C.K.Babdoss Vs. R.S.Asokan and  
others, (2015) 1 MLJ 477.

14. Per contra, the learned counsel for the second respondent has submitted that since the plaintiff has come to the Court, he has to establish his possession over the entire extent of the suit property, but in this case, the plaintiff has not produced any documentary evidence to show that he is in possession of the entire extent of the suit property. He further submitted that admittedly patta was granted in favour of the plaintiff only to the extent of 5 cents and that being so, he cannot claim any relief for 10 cents. He further submitted that the physical features mentioned in the Advocate Commissioner's report and plan clearly show that the plaintiff is in possession of a portion of the suit property alone i.e., 'CDEIHG' portion as shown in Ex.C2 plan.

15. He further submitted that the trial Court without taking into consideration of the aforesaid facts had erroneously decreed the suit in respect of the entire extent of 10 cents of lands, but the first Appellate Court taking into consideration of the aforesaid facts in a proper perspective had rightly modified the judgment and decree passed by the trial Court to the effect that the plaintiff is entitled for the relief of permanent injunction only in respect of the portion marked as 'CDEFG' and dismissed the suit in respect of the remaining portion and in the said factual finding, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

16. The plaintiff is claiming 10 cents in S.No.140 of Lathur Village, Cheyyur Taluk, but the plaintiff has admitted in his plaint that the Tahsildar has granted patta to him only for an extent of 5 cents. Since the plaintiff has come to the Court claiming that he is in possession of 10 cents, the burden is upon him to prove that he is in possession of the entire extent of 10 cents. But, in this case, as already pointed out that the plaintiff himself has admitted in his plaint that patta was granted in his favour only for an extent of 5 cents. He has not produced any documentary evidence to show that he is in possession of the entire extent of the suit property i.e., 10 cents.

17. The Advocate Commissioner's report and plan (Exs.C1 and

C2) would clearly show that there is a clear demarcation between the plaintiff's house and Gangaianman Temple which is situated on the south of the plaintiff's house. The said report and plan also would show that there is a clear compound wall in between the plaintiff's house and the aforesaid temple and shown as 'CD' in Ex.C2 plan. In fact, the said plan shows that the plaintiff is having accesse to his house from the Colony Street, which runs on the eastern side.

18. At this juncture, it would be relevant to refer to the decision in Chelladurai and 5 others Vs. Perumal Nadar, 1998-3-LW-119 wherein this Court in paragraph No.9 has observed as follows:-

"9. According to me, Ex.C-1 report and Ex.C-2 plan wil have a great bearing in deciding the issue in this case. Unfortunately, the lower appellate Court has not taken into consideration that material evidence, except for a mere statement that a Commissioner's report has been filed. There is no discussion about Exs.C-1 and C-2 report and plan. Why I am referring to Ex.C-1 report is because, nobody has got any objection to the lie of the property as identified by the Commissioner. It is an impartial report even according to both parties, and the same has been prepared by an independent person. All the other piece of evidence are interested. I am not saying for a moment that the Commissioner's report has to be relied on for the purpose of proving possession. I am relying on the report and plan only for the purpose of proving the physical features of the property, from which certain inference can be drawn."

19. From the aforesaid decision, it is clear that though the Advocate Commissioner's report and plan cannot be relied upon for the purpose of proving possession, they can be relied on for the purpose of proving the physical features of the property from which certain inference can be drawn. In this case, as already pointed out that there is a demarcation between the plaintiff's house and the Gangaianman Temple. Further, the said report and plan would show that the portion which is demarcated as 'ABCD' in Ex.C2 plan is having a separate compound wall and the plaintiff is having access to his property from the Colony Street which runs on the eastern side. From the aforesaid physical features, the Court can infer that the plaintiff is not in possession of the portion which is shown as 'ABCD' in Ex.C2 plan. He is in possession of the portion which is shown as 'CDEIHG' only.

20. In C.K.Babdoss Vs. R.S.Asokan and others, (cited supra), the plaintiff has proved his possession through acceptable documentary evidence but the defendants though have claimed to be in possession in respect of the particular property, they have not chosen to produce any documentary evidence and they have also admitted the possession of the plaintiff in respect of the suit property. Further, the Village Administrative Officer, who was examined as PW4 in that case had deposed that the plaintiff was in exclusive possession of the suit property and taking into consideration of the aforesaid facts, this Court has held that the plaintiff is entitled for the relief of permanent injunction in respect of the suit property. Whereas, in this case, the plaintiff has not produced any documentary evidence to show that he is in possession of the entire extent of 10 cents of the suit property. On the contrary, he has produced patta (Ex.A11) and other documents) to show that he is in possession of 5 cents only and hence, the aforesaid decision will not help the plaintiff.

21. As already pointed out that since the plaintiff has come to the Court claiming that he is in possession of 10 cents of suit property, the burden is upon him to prove his possession by adducing satisfactory oral and documentary evidence. He cannot stand on the weakness of the defendants. Further, as already pointed out that the physical features noted down by the Advocate Commissioner would clearly show that the plaintiff is not in possession of the property which is shown as 'ABCD' in Ex.C2 plan. The trial Court failed to appreciate the aforesaid facts in a proper perspective and granted decree in respect of the entire extent of 10 cents, and hence, the first Appellate Court had rightly interfered and modified the judgment and decree passed by the trial Court to the effect that the plaintiff is entitled to the extent of the property which is marked as 'CDEIHG' in the Commissioner's plan and in the said factual findings, this Court cannot interfere. Accordingly, the substantial questions of law are answered against the appellants.

22. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the first Appellate Court. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Additional Subordinate Judge,  
Chengalpattu.

2.The District Munsif,  
Maduranthakam.

3.The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to Mr.V.Sairam, Advocate, S.R.No. 4859

+1cc to Mr.K.Hariharan, Advocate, S.R.No. 5417

S.A.No.431 of 1999

NMI (CO)  
GN(22/09/2020)