

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.413 of 2009

Kuppusamy

...Appellant/Plaintiff

Vs

1. Kumar
2. Vinayagam
3. Sabapathy
4. The Tahsildar
Thirukalukundram Taluk

5. The District Collector, Kancheepuram

6. Pattammal

...Respondents/Respondents

PRAYER: Second Appeal is filed under Section 100 of CPC praying to prefer the above Memorandum of Grounds of Second Appeal against the Judgement and the decree dated 30.10.2008 passed in A.S.No.14 of 2007 on the file of Principal Sub-Judge, Chengalpet confirming the judgement and the decree dated 17.11.2006 passed in O.S.No.99 of 2001 before the District Munsif Cum Judicial Magistrate, Thirukalukundram.

For Appellant : Mr. J. Sudhakaran

For Respondents : R1 to R3- No appearance

Mr. N. Manikandan,

Government Advocate for R4 and R5

R6- Set Exparte

Judgment

The unsuccessful plaintiff before the Courts below is the appellant before this Court.

2. The plaintiff had filed a suit for permanent injunction and briefly stated his case was that he has been in possession and enjoyment of the suit property for over ten years. The property in question is a Mekal paromboke, that is; a grazing ground, covering an extent of 4.50 acres. The plaintiff would contend that he has been paying B memo charges regularly in respect of the property and the available B memos were already

filed by him. It is his case that the defendants who were total strangers to the property were attempting to trespass and take over the possession of the same. The suit property is described as follows:

SCHEDULE OF PROPERTY

Kancheepuram District, Thirukalukundram
firka and Taluk, Pattikodu Village Meyekkal
S.No.192/1 4-50 acres, surrounded North by
Saraswathi and Co Lands,
South by Natham Road,
West by Sabapathy; and
East by Kanniappan

3. The case of the defendants that they have been in possession and enjoyment of the property and that the land was being used for cultivation. It is their case that they have cultivated various crops in the said property. At no point of time the plaintiff has been in possession and enjoyment of the said property. They would further contend that they have also been paying the 2 A charges to the Government in respect of the suit property. That apart defendants have also put up a small hut in the suit property to keep a watch on the crops. They would further argue that the cause of action as pleaded in the plaint does not exist and therefore the suit deserves to be dismissed.

4. The learned District Munsif, Thirukkazhukkundran on considering the pleadings, framed the following issues:

1. Whether the plaintiff is entitled for a bare injunction as prayed for against the defendant?
2. Whether the suit property is in the possession of the plaintiff?
3. Whether there is cause of action in the suit?
4. To what relief?

5. The plaintiff had examined himself as PW1 and marked Ex.A1 to A7. On the side of the defendants, the second defendant had examined himself as DW1 and one Murugesan was examined as DW2 and one Chokkalingam was examined as DW3 and Ex.B1 and B2 were marked.

6. The Trial Court on considering both documentary and oral evidence, came to the conclusion that the plaintiff had not proved his possession and therefore dismissed the suit.

7. Aggrieved by this Judgment and Decree, the plaintiff had filed AS.No.14 of 2007 on the file of the Principal Subordinate Court, Chengalpattu. He had also filed I.A.No. 530 of 2008 for receiving Additional documents.

8. The learned Subordinate Judge dismissed the application for receiving the additional documents on the ground that there was absolutely no reason given in the affidavit filed in support of the petition to state as to why the documents had not been produced before the Trial Court. The First Appellate Court had further observed that the plaintiff who was seeking to mark the electricity consumption card as additional document had not proved as to how it relates to the suit property and consequently the IA came to be dismissed. The learned Appellate Judge also concurred with the findings of the Trial Court and held that the property belongs to the Government as it is a Paramboke land and there cannot be an injunction against the defendants 4 and 5 and the suit deserved to be dismissed as the plaintiff had also not proved possession.

9. The learned Subordinate Judge had held that the documents filed on the side of the plaintiff does not in any manner relate to the suit property. In fact, Ex.A2 relates to Survey No. 192/2, whereas the suit property lies in survey No. 192/1. That apart, the Appellate Court has held that the Revenue Officials have not been examined on the side of the plaintiff to prove his case and therefore the judgment and decree of the Trial Court did not call for any interference.

10. In the above Second Appeal, notice was ordered to the respondents and the matter was posted for admission. The Appeal is yet to be admitted.

11. A perusal of the judgment and decree of both the Courts below clearly shows that the plaintiff who has come forward with a suit for bare injunction in respect of a specified property described in the schedule to the plaint has not let in evidence whatsoever to prove his possession of the same. The Revenue receipts which have been relied by him do not correlate to the suit property.

12. The plaintiff has not examined any other independent witness or the revenue officials to prove his case. Though the electricity receipts were sought to be marked as additional documents it has not been explained as to how these payments relate to the suit property. Further house tax receipts have been produced however there is no pleading by the plaintiff that he has made any construction and therefore directed to pay tax. It is not proved that the plaintiff has been directed to pay B memo charges in respect of the property, as no survey number is mentioned in the B memos. Being a suit for bare injunction proving possession is sine qua non for obtaining the decree for injunction, apart from proving that there is threat to one's

possession. The plaintiff in the instant case has neither proved his possession nor proved any threat to such possession. Therefore, there is no substantial question of law involved in the second appeal and consequently the Second Appeal stands dismissed. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Subordinate Judge
Chengalpattu

2.The District Munsif cum Judicial Magistrate
Thirukalukundram

+1 CC to Mr.J. Sudhakaran, Advocate sr 19434

+1 CC to The Special Govt. Pleader sr 19827.

S.A.No.413 of 2009

RSI (CO)
SP (24/08/2020)



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