

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.02.2020

DELIVERED ON:18.02.2020

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

S.A.No.1255 of 2008

and

M.P.No.1 of 2008

1.Haliammal

2.K.Krishnamurthy

3.M.Ranganathan

... Appellants

vs.

P.Lingam

.... Respondent

Second Appeal is filed against the judgement and decree, dated 14.03.2008, passed by the Sub Court, Udagamandalam, in A.S.No.3 of 2008, reversing the judgement and decree, dated 12.10.2007, passed by the District Munsif Court, Coonoor, in O.S.No.3 of 2002.

For Appellants : Mr.R.Subramaniam for
M/s.B.Ravi

For Respondent : No appearance

JUDGEMENT

This second appeal is filed by the plaintiffs in the suit as against the judgement and decree, dated 14.03.2008, passed by the Sub Court, Udagamandalam, in A.S.No.3 of 2008, reversing the judgement and decree, dated 12.10.2007, passed by the District Munsif, Coonoor, the Nilgiris, in O.S.No.3 of 2002, which was one for permanent injunction.

2.The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3.The appellants are the plaintiffs and the respondent herein is the defendant, in the suit. The case of the plaintiffs is that they are the owners of the suit schedule property and they are in peaceful possession and enjoyment of the same, by virtue of inheritance and succession. According to them, originally they owned 0.21-½ acres of land in R.S.Nos.613/2 and 613/3 of Ketty Revenue Village and in the land there were two buildings in R.S.No.613/2, bearing Door Nos.17/52 and 17/53. In the year 1971, one Madhan-the husband of the first plaintiff and father of second and third plaintiffs, died intestate, leaving behind the plaintiffs as his legal heirs. Subsequent to his death, on 23.05.1972 the first plaintiff sold 0.20 acre of land in R.S.Nos.613/2 and 613/3 of Ketty Village along with building at Door No.17/52, to one Smt.Mercy Kamalam, wife of J.Michael, under a Sale Deed, which was a registered document. The said Sale Deed was marked as Ex.A1.

4.According to the plaintiffs, the property was sold with specific boundaries and the building thereon. The plaintiffs were left with 0.01-1/2 acres of land in S.No.613/2, with the building bearing Door No.17/53. They have been in possession and enjoyment of the same. The defendant herein purchased 0.19 acres of land in R.S.No.613/2 and 613/3 of Ketty Revenue Village, from J.Michael, husband of Smt.Mercy Kamalam, after her demise, under a Deed of Sale dated 21.11.1983, which was marked as Ex.A2 and the sale was also registered in the office of the Sub-Registrar, Coonoor. The defendant further purchased 0.01 acre of land in R.S.No.613/2 and 613/3, Ketty Village, with the building thereon, bearing Door No.17/52. According to the plaintiffs, the property, which was originally sold to one Smt.Mercy Kamalam, by the first plaintiff in 1972, had been purchased by the defendant from the husband of Smt.Mercy kamalam. There was also one more transaction of sale, on 26.10.1974, which was also registered in the Office of the Sub-Registrar, Coonoor, under which, the defendant had purchased 0.01 acre of land in R.S.613/2 and 613/3, Ketty Village, with the building standing thereon, bearing Door No.17/55, Ketty Town Panchayat, from one A.Nandhi, who was none other than the brother of the first plaintiff's husband. In respect of the properties belonging to Madhan-the husband of the first plaintiff and the father of the second and third plaintiff and his brother A.Nandhi, there was a partition suit filed in O.S.No.48 of 1986, which was pending finalization.

5.According to the plaintiffs, the defendant having purchased some properties in Ketty Village, attempted to disturb their peaceful possession and enjoyment of the suit schedule property. Therefore, the plaintiffs filed the suit seeking for permanent injunction.

6.The suit was resisted by the defendant by filing a written statement denying the possession of the suit schedule property with the plaintiffs. The defendant also denied the door numbers of the buildings, in respect of which the plaintiffs claimed right over the same. The defendant also denied the ownership of the plaintiffs in respect of the building bearing door No.17/53.

7.The trial Court, after framing the issues and after perusing the materials and the pleadings placed on record, decreed the suit in favour of the plaintiffs. According to the trial Court, the plaintiffs had clearly established their case of possession through documents Exs.A1 to A11. In fact, on behalf of the plaintiffs, encumbrance certificate was marked covering the period of 30 years from 01.01.1972 to 06.12.2001, showing that the suit property of 0.01-½ acres, with the house bearing door No.17/53, which was marked as Ex.A4, was in the name of the first plaintiff. Moreover, the trial Court also found that Exs.A5 and A10 were the house tax receipts, which show that the tax was paid for the suit schedule property in the name of Madhan-the husband of the first plaintiff and father of second and third plaintiffs. The trial Court has also found that though partition suit was pending between the parties, since the possession was with the plaintiffs, the plaintiffs were entitled to the grant of relief as prayed for in the suit. As against the said judgment and decree of the trial Court, the defendant filed an appeal in A.S.No.3 of 2008, on the file of the Sub-Court, Udagamandalam.

