

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.541of 2020
and CMP No.11640 of 2020

1. Arumugham
2. Madhammal
3. Palanisamy
4. Muthu (a) Muthulakshmi ... Appellants/Defendants 7 to 10

Vs.

1.Sankar
2.Papathi
3.The District Collector,
Erode.
4.The Revenue Divisional Officer,
Erode Revenue Sub-Division,
Erode.
5.The Tahsildar,
Erode Taluk,
Erode.
6.The Village Administrative Officer,
Kanagapuram Village- Group - A,
Erode Taluk, Erode.
7.The Panchayat President
Kangapuram Village,
Erode Taluk.
8.The Block Development Officer,
Modakurichi, Erode Taluk.
9.Venkidusamy ... Respondents/Plaintiffis/
Defendants 1-6, 11

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the decree and Judgment passed in A.S.No.27 of 2016 on the file of the Principal Subordinate Judge, Erode, dated 08.01.2020, confirming the Decree and

Judgment passed in O.S.No.448 of 2012 on the file of the I Additional District Munsif, Erode, dated 31.03.2016.

For Appellants : Mr.P.Kannan

J U D G M E N T

The defendants 7 to 10 in O.S.No.448 of 2012 on the file of the I Additional District Munsif, Erode are the appellants. Having suffered a decree for permanent injunction in the said suit on the same being confirmed by the appellate Court in A.S.No.27 of 2016, the defendants have come up with this second appeal.

2. The plaintiffs sued for injunction claiming that the suit property was allotted to the 2nd plaintiff as per the HSD patta issued in the year 1989 in HSD No.1927/1998. The 2nd plaintiff who is the maternal grandmother of the 1st plaintiff, executed a Settlement Deed in favour of the 1st plaintiff. The plaintiffs therefore claim that they are in possession of the property as owners. It is the further claim of the plaintiffs that the defendants who are the residents of Tiruchengode, attempted to interfere with the possession of the plaintiffs' claiming that they have an interest in the property.

3. The suit was resisted by the defendants contending that they are in possession of the property and they are also entitled to a share in the property. It was their further contention that the suit property is a Village Natham land and they were also in possession along with the plaintiffs. The 5th defendant had also recognised the possession of the defendants for over 50 years. The official defendants filed a written statement accepting the title of the plaintiffs and their possession. The written statement filed by the 4th defendant specifically stated that no patta has been granted to the defendants 7 to 10 in respect of the suit properties.

4. At trial, the 2nd plaintiff was examined as PW1 and Exs.A1 to A14 were marked. The 7th defendant was examined as DW1 while the 9th defendant and one Thangavel were examined as DWs 2 and 3. Exs.B1 to B7 were marked.

5. The trial Court upon a consideration of the evidence on record concluded that the 2nd plaintiff has established the title by producing the assignment patta in her favour. The other documents produced by the plaintiffs in proof of their possession were also taken into account by the trial Court. The

documents that were filed by the defendants namely House Tax receipt Exs.B2 to B5 were rejected on the ground they are subsequent to the suit. The trial Court found that other documents do not prove the possession of the defendants of the suit property. On the above findings, the trial Court dismissed the suit. Aggrieved, the defendants 7 to 10 preferred an appeal in A.S.No.27 of 2016.

6. The lower appellate Court upon a reconsideration of the evidence, concurred with the findings of the trial Court and dismissed the appeal. It is as against the said concurrent findings, the defendants 7 to 10 have come up with this second appeal.

7. I have heard Mr.P.Kannan, learned counsel appearing for the appellants.

8. Mr.P.Kannan, learned counsel appearing for the appellants, would vehemently contend that the plaintiff himself has admitted the possession of the defendants in the plaint. He would refer to a statement made in the plaint which reads as follows:

"Now the defendants 7 to 10, who are all residing at Tiruchengode, are tried to grab the above said property illegally, and they trespassed into the plaintiff's suit property and made an attempt to encroach and get sale deed coercively on 09.02.2012 at 8.30 am."

9. According to the learned counsel, this statement made in the plaint amounts to admission of the possession of the defendants by the plaintiffs. I am unable to agree with the said interpretation of the learned counsel for the appellants. All that is stated is there was an attempted trespass on 09.02.2012. This cannot be interpreted to mean that the plaintiff has admitted the possession of the defendants. It is the specific case of the plaintiffs that the defendants are the residents of Tiruchengode. The learned counsel would rely upon the written statement filed by the 4th defendant to contend that the 4th defendant has admitted the possession of the defendants.

10. I have gone through the said written statement filed by the 4th defendant, which is in vernacular. The said written statement is neither here nor there. While in one paragraph, the 4th defendant has accepted the title of the plaintiffs and stated that the plaintiffs have been in possession, in other paragraph, the 4th defendant has stated that the defendants are in possession of some other portion of the suit properties. This cannot form the basis to reject the claim of the plaintiffs. I find that both the Courts have examined the evidence on record

and have come to the conclusion that the plaintiffs have proved their possession and they are entitled to a decree for permanent injunction.

11. The other contention of the learned counsel is that when there is a serious dispute regarding title a suit for permanent injunction will not lie, as seen from the pleadings, there is no serious dispute regarding title. The Official defendants namely, defendants 1 to 6 have admitted the title of the second plaintiff to the suit property as per the Patta granted in the year 1989. It is an assignment patta, therefore, it will confer title on her. I, therefore, do not see any merit in the claim of the appellants that there is a serious title dispute and the suit for permanent injunction will not lie. I do not find any question of law, much less a substantial question of law, in order to enable me to entertain the second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vum

To

1.The Principal Subordinate Judge, Erode

2.The I Additional District Munsif, Erode.

+lcc to Mr.P.Kannan, Advocate, S.R.No.34261

S.A.No.541 of 2020 and
CMP No.11640 of 2020

KK(CO)
CB(27/05/2021)