



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.11.2019

PRONOUNCED ON: 30.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.1225 of 2008

and

M.P. (MD).No.1 of 2009

1.K.Sankaralingam (Died)

2.K.Chellappan

... Appellants 1 & 2/
Appellants / Plaintiffs

3.Rukmani

... 3rd appellant /
L.R. of 1st appellant

(The 3rd appellant is impleaded as legal heir of the deceased first appellant, as per the order of this Court dated 24.04.2019 in C.M.P. (MD).Nos.3442 to 3444 of 2019)

Vs.

1.Yesuraj

2.Balan

3.Manoharan

... Respondents / Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 16.09.2008, passed in A.S.No.113 of 2006 by the II Additional Subordinate Court, Nagercoil, confirming the judgment and decree, dated 16.11.2006, passed in O.S.No.337 of 2001 by the Principal District Munsif, Nagercoil.

For appellants ... Mr.S.Kadarkarai

For respondents 1 & 2 ... Mr.Issac Mohanlal,
Senior Counsel for
Mr.A.Hajamohideen

For 3rd respondent ... No appearance

JUDGMENT

This second appeal has been filed by the appellants/plaintiffs against the concurrent judgment passed by the Courts below, ~~dismissing the~~ suit for permanent injunction.

<https://hcservices.ecourts.gov.in/hcservices>



2. For better appreciation and understanding, the parties are referred to as per their rank in the suit.

3. The case of the plaintiffs is that the suit property measuring 7-1/2 cents in Old Survey No.2490-A and Re-Survey No.223/2 was purchased by the first plaintiff from one Perumalswamy, Chandrasekaran and Kumarakurubaran, as per a registered sale deed dated 11.01.1971. In the plaint schedule property, a old shop building is available and the same was leased out by the plaintiffs. Subsequently, the first plaintiff gifted eastern half of the suit property to his brother viz., the second plaintiff. The plaintiffs have been in possession and enjoyment of the same as absolute owners by getting separate patta and tax assessments. On the north of the suit property, Nagercoil-Manakudy Main Road is available and touching the northern side road, a Kurusady is available, which is under the Management of Bharathar Community People. They have no right, title, possession and enjoyment over any of the portion of the south of the road. While so, when the plaintiffs attempted to put a compound wall over the suit property, the first defendant, who is the President of the Bharathar Samudhayam Community along with other defendants 2 and 3 objected the same. Hence, the plaintiffs have filed the suit for permanent injunction.

4. The case of the defendants is that apart from Kurusady, the Bharadhar Community is having 2-1/2 cents of land in Old Survey No.2490-A and Re-survey No.223/2 on the southern side of the road. The Chitta and all other Revenue records stood in the name of the President of the Community. They have been in continuous possession and enjoyment of the said property for more than one hundred and fifty years. The plaintiffs have purchased only undivided portion. The description of 7-1/2 cents referred in the plaint is not in consonance with revenue records.

5. On the side of the plaintiffs, two witnesses were examined as PW1 and PW2 and Exs.A1 to A18 were marked and on the side of the defendants, two witnesses were examined as DW1 and DW2 and Exs.B1 and B2 were marked, before the trial Court. On the side of the Court, Exs.C1 and C2 were marked.

6. The trial Court, after considering the oral and documentary evidences, has dismissed the suit on the ground that the plaintiffs have not proved their possession by valid documents and that they have not come up with clean hands. Aggrieved by the same, the plaintiffs have filed an appeal suit in A.S.No.113 of 2006. The first appellate Court, after reappraising the evidence, has confirmed the judgment and decree passed by the trial Court and dismissed the appeal. Aggrieved by the said concurrent



judgment passed by the Courts below, the present second appeal has been filed by the plaintiffs as appellants.

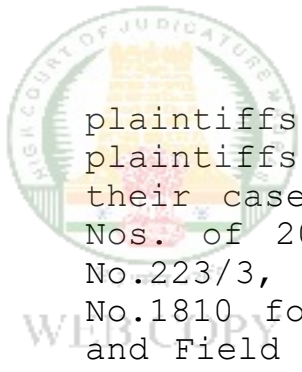
7. This second appeal was admitted on the following substantial questions of law:

(a) Whether the findings of the Courts in respect of Exs.A1 to A15 are not perverse?

(b) Whether the Courts below are correct in dismissing the suit that the suit for bare injunction is not maintainable without a prayer for declaration, when the plaintiff established their case that they are in possession and enjoyment of the suit property?

