

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.689 of 2000

1.Kasi(died)
2.Andal Ammal(died)
3.Mariammal .. Appellants1 to 3/ Appellants/Plaintiffs
4.Muniammal
5.Krishnaveni
6.Chitra(Minor)
Rep. by mother and NF Mariammal
7.Kumar
8.Revathy(Minor)
Rep. by her father Kumar
9.Dhanalakshmi(Minor)
Rep. by her father Kumar
10.Kokila(Minor)
Rep. by her father KumarAppellants4 to 10
(Appellants 4 to 10 brought on record
as LR's of the deceased first
appellant viz., Kasi vide order of court
dated 14.08.2019 made in CMP.No.
1909 to 1911 of 2008 in SA.No.
689 of 2000)

Vs.

1.Sukri @ Veerasamy(died)
..1st Respondent/ Respondent/ Defendant
2.Shenbagavalli
3.Shanthakumar
4.Kumaresan
5.Shanmugam
6.Umarani
7.Kalaivani ...Respondents2 to 7

(RR2 to 7 brought on record as the LR's of the
deceased sole respondent Sukri @ Veerasamy
vide order of court dated 14.08.2019 made
in CMP.No.1912 to 1914 of 2008 in SA.No.
689 of 2000)

Prayer :- This Second Appeal filed under Section 100 of Civil
Procedure Code against the judgment and decree dated
08.12.1999, in A.S.No.9 of 1999 on the file of the Subordinate
Court, Madurantakam, partly allowing the decree and judgment
dated 11.12.1998 in O.S.No.207 of 1994 on the file of the
District Munsif Court, Madurantakam.

For Appellants : Ms.C.R.Rukmani

For Respondents

R1 : Died

R2 to R7 : Notice served - no appearance

JUDGMENT

This second appeal is directed as against the judgment and decree dated 08.12.1999, in A.S.No.9 of 1999 on the file of the Subordinate Court, Madurantakam, partly allowing the decree and judgment dated 11.12.1998 in O.S.No.207 of 1994 on the file of the District Munsif Court, Madurantakam.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and permanent injunction. The plaintiffs are the absolute owners of the suit property. It was originally in possession and enjoyment of the second and third plaintiff's family. The first plaintiff married the third plaintiff 25 years back and thereafter settled along with the second and third plaintiffs. It was classified as Grama Natham Poramboke and there is a thatched house in the suit property. The house was also assessed to tax and house tax is paid in the name of the second plaintiff. Patta was also granted in favour of the first plaintiff by the Natham Survey Scheme Special Tahsildar dated 04.10.1993 in patta No.88. Since the first plaintiff is the male member of the family, the patta was issued in his name. While being so, the defendant is a stranger and he has no right, interest and title over the suit property and trying to dispossess the plaintiffs from the suit property. Hence, the suit.

4. The defendant resisted the plaintiffs' case by filing written statement stating that the entire averments made in the plaint are false and frivolous. The defendant is the absolute and exclusive owner of the six cents of land adjacent to the Endathur Main Road, namely the northern half of the suit property. The defendant has purchased the same by registered sale deed dated 29.03.1981 from one, Ramamoorthy. From the date of purchase, the defendant is in possession and enjoyment of the suit property. He also constructed house and permitted his servant to reside there in the extent of 6 cents. The defendant is paying house tax to the local panchayat. Further stated that even his vendor was in possession and enjoyment of the suit property for more than 12 years and prescribed title to northern half of the suit property by adverse possession and therefore, the plaintiffs are not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 to P.W.3 were examined and nine documents were marked as Ex.A.1 to Ex.A.9. On the side of the defendant, D.W.1 to D.W.3 were examined and Ex.B.1 and Ex.B.2 were marked. The Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2 as Court documents. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiffs preferred an appeal suit in A.S.No.9 of 1999 before the Subordinate Court, Madurantakam. The first appellate Court on appreciating the materials placed on records, partly allowed the appeal and decreed the suit in respect of six cents of the suit property out of 12 cents. Challenging the same, the plaintiffs have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the findings of the appellate court in the absence of any legal and acceptable evidence, that the defendant is entitled to 0.06 cents of land as against voluminous documentary evidence adduced on behalf of the plaintiff/appellant are correct?

b) Whether the findings of the appellate court in the absence of sufficient proof of possession by the defendant / respondent herein that the defendant is in enjoyment of 0.06 cents of land are correct?

c) Has not the appellate court adopted a wrong and erroneous approach to the points in issue regarding title and possession of the suit lands?

d) Whether the findings of the appellate court that plaintiff / appellant herein is entitled to 0.06 cents out of 0.12 cents of land only and the defendant to rest, in disregard of sufficient materials placed before it, are not erroneous?

