

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2020

PRONOUNCED ON:09.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.939 of 2010
(Heard through video conferencing)

A.Kuppuswamy
S/o Chinna Appu Naidu,
Tirur Kuppam,
Tirur Post,
Trivellore District.

... Appellant/Appellant/
2nd Plaintiff

Vs

1.Vadivazhagi
W/o Damodharan

2.Damodharan

3.Raman
S/o Venkataswamy Pillai

4.Lakshmanan
S/o.Venkataswamy Pillai,
all are residing at
Tirur Kuppam,
Tirur Post,
Trivellore District.

.. Respondents/Respondents/Defendants

Prayer:- This Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the Additional District Judge, Fast Track Court No.5, Chengalpet at Trivellore dated 08.03.2002 and made in A.S.No.13 of 2001, confirming the judgment and decree of the District Munsif, Trivellore dated 28.10.1998 and made in O.S.No.906 of 1989.

For Appellant :Mr.T.D.Vasu

For Respondents 1 and 2 :No Appearance

For Respondents 3 and 4 :Exparte

JUDGMENT

This second appeal is filed by the second plaintiff aggrieved by the concurrent finding of the Courts below. Originally, the suit was filed by Sanjeevi Ammal, the sole plaintiff. Since the sole plaintiff died during the pendency of the suit, the second plaintiff was impleaded as second plaintiff. The suit filed for injunction against the defendants was dismissed by the Courts below on the ground that in the plaint the suit property is not properly described and the plaintiffs have not proved possession of the suit property.

2.The suit property is more fully described in the plaint as under:-

"Acre 0.54 cents in R.S.No29/1 (Old Paimash No.429/1) Bounded on the north by Thozhur Village limits, on the south by Gramanatham lands, on the East by the land of Ranganatha Naidu purchased from Sanjeevi Ammal the plaintiff and on the West by the bound at Tirur Village, Tirur Firka, Tiruvallur Taluk and Registration Sub-District."

3.According to the plaintiffs, the said land was originally held by Kuppusamy Naidu who inherited the property from his ancestors. On 19.02.1931, he executed a registered Will in favour of his wife Rajammal and daughter Sanjeevi Ammal. Patta No.21 was issued to the said property. The land was described as Anumantharayankulam. This land was used by their ancestors for grazing cattle and to feed water to the cattle. The defendants claiming the said property as Government poromboke trying to encroach upon it. Hence, the present suit seeking injunction restraining the defendants from disturbing the peaceful possession.

4.The defendants contested the suit stating that they are in possession of the suit property for more than 15 years. It is classified as grama natham. No patta issued to the plaintiffs. Kuppusamy Naidu has no right to bequeath the said property to his wife and daughter through Will. The Survey Number furnished in the plaint does not belong to the suit property.

5.Before the trial Court, two witnesses were examined on the side of the plaintiffs and six exhibits were marked. On the side of the defendants, two witnesses were examined and 12 exhibits were marked.

6.The crucial witness in this case is the Village Administrative Officer who was examined as P.W.2. Referring the Village Register, this witness has clarified to the Court that 54 cents of land in S.No.29 paimash No.429/1 stands in the name of Sanjeevi Ammal, the first plaintiff. Survey number of Anumantharayakulam is 27. It is classified as grama natham. Patta No.21 does not relates to Anumantharayakulam.

7.The trial Court after extensively extracting the evidence has held that the suit schedule does not correlate with the documents relied by the plaintiffs, for getting a relief of injunction. Particularly, the patta No.21 stands in the name of one Rajarathina Naidu (Ex.A.6). How that patta No.21 will confer any title to the plaintiffs in respect of suit property, not been explained by the plaintiffs.

8.On appeal filed by the plaintiffs, the trial Court dismissed the appeal confirming the decree of the trial Court. On analysing the exhibits relied by the plaintiffs, the First Appellate Court has observed that the perusal of Ex.A.1 registered Will executed by Late Kuppusamy Naidu, describes the property bequeathed under the Will as Anumantharayakulam, paimash No.429. No evidence produced how Kuppusamy Naidu got title over the property. No evidence like patta, chitta or adanagal in the name of Kuppusamy Naidu was filed. Since, the Will is more than 70 years old, the execution of the Will is not questioned but the right of Kuppusamy Naidu over the suit property is questioned and doubted since, there was no supporting document to show that Kuppusamy Naidu was enjoying the suit property as his own till his death in the year 1950. Further, pointing out that the plaintiffs in the course of the pendency of the suit attempted to amend the survey number of the suit property but the same was dismissed and the second plaintiff did not pursue the matter any further. Therefore, the plaintiffs right in the subject property not proved.

9.The Survey number mentioned in the plaint is not related to the suit schedule property as it is described. Patta No.25 which is alleged to have been issued in favour of the first plaintiff - deceased Sanjeevi Ammal was not produced before the Court. On comparing, the village register Paimash No.429/1 is corresponding to S.No.29/1. Therefore, the First Appellate Court confirmed the trial court decree and judgment by dismissing the appeal.

10.The learned counsel for the appellant/second plaintiff would submit that the Courts below failed to appreciate the exhibits marked by the plaintiffs in its proper perspective. The fact that they are in possession and enjoyment of the suit property continuously for several years not been taken note for

granting the relief of injunction. The plaintiffs trace the title through Will of Kuppusamy Naidu marked as Ex.A.1 dated 19.02.1931 and the patta issued in the name of Rajarathina Naidu which is marked as Ex.A.6. Two kist receipts were marked which stands in the name of the deceased first plaintiff.

11.Heard the learned counsel on either side. Records perused.

12.Though the plaintiffs claim that the property is in their possession for several years, the relevant revenue record like patta, chitta and adangal not produced by the plaintiffs to show their longstanding possession. Two kist receipts were produced for payment of penal charges.

13.The plaintiffs have later realised that in the plaint, they have given wrong description of the property and its corresponding Survey number. Their application to amend the survey number was dismissed by the trial Court. So, it is obvious that the plaint as it stands has to be dismissed since, the description of the suit property and the documents relied by the plaintiffs does not correlate. Even if such error to be ignored, the other documents relied by the plaintiff also does not provide sufficient evidence for their continuous undisturbed possession of the suit property which is more specifically stated as 54 cents in S.No.29/1 appended on the South by grama natham land.

14.When the property itself is a grama natham as per the revenue records, by providing wrong description of the property and wrong Survey Number, the relief of injunction cannot be granted. The Courts below have rightly held so. There is no substantial question of law arise for consideration in this Second Appeal.

15.In the result, the Second Appeal is dismissed thereby confirming the decrees and judgments passed by the Courts below. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District Judge,
Fast Track Court No.5,
Chengalpet at
Trivellore.

2.The District Munsif,
Trivellore.

Copy to:
The Section Officer,
V.R.Section, High Court, Madras.

S.A.No.939 of 2010

GJ(CO)
CB(26/04/2021)



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