

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.10.2020	Pronounced on: 22.10.2020
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CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1451 of 2010
and
M.P.No.1 of 2010

1.Vijayamurthy
2.Srinivasan ... Appellants /Defendants 2 & 3

/versus/

1.Muthusamy Gounder
2.Selvaraj ... Respondents 1 & 2/Plaintiffs
3.Ponnammal
4.Kamala
5.Lalitha
6.Selvi
7.Rani ... Respondents 3 to 7 / Defendant 5 to 9
8.Kesavan ... 8th Respondent/ 4th Defendant

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Principal Subordinate Judge, Krishnagiri, dated 24.03.2010 in A.S.No.43 of 2008 confirming the Judgment and Decree of the learned District Munsif of Uthangarai, dated 29.09.2008 in O.S.No.251 of 1995.

For Appellants :Mr.Karthikeyan for
Mr.N.E.A.Dinesh

For Respondents:Mr.V.Raghavachari for R1 & R2
No appearance for R3 to R8

J U D G M E N T

(The case has been heard through Vedio Conference)

This Second Appeal is filed by the defendants 2 and 3 against the concurrent findings of the Courts below in the suit filed for declaration and permanent injunction restraining the appellants and their men from trespassing or interfering in any manner the peaceful possession and enjoyment of the suit property more fully described under the plaint schedule.

2. The appellants herein in his written statement had contended that the defendants and their ancestor for over statutory period are in enjoyment of the suit property and

perfected the title over of the suit property by way of adverse possession. The said contention disbelieved by both the Courts below and granted permanent injunction in favour of the plaintiffs/respondents.

3. The facts pleaded and proved by the parties are under:

The 1st plaintiff is the junior paternal uncle of the 2nd plaintiff. The 1st plaintiff and his elder brother Ramasamy purchased 19.05 hectares of land bearing Survey No.2/2B in Mallipatti village, Uthangarai Taluk under the sale deed dated 20.05.1996 marked as Ex.A4, since then the property is in their possession and enjoyment and they are paying the necessary kist and also ryotwari patta Ex.A5 issued to them by the settlement Tahsildar for the suit property. In the year 1994, the property was sub divided under the proceedings of the Tahsildar (Ex.A6) and patta (Ex.A7) issued in the name of the plaintiffs. Based on the Adangal, Kist receipt and certified copy of the chitta, which was marked as Ex.A10 and Ex.A11. The plaintiff has succeeded by establishing their right, title, interest and possession over the suit property.

4. The case of the defendants that their father Ponnu Naidu possessed 30 acres and 10 cents in Survey No.3, Mallipatti village and enjoying along with the suit property since 28.08.1935 and had obtained patta for the entire 14.90 ares of patta No.108 was rejected by the Courts on the ground that the entire extend of land in Survey No.3 is only 13 acres 10 cents, whereas the patta issued in their favour for 1.80 cents in excess and said excess land falls in S.No.2/2B which is the land purchased by the plaintiff under Ex.A.4. Whereas the document of the year 1935(Ex.B1) relied by the defendants is not actually patta, but the notice issued to the mother of the 1st defendant. The content of the said notice is regarding enquiry in respect of property in Survey No.3 for an extent of 13.10 acres found in the Survey Register extract. The inclusion of 1.80 acres in addition to 13.10 acres is found to be an interpolation. Further the other records relied by the appellants/defendants namely the patta pass book marked as Ex.B2, the Court on scrutiny has pointed out that there is no serial number for the patta, address of the pattadar differs and the date of issue is not found. The inclusion of 1.80 acres of land in addition to the 13.10 acres in Survey No.3 not counter signed by the VAO or other revenue officials.

5. The learned counsel for the appellant in the second appeal took pain to canvas that the description of the suit property not properly given in the sale deed relied by the plaintiff and therefore grant of decree of declaration and permanent injunction in favour of the plaintiff is erroneous. Further it was contended that the plaintiff had never been in

possession of the suit property. Whereas, the defendants of perfected the title by adverse possession.

6.To prove the title over the suit property, the plaintiffs have relied upon the sale deed Ex.A4, patta Ex.A5, the proceedings of the Tahsildar Ex.A6 and patta pass book Ex.A7. To prove the possession and enjoyment, they have relied upon the kist receipt, chitta and adangal. In the UDR scheme after 21 years of the purchases, the UDR patta Ex.A1 has been issued in the name of the plaintiff and his brother Ramasamy. Contrarily, the defendants had relied upon 5 exhibits out of which the manipulation and error in Ex.B1 notice and Ex.B2 patta been pointed out by the Courts below.

7.In the said circumstances, while the plaintiff has proved the title as well as the possession through documents the attempt of the defendants relying upon manipulated documents for their title and possession has been exposed in the discussions of the Courts below.

8.In the said circumstances, this Court finds no ground to interfere the findings of the Courts below. Since there is no substantial question of law available to exercise power under Section 100 of CPC, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rpl

To:

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif Uthangarai.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

S.A.No.1451 of 2010
and
M.P.No.1 of 2010

SV(CO)
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