7. The learned counsel appearing for the plaintiffs is present and she reiterated the averments set out in the plaint.

8. Heard M/s.C.R.Rukmani, learned counsel appearing for the plaintiffs. Though notice was served to the defendant, no one appeared on behalf of the defendant.

9. This Court considered the rival submissions made by the learned counsel for the plaintiffs.

10. According to the plaintiffs, they are in possession and enjoyment of the suit property for a period more than 60 years. The first plaintiff married the third plaintiff and thereafter he also settled along with the other plaintiffs in the suit property. Their house was also assessed to house tax and they are paying house tax regularly. The suit property is comprised in survey No.178 /B2 admeasuring 12 cents (0.475 square meters) with thatched house, two tamarind trees, four palm trees along with other trees situated at Morappakkam Village, Madurantakam. Patta issued in favour of the plaintiffs was marked as Ex.A.1 dated 04.10.1995. Ex.A.2 to Ex.A.9 are the house tax receipts stand in the name of the plaintiff.

11. Whereas the defendant purchased half of the suit property on the northern side by the registered sale deed dated 29.03.1981 from one Ramamoorthy Pillai, which was marked as Ex.B.1. P.W.1 to P.W.3 deposed that the plaintiffs are in possession and enjoyment of the suit property and patta was also issued in their favour for the entire suit property. They also paid house tax to the entire suit property even till the filing of the suit. D.W.1 deposed that half of the suit property, namely six cents, patta was issued in favour of his vendor and the same was marked as Ex.B.2. Admittedly, the suit property is classified as Grama Natham. Though the defendant marked the sale deed and the patta issued in respect of the land comprised in survey No.178/B, they did not produce any document to show their possession. Whereas the plaintiff marked patta as well as house tax receipts to prove their possession of the suit property. Further, the suit property comprised in survey No.178/B2. Whereas the defendant marked the sale deed and patta in respect of the property situated in survey No.178/B, that too for six cents. Therefore, the first appellate court decreed the suit only for six cents of the suit property on the southern side.

12. The trial court dismissed the suit on the ground that the plaintiffs did not produce any document to show their title over the suit property. As mentioned above, the suit property is classified as Grama Natham and the plaintiffs proved their possession and enjoyment for period more than 30 years. Though the defendant marked the sale deed and patta of the land comprised only in survey No.178/B, the suit property is comprised in survey No.178/B2 admeasuring 12 cents. Further the defendant also failed to produce any piece of evidence to show their possession and enjoyment of the suit property. Therefore, both the courts below erred in holding that the plaintiffs failed to prove their possession and enjoyment of the suit property without considering Ex.A.1 to Ex.A.9. Further, the learned counsel for the plaintiffs submitted that as on today, no one is in possession of the suit property by the defendant. Even after receipt of notice from this Court, no one has appeared before this Court. Therefore, this Court believes the case of the plaintiffs that

no one is in possession and enjoyment of the suit property by the defendant. Therefore, this Court necessarily constrains to interfere with the findings of the courts below, and all the substantial questions of law involved in this second appeal are answered in favour of the plaintiffs and as against the defendant.

13. In view of the above discussion, the second appeal is allowed, and the judgment and decree dated 08.12.1999 passed by the first appellate court partly set aside. The judgment and decree dated 11.12.1998 passed by the trial court are also set aside. Consequently, the suit filed by the plaintiffs in O.S.No.207 of 1994 on the file of the District Munsif Court, Madurantakam is decreed in favour of the plaintiffs. There is no order as to costs.

Sd/-

Assistant Registrar(CS III MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Madurantakam
- 2.The District Munsif,
Madurantakam.

Copy to:

The Section Officer, VR Section, High Court, Madras.

S.A.No.689 of 2000

A.SK(20.01.2021)

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