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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2020

Date of Verdict : 03.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 2099 of 2004

1. K.Jabbar (Died)
2. Thasthakeer
(2nd Appellant brought on record as LRs' of the deceased
1st Appellant vide order dated 18.12.2019 made in
C.M.P.No. 27231 of 2019) ..Appellants

Vs.

1.Kannaiah Naidu (Died)
2.Dhanalakshmi
3.Jayanthi
4.Indira
5.Saraswathi
6.Sekar
7.Latchumi
8.Govindammal
9.Jaishankar
(R2 to R9 brought on record as LRs' of the deceased sole
respondent viz., Kannaiah Naidu vide order of Court dated
03.01.2020 made in C.M.P.No. 28083, 28086 and 28087 of 2019
in S.A.No. 2099 of 2004) ...Respondents

Prayer: Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 19.09.2000 made in A.S.No. 45 of 2000 on the file of the District Judge, Tiruvannamalai, confirming the judgment and decree dated 19.11.1999 made in O.S.No. 679 of 1992 on the file of the II-Additional District Munsif Tiruvannamalai.

For Appellant : Mr.S.T.Bharath Gowtham

For Respondents : R1 - Died
Mr.R.Muthukannu for R2 to R9



J U D G M E N T

This appeal has been filed as against the judgment and decree dated 19.09.2000 passed in S.A.No. 45 of 2000 on the file of the District Judge, Tiruvannamalai, confirming the judgment and decree dated 19.11.1999 made in O.S.No. 679 of 1992 on the file of the II-Additional District Munsif Court, Tiruvannamalai.

2. For the sake of convenience, parties were referred to as per their ranking in the Trial Court.

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

3.1. The suit is filed for bare injunction. The suit property belonged to the plaintiff. The plaintiff is in possession and enjoyment of the suit property for the past 40 years and thus, perfected title by adverse possession. He also obtained electricity service connection and paying electricity charges in his name. The property also assessed to the tax and duly paid Panchayat tax. While being so, the defendants, who is the Muthuvalli of the Dharka attempted to evict the plaintiff from the suit property. Hence, the suit.

4. Resisting the same, the defendant filed a written statement and contended that the suit property never belong to the plaintiff which is comprised in Survey No.195/5 classified as burial ground belongs to the Muslim community of Kilpennathur. By an order dated 10.08.1970, the settlement Tahsildhar, Chinglepet treated the suit property as a burial ground of the Muslim community of Kilpennathur. While being so, the plaintiff encroached upon the property comprised in Survey No. 193/5 and constructed a thatched house partly in Highway Poromboke for which the entire Muslim community, Kilpennathur arouse objections. Therefore, the plaintiff's possession and enjoyment never perfected title by an adverse possession. Further, they did not add necessary party to the suit property and as such the suit is bad for non-joinder of necessary party and prayed for dismissal of the suit.

5. On the side of the plaintiff, examined P.W.1 to P.W.3 and were marked Exs. A1 to A25. On the side of the defendants, they examined D.W.1 and D.W.2 and were marked Exs. B1 and B2. On perusal of the material available on record, oral and documentary evidence adduced by the parties and submissions of the counsel for both the parties, the Trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No. 45 of 2000 and the same was dismissed and confirmed the judgment and decree



passed by the Trial Court. Aggrieved by the same, the defendant preferred this second appeal. At the time of admission, the following substantial questions of law were formulated for consideration:-

"i) Is the learned District Judge right in reversing the findings of the learned II-Additional District Munsif that suit property is a burial ground when no appeal is preferred against this finding by the plaintiff?

ii) Is the learned District Judge right in granting a decree for injunction against the real owner when in law no such decree can be granted?"

6. Heard, Mr. S.T.Bharath Gowtham, learned counsel for the appellant and Mr. R.Muthukannu for respondents 2 to 9. R1 Died.

7. The learned counsel appearing for the defendants submitted that the Ex.B1 categorically proved that the suit property was originally allotted for burial ground to the Muslim community of Kilpennathur. The plaintiff is nothing but the encroacher, when the plaintiff's suit property which belongs to the Dharka allotted for the purpose of burial ground. The Dharka is the necessary party and even then the plaintiff failed to implead the necessary party to the suit proceedings and as such, the suit itself is bad for non-joinder of necessary party. Further, the plaintiff did not even mentioned the measurement of the suit property except the boundary. Further, the Tahsildhar also issued eviction notice and directed the plaintiff to evict the premises and it is clearly proved from the Ex.A6 marked by the plaintiff namely, petition submitted by the plaintiff to the District Collector. He further submitted that admittedly the suit property which is allotted in favour of Dharka as burial ground by the settlement Tahsildhar and as such the prayer of injunction cannot be maintainable as against the real owner of the property. Further, when the title over the property is disputed by the defendant, the suit itself is not maintainable for injunction alone without the prayer of declaration. Further, the injunction suit is not maintainable as against the government property which is allotted for burial ground to the Muslim religion. Therefore, prayed for dismissal of the suit. The learned counsel for the defendants cited the below judgments in support of his contention:-

i) AIR 2004 SC 4609 - Rame Gowda (D) by LRs' Vs. M.Varadappa Naidu (D) by LRs'

ii) 2019 (1) CTC 8 (Mad) - Ezumalai; Kuppan; Govindaraj; Lingesan; Kasinathan; Ramalingam; Jayaraman Vs. Venkatesa Gounder

iii) 2019 (6) CTC 517 - Mrs. Chandra Sundararaj (Died) and



others. Vs. C.M.Dhinakaran @ Suresh and others.