8.The lower appellate Court, which dealt with the appeal, however, reversed the findings of the trial Court. The principal reason that weighed with the appellate Court was that the plaintiffs did not prove their ownership over the property. The lower appellate Court has also concluded that the defendant had contested the claim of the plaintiff regarding the ownership over the property and the plaintiffs did not establish their claim, rebutting the contention of the defendant. Moreover, the lower appellate Court has also held that in order to prove possession, no documents were marked in the suit proceedings. The lower appellate Court, therefore, reversed the findings of the trial Court and allowed the appeal filed by the defendant. Aggrieved by the said judgment and decree of the appellate Court, the present Second Appeal has been filed by the plaintiffs, raising the following Substantial Questions of Law:

"a)Whether in law, has not the lower appellate Court failed to see that the plaintiffs have proved their possession vide Ex.A4 to A10 and hence the plaintiffs are entitled to injunction decree.

b)Whether in law is not the lower appellate Court wrong in going into the question of title, in the suit for bare injunction?

c)Has not the lower appellate Court erred in holding that the boundary description in Ex.B1 is wrong, in the absence of any rectification deed or any pleading."

9.Mr.R.Subramaniam, the learned counsel appearing for the appellants/plaintiffs would submit that the lower appellate Court has completely misdirected itself on several grounds and facts. First of all, the lower appellate Court has erred in allowing the appeal on the ground that the plaintiffs did not establish their ownership over the suit schedule property. In a suit for injunction, the plaintiffs were called upon only to prove their possession and not title. When the trial Court has clearly understood the case of the plaintiffs, i.e. the partition suit was pending between the descendants of common ancestor, including the plaintiffs and on behalf of the plaintiffs, documents Exs.A1 to A11 were marked, which demonstrated clearly their possession of the suit schedule property, unfortunately and strangely, the lower appellate Court overlooked all those vital factors and allowed the appeal against the plaintiffs.

10.The learned counsel would also submit that in the judgment, the lower appellate Court has concluded that no documents were marked on behalf of the plaintiffs, in order to prove their possession. On the contrary, Exs.A1 to A11 were marked by the plaintiffs, clearly showing their possession of the suit schedule property. The learned counsel would also submit that the lower appellate Court has also failed to look into the boundaries, which were reflected in Exs.A1 to A3 and also overlooked the most crucial document, viz., the encumbrance certificate for 30 years , which was marked as Ex.A4, wherein, it was shown that the suit schedule property was standing in the name of Madhan-husband and father of the plaintiffs. In any event, once the lower appellate Court has concluded erroneously that no documents were marked by the plaintiffs in order to prove their possession, such conclusion has to be discountenanced outright, as the same was contrary to records.

According to the learned counsel, the trial Court has appreciated all the materials and the evidence on record in proper perspective and allowed the suit, but unfortunately, the lower appellate Court has wrongly reversed the said finding, which warrants interference by this Court.

11. Although notice was issued to the respondent/defendant and the same having been served and the name of the defendant/respondent also having been printed in the cause list, there is no appearance on behalf of the respondent/defendant.

12. This Court heard the submissions of the learned counsel for the appellants/plaintiffs and perused the materials and pleadings placed on record.

13. This Court is entirely in agreement with the submissions made on behalf of the appellants/plaintiffs, on the basis of the materials and the pleadings placed on record. On behalf of the plaintiffs, 11 documents were marked as Exs.A1 to A11. Exs.A1 to A3 are the Sale Deeds, describing the boundaries of the property sold. Ex.A4 is an Encumbrance Certificate for a period of 30 years i.e from 01.01.1972 to 06.12.2001 and also Exs.A5 to A10 are the House Tax Receipts and all these documents would unequivocally establish the fact that the plaintiffs have been in possession of the suit schedule property. Whether their ownership is established or not, which is the subject matter of dispute in the partition suit, pending finalization, the trial Court appreciated the rival claims and decreed the suit in favour of the plaintiffs, whereas, the lower appellate Court has completely gone astray in erroneously concluding that no documents were marked on behalf of the plaintiffs, which conclusion was outrightly wrong and unsustainable. The very fact is that the lower appellate Court had overlooked 11 documents marked on behalf of the plaintiffs in order to prove their possession. The lower appellate Court has, therefore, committed the gravest error in arriving at such conclusion and on this ground alone, the judgment and decree of the lower appellate Court are to be set aside.

14. In any event, as rightly contended by the learned counsel for the appellants/plaintiffs, in a suit for injunction, the plaintiffs are required only to prove possession, regardless of the ownership issue. Once again the lower appellate Court has misdirected itself in its conclusion that the plaintiffs did not establish their ownership over the suit schedule property. In fact, the trial Court is perfectly right in concluding that the ownership of the subject property was to be decided in the

pending partition suit. The lower appellate Court has overlooked even this patent fact and found that the ownership was not established by the plaintiffs. On the whole, the approach of the lower appellate Court is fundamentally wrong and cannot be sustained both in law and on facts. The way and manner in which the appellate Court has dealt with the appeal and the conclusion reached by it against the plaintiffs, in the teeth of the materials/evidence made available for conclusion, is not to be appreciated and this Court cannot have any hesitation in setting aside the judgment and decree of the appellate Court, dated 14.03.2008.

15. In the above circumstances, the judgment and decree of the lower appellate Court, passed in A.S.No.3 of 2008, dated 14.03.2008, are hereby set aside. The judgment and decree of the trial Court, passed in O.S.No.3 of 2002, dated 12.10.2007, are upheld. The Second Appeal stands allowed. The Substantial Questions of Law, framed by this Court, are answered in favour of the appellants/plaintiffs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/true copy/

Sub Asst. Registrar

msk

To

1. The Sub Court, Udagamandalam.
2. The District Munsif Court, Coonoor.

+1 cc to M/s.R.Subramanian Advocate srl3899

S.A.No.1255 of 2008

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