8. The learned counsel for the plaintiffs/appellants submitted that though the first plaintiff has purchased 15 cents, in the sale deed it has been wrongly stated as if 7-1/2 cents, but the four boundaries described only for 15 cents and that since the date of purchase, they have been in possession and enjoyment of entire 15 cents for more than a decades by putting up shops, paying taxes, obtaining patta, etc. and that the document Nos.1 to 15 would prove their possession and enjoyment of the suit property, but the Courts below, without considering those documents, has erroneously dismissed the suit on the ground that without the prayer for declaration the relief of injunction cannot be granted. He would further submit that the Courts below have failed to look into the evidence of DW2 - Village Administrative Officer, who has admitted the Sub-Division effected in Ex.A13 - Resurvey plan and payment of Tax in Exs.A1 to A6 in his evidence. Further, the shops put up by the plaintiffs abutting to the northern side road shall clearly prove that the plaintiffs have been in possession and enjoyment of the property more than decades. Thus, he prayed to set aside the concurrent judgments passed by the Courts below and to decree the suit as prayed for.

9. The learned counsel appearing for the defendants 1 and 2 submitted that in the written statement, it has been wrongly stated as if the Bharathar Community have been in possession and enjoyment of 2-1/2 cents instead 2-1/2 ares, which is equal to 7-1/2 cents and that the predecessors in title of the plaintiff by name Balasubramania Nadar has purchased only 7-1/2 as per Ex.B2 and the same has been purchased by the first plaintiff and the same has been subsequently subdivided as R.S.No.223/3. In Ex.B2 also, the four boundaries are mentioned for 15 cents and therefore, it cannot be claimed by the plaintiffs that in Ex.A1 - sale deed, the extent of the property has been wrongly mentioned. He would further submitted that the revenue records relating to the suit property stand in the name of the Community and therefore, the Courts below have concurrently held that the



plaintiffs have not proved their possession, and non suited the plaintiffs. He would further submit that in order to strengthen their case, the defendants have filed a petition in C.M.P.(MD). Nos. of 2019 for receiving documents such as Chitta for Survey No.223/3, Kist receipts in the name of Bharathar Community, Patta No.1810 for Survey No.223/2 stands in the name of the Community and Field Map for Survey No.223, as additional documents and they are yet to be numbered. Those documents would further strengthen their possession. Therefore, there is no need to interfere with the concurrent judgment passed by the Courts below. Thus, he prayed to dismiss this second appeal.

10. Heard the learned counsel appearing for the plaintiffs/appellants and the learned counsel appearing for the contesting defendants 1 and 2 / respondents 1 and 2 and perused the records carefully.

11. Admittedly, the present suit has been filed by the plaintiffs seeking the relief of injunction only in respect of the property measuring 7-1/2 cents in Old Survey No.2490-A, Resurvey No.223/2, in Thengamputhoor Village, Agasteeswaram Taluk, Kanyakumari District. The plaintiffs claimed the suit property only based on Ex.A1. In Ex.A1, it has been clearly stated that the plaintiffs have purchased Southern side 7-1/2 cents of undivided property in Survey No.2490-A. As per Ex.B2 - Sale Deed of the predecessor in title of the plaintiffs, the predecessor in title of the plaintiffs had purchased only undivided Southern side 7-1/2 cents of land, but the Survey number has been mentioned as if Survey No.2490. Therefore, the plaintiffs have no right over the northern side of the property in Survey No.2490. The plaintiffs have not produced any document relating to new survey number in correlation with the old survey number.

12. According to the contesting defendants, as per Ex.A1, the Southern side 7-1/2 cents lies in Resurvey No.223/3 and not in Resurvey No.223/2. It is not disputed by the contesting defendants that 7-1/2 cents of land in Resurvey No.223/3 belonged to the plaintiffs. Though it is stated by the plaintiffs that the first plaintiff has actually purchased 15 cents of land through Ex.A1 and that the four boundaries are mentioned only for 15 cents, the Courts below have rejected the said contentions holding that as per Ex.A1, only 7-1/2 cents have been purchased by the first plaintiff and further, as per Ex.B2, the predecessors in title of the first plaintiff had purchased only 7-1/2 cents and therefore, it cannot be concluded that the first plaintiff has actually purchased 15 cents. The first plaintiff has also admitted in his evidence that he has purchased only 7-1/2 cents. Merely because in the sale deed - Ex.A1 the four boundaries are mentioned for 15 cents, it cannot be concluded that the first



plaintiff has actually purchased 15 cents.

