

Revenue Officer by proceedings dated 19.07.1995, affirmed the patta granted in favour of the second defendant observing that the parties will have to work out their rights before proper Civil Court. The so called admission made by the first defendant before the revenue authorities about the possession of the plaintiffs in their capacity as tenants, was also projected as a ground for seeking a permanent injunction.

3.The suit was resisted by the defendants contending that the sale deed, dated 12.03.1945 never included the suit property. According to the first defendant, she is the wife of Sanga Konar, one of the sons of Nallan konar and they have been continues possession of the property throughout and the plaintiffs have no right over the same. The claim of the plaintiffs that there was a mistake in the sale deed, dated 12.03.1945 was stoutly denied.

4.It was the contention of the defendants that the plaintiffs have attempted to obtain patta by dubious method before the revenue authorities, which was scuttled by the order of the District Revenue Office. Despite having knowledge of the fact that the defendants have been claiming title over the property through proper succession, the plaintiffs who claim to be in possession of the property under sale deed dated 12.03.1945, have not sought for declaration of their title to the property and suit simplicitor for injunction would not lie.

5.The Courts below, on appreciation of the evidence on record, concluded that the plaintiffs have not proved the possession of the suit property on the date of the suit. The Courts below also concluded that the suit filed without seeking a relief of declaration, cannot be entertained. Even though in a suit for bare injunction, the Courts are empowered to go into the question of title as an incidental issue, when there is a serious title dispute, it is incumbent upon the plaintiff who has knowledge of such dispute even prior to the institution of suit to seek a declaration of title. The Courts below also factually found that the plaintiffs have not established their possession of the suit properties. The documents viz., the Kist receipts filed by the plaintiffs were disbelieved based on the patta and other revenue documents that stood in the name of the second defendant. Upon such conclusion, the Courts below dismissed the said suit. Aggrieved by the said dismissal of the suit, the plaintiffs have come up with this Second Appeal.

6.The following substantial questions of law were framed in this appeal, at the time of admission:-

"1.Whether the Courts below have concurrently erred in upholding the plea of respondents that they are legal descendants of Nallan Konar in the absence of acceptable and concrete evidences providing the genealogy pleaded by them



as emphasized by Apex Court and therefore, the judgment and decree of Courts below are tainted with illegality?

2. Whether the Courts below have committed material irregularity in the exercise of power vested in them in rejecting the plea of appellants that they are in possession and enjoyment of suit land from the date of Ex.A1 sale deed dated 12.03.1945 in the background of Exs.A2 to A10 besides Commissioner's report and plan (not marked as Exhibits) and therefore, the judgments and decrees of Courts below are vitiated by their failure to consider material evidence on record both oral and documentary in a proper perspective?"

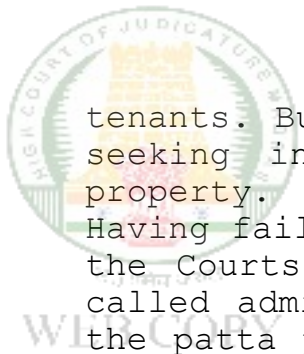
7. I have heard Mr.P.Vinodh, learned counsel appearing for the appellants and M/s.J.Lakshmi Prasanna, learned counsel appearing for the respondents.

8. Mr.P.Vinodh, learned counsel appearing for the appellants would vehemently contend that the first defendant has not established that she is the wife of Sanga Konar, who is the son of the original purchaser Nallan konar. In the absence of such evidence, the Courts below were not right in concluding that the defendants have got title to the property.

9. In fact, the first question of law relates to the said submission of the learned counsel. I am unable to countenance of the said submission of the learned counsel for the simple reason that title of the defendants or possession of the defendants is immaterial in a suit for injunction. It is for the plaintiffs to prove their possession by positive tangible evidence. Having failed to prove their possession, the plaintiffs cannot fall back upon the weakness of the defence and contend that since the defendants have not proved their title, the plaintiffs should be favoured with the decree for injunction. It is settled law that the plaintiffs cannot, particularly in a suit for injunction, rely upon the weakness of the defence and claim a decree. In view of the above, the first question of law is answered against the appellants.

10. As regards the second question of law, the Courts below have given a categorical finding that the suit property did not form part of the sale deed, dated 12.03.1945 and the plea of mistake is wholly unfounded. I do not see any perversity in the said factual findings of the Courts below to enable me to interfere with the same sitting under Section 100 of Code of Civil Procedure.

11. As a last straw, the learned counsel for the appellants would contend that the defendants have admitted the possession of the plaintiffs. The said admission is culled out from the proceedings of the District Revenue Officer marked as Ex.B28 wherein it is claimed that the plaintiffs were cultivating the lands as



tenants. But the Courts below have held that the plaintiffs are not seeking injunction on the basis that they are tenants of the property. Their claim is that they are owners of the property. Having failed to establish that they are the owners of the property, the Courts below have rightly rejected the claim based on the so called admission made by the Village Administrative Officer during the patta proceedings. The revenue records produced on the side of the defendants would show that the defendants have been in possession of the property and the property also stands in the name of the second defendant.

12.In view of the answers to the questions of law framed, the Second Appeal fails and it is accordingly, dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional District Judge,
Fast Track Court, Pudukkottai,

2.The District Munsif cum Judicial Magistrate,
Keeranoor.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to Mr.P.THIYAGARAJAN, Advocate (SR-7434[F] dated 20/02/2020)
+1 CC to Mr.V.A.SAMAYAVASU, Advocate (SR-7145[F] dated 19/02/2020)

S.A. (MD)No.207 of 2015

19.02.2020

MK (17.03.2020) 4P 7C