8. Per contra, the learned counsel appearing for the plaintiff submitted that the suit is not for title and as such it is very much maintainable for injunction alone as against the plaintiff. The suit property never allotted to the burial ground for the Muslim religion and it is not belonged to any Dharka therefore, the Dharka is not at all a necessary party to the suit proceedings. The defendant alone disturbed the possession and enjoyment of the suit property by the plaintiff and as such the Dharka is not a necessary party to the suit proceedings. The plaintiff is in possession and enjoyment of the property the from time memorial and as such the plaintiff is perfected title by adverse possession. The plaintiff categorically proved his case by marking house tax receipts and the receipts for the payment of electricity charges. Even assuming that the plaintiff is in possession, the defendant can very well take appropriate action to evict the plaintiff from the suit property. Admittedly, the defendant even till today did not even take any steps to evict the plaintiff from the suit property. Further, he submitted that even assuming the suit property belonged to the Dharka which was allegedly allotted for burial ground, the suit is very much maintainable without adding the Dharka as necessary party. The learned counsel appearing for the plaintiff has cited the judgments, in support of his contention is as follows:-

i) Mohammad Kasam Abdul Rehman and another Vs. Abdul Gafoor Ahmedji and others reported in 1963 SCC Online MP 32.

ii) M.Subbiah Vs. T.Subbiah (Died) and thirteen others reported in 2009 (1) CTC 366.

iii) N.Raman Vs. P.Sivalingam and others reported in 2013(4) MLJ 414.

iv) M.Ramamoorthy and another Vs. R.Thirunavukkarasu reported in 2015 (5) CTC 730.

v) Jharkhand State Housing Board Vs. Didar Singh & Another reported in 2019 SAR (Civil) 37.

9. The suit is filed by the plaintiff for bare injunction. According to the plaintiff, the plaintiff is in possession and enjoyment of the suit property for the past 40 years. He constructed house and assessed to the house tax. He also got electricity service connection and paying electricity charges regularly and to prove his possession and enjoyment of the suit property, the plaintiff marked the house tax demand notice and marked the Extract as Exs. A1 and A2. The electricity receipt was marked as Ex.A3. These documents clearly proved that the plaintiff is in possession and enjoyment of the suit property by



paying house tax and electricity charges from the year 1962 to 1994. The said demand register extract was marked as Ex.A25. The representation of the plaintiff was marked as Ex.A6 dated 03.07.1992. The said representation clearly proved the possession and enjoyment of the plaintiff for the past 40 years. In view of the representation sent by the defendant, the concerned Tahsildhar had taken action to evict the plaintiff. Therefore, he sent representation to the District Collector, requested to issue house site Patta and categorically mentioned that even before the Dharka he was in possession and enjoyment of the suit property. Further, the house tax also reassessed by the Execution Officer of Kilpennathur Panchayat in favour of the plaintiff. Whereas, the defendant marked Ex.B1, the order passed by the settlement Tahsildhar in respect of the property comprised in Survey No. 193/5 as burial ground in public use. It was issued on 10.08.1970. Even then, the defendant did not take any steps to evict the plaintiff from the suit property. In fact, in the year 1992, the plaintiff filed the present suit for injunction. Even pending the suit, the defendant failed to take any action against the plaintiff for eviction from the suit property. Whereas, Exs. A1 to A25 categorically proved that the suit is bad not for non-joinder of necessary party. The present suit is filed as against the defendant in the capacity of Muthuvalli of Dharka therefore, Dharka is not at all a necessary party since the Muthuvalli of Dharka was added as a necessary party for the suit. Further, other contention of the learned counsel for the defendants is that the injunction suit is not maintainable as against the true owner. Ex.B1, there is absolutely no document to show that the suit property is framed as a burial ground which was allotted to the Muslim, since Ex.B1 was issued in the year 1970. If really, the suit property was allotted to the muslim as a burial ground definitely, they would have taken appropriate action as against the plaintiff to evict him from the suit property. Admittedly, they did not even take any steps even till today, for evicting the plaintiff from the suit property. In fact, the plaintiff also categorically proved his possession and enjoyment of the suit property by marking appropriate documents. Therefore, the Courts below concurrently find that the plaintiff is entitled for the relief of injunction in respect of the suit property against the defendant. Therefore, principles of law applied in the above said decisions are taken into consideration and valid as applicable to the case on hand.

10. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below by upholding the case of the plaintiff and this Court is of the considered opinion that



no substantial questions of law are involved in this second appeal. Be that as it may, the substantial questions of law are answered accordingly in favour of the plaintiffs and against the defendants. In fine, this second appeal is dismissed and the judgments and decree of the Courts below are confirmed. Consequently, connected miscellaneous petitions, if any are closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

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To:-

1. The District Judge, Tiruvannamalai.
2. The II-Additional District Munsif Tiruvannamalai.

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The Section Officer
VR Section
High Court Madras

S.A.No. 2099 of 2004

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