13. Having purchased only 7-1/2 cents as per Ex.A1 and holding 7-1/2 cents in Resurvey No.223/3 on the southern side, the plaintiffs have claimed right over the land in Resurvey Nos.223/2 also. In the plaint, the plaintiffs have not specifically claimed their right over the land in Resurvey No.223/2 by adverse possession. When the defendants specifically denied the right of the plaintiffs by adverse possession, the plaintiffs ought to have been amended the plaint and prayed for declaration also. But, they have not done so. Admittedly, the suit property is a vacant site, except a small petty shop. Further, the trees which are stated to be standing in the suit property are in tender age, based on which the possession cannot be decided. Even assuming that the plaintiffs have been running a small petty shop in the disputed property, the fact remains that they have not specifically claimed their right by adverse possession in the plaint and therefore, they cannot be granted injunction in respect of the said portion of land.

14. Though the plaintiffs have produced Exs.A1 to A18, Kisth receipts, Property Tax receipts, Water Connection receipt, Electricity receipt, etc. those documents are not enough to conclude that the plaintiffs have purchased the land in Resurvey No.223/2 also or they have been in possession and enjoyment of the disputed land in Resurvey No.223/2 for more than a statutory period, as they are only very recent documents. It is seen that Exs.A14 and 15 - Patta Passbooks contain several corrections and therefore, they cannot be relied upon. However, Ex.C1 - Adangal Extract clearly shows that the land in Survey No.223/2 belongs to the Bharathar Community and the land in Survey No.223/3 belonged to the plaintiffs. Therefore, the Courts below have come to the conclusion that Exs.A1 to A18 are not sufficient to grant the relief. This Court does not find any reason to interfere with the said finding of the Courts below. Thus, the first question of law is answered against the plaintiffs.

15. It is well settled principles of law that the revenue records will not confer any title to the property, but the same will definitely prove the possession of the property and the possession follows title. In a suit for bare injunction, the primary question to be considered is one of possession on the date of filing of the suit. The plaintiffs have produced Ex.A10 - Business licence to show that they have been running a shop in the disputed property in Resurvey No.223/2. Ex.A10 is license of the year 2001-2002 for running a shop. As the suit is of the year 2001. The plaintiffs have not produced any document relating to his possession in respect of the disputed land older than the same. On the contrary, DW2 - Village Administrative Officer has



admitted in his evidence that the disputed land belonged to the Community. In Ex.C1 - Adangal Extract, it has been clearly stated that the land in Survey No.223/2 belonged to the Bharathar Community groups in Patta No.1810 and the land in Survey No.223/3 belonged to plaintiffs in Patta No.5500. As the plaintiffs have not proved their title over the disputed property and as the issue with regard to declaration of title does not arise before the Courts below, the second question of law is answered against the plaintiffs. It is seen that in the first appellate Court, when the defendants submitted that the plaintiffs ought to have amended the suit as the one for declaration also, the plaintiffs have prayed to remit the matter back to the trial Court for amending the plaint and to try the suit afresh. But, the first appellate Court has rejected the said contention holding that now the matter cannot be remanded to fill up the lacuna. This Court does not find any reason to interfere with the said finding of the first appellate Court.

16. It is found that the exact measurement of the four boundaries are not mentioned in Ex.A1 and that only four boundaries of 15 cents mentioned in Ex.A1. It is stated in Ex.A1 that the first plaintiff has purchased Southern portion of 7-1/2 cents out of 15 cents in S.No.2490-A. Therefore, this Court is of the view that the report of the Advocate Commissioner appointed by this Court would only lead to a confusion and therefore, this Court is not inclined to rely upon the same.

17. Though the defendants, in order to further substantiate their case, stated to be presented petitions praying to receive four documents viz., Chitta for Survey No.223/3, Kist receipts in the name of Bharathar Community, Patta No.1810 for Survey No.223/2 stands in the name of the Community and Field Map for Survey No.223, as additional documents, in view of the above discussions and also considering the fact that the plaintiffs have not proved their initial burden of proof, this Court is of the view that the same need not be taken into account.

18. In view of the above, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



To

1.The II-Additional Subordinate Judge,
Nagercoil,
Kanyakumari District.

2.The Principal District Munsif,
Nagercoil,
Kanyakumari District.

3.The Record Keeper,-2 COPIES
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

judgment made in
S.A. (MD) No.1225 of 2008
30.06.2020

KM (07.07.2020) 7P 5C