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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2021
PRONOUNCED ON : 12.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1233 of 2008

1.Sekar
Jayaraman (died)
2.Seenu
3.Balasundaram

...Appellants / Defendants 1,3 & 4

Vs.

1.Krishnan ...1st Respondent / Plaintiff
2.The Tahsildar
Taluk Office, Vandavasi
Thiruvannamalai District. ...2nd Respondent / 5th Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.03.2008 passed in A.S.No.20 of 2007 on the file of the Subordinate Court, Cheyyar, in reversing the Judgment and Decree dated 20.04.2007 passed in O.S.No.56 of 1997 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Vandavasi.

For Appellants : Mr. P.Mani

For Respondent No.1 : Mr.G.Thangavel

For Respondent No.2 : Mr.N.Manikandan
Government Advocate

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.03.2008 passed in A.S.No.20 of 2007 on the file of the Subordinate Court, Cheyyar, reversing the Judgment and Decree dated 20.04.2007 passed in O.S.No.56 of 1997 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Vandavasi.



2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The defendants 1,3 & 4 in O.S.No.56 of 1997 are the appellants in this second appeal.

4.Suit for Permanent Injunction.

5.The case of the plaintiff, in brief, is that the suit property is Eri Poramboke land and the plaintiff is in the possession and enjoyment of the same for more than 25 years by paying "B" memo charges from 1973 onwards and the plaintiff has constructed a hut in the suit property and been running a tea shop therein and also residing in the same premises and enjoying the same by obtaining the service connection, which stands in the name of his father. The defendants 1 to 4 by using force interfered with the plaintiff's possession and enjoyment of the suit property without any authority and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants 1 to 4 for the relief of permanent injunction.

6.The defendants 1 to 4 resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and disputed the case of the plaintiff that he has been in the possession and enjoyment of the suit property for several years as claimed in the plaint by paying "B" memo charges, putting up hut, obtaining service connection, etc., According to the defendants, the plaintiff has never been in the possession and enjoyment of the suit property and the plaintiff has no cause of action to lay the suit and the defendants would substantiate their possession and enjoyment of the suit property during the course of trial by producing necessary documents and accordingly, prayed for the dismissal of the plaintiff's suit.

7.In support of the plaintiff's case, PWS1 & 2 were examined and Exs.A1 to A39 were marked. On the side of the defendants, DWS1 to 3 were examined and Exs.B1 to B9 were marked. CW1 was also examined and Ex.C1 was also marked.

8.On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial Court was pleased to dismiss the plaintiff's suit. On appeal preferred by the plaintiff, the



first appellate Court, on an appreciation of the materials available on record and the submissions projected by the respective parties, was pleased to entertain the appeal preferred by the plaintiff and thereby, setting aside the judgment and decree of the trial Court and granted the relief in favour of the plaintiff as prayed for against the defendants. Impugning the same, the defendants 1, 3 and 4 have preferred the second appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"1. Whether the lower appellate Court has failed to appreciate the testimony of the Advocate Commissioner along with the Report and Plan in proper perspective and the finding with regard to the suit property is vitiated.

2. Whether the lower appellate Court has failed to consider the oral and documentary evidence in proper perspective and the finding is vitiated."

10. It is seen that the suit property is the Eri Poramboku land belonging to the Government. Now, both the plaintiff and the contesting defendants are vying with each other for claiming the possessory title over the suit property. Now, according to the plaintiff, he has been in the possession and enjoyment of the suit property for several years by paying "B" memo charges and also by putting up hut, running tea shop and also residing there and securing service connection and therefore, the defendants are not entitled to interfere with the plaintiff's possession and enjoyment of the suit property and on the other hand, as the defendants endeavoured to disturb his possession, according to the plaintiff, he has been necessitated to institute the suit against the defendants for the relief of permanent injunction.

11. The defendants in the written statement after disputing the plaintiff's averments, very vaguely would only put forth the case that they would substantiate their case as regards their possession and enjoyment of the suit property by placing reliable documents during the course of trial. Therefore, it is



found that the defendants have not specifically put forth any case as to on what basis they claim to be in the possession and enjoyment of the suit property.

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12. As above pointed out, the suit property is only the Eri Poramboku land belonging to the Government. The plaintiff would claim that he had been enjoying the suit property by paying "B" memo charges right from 1973 onwards. The plaintiff would also state that he had put up the hut construction and been running the tea shop therein and also residing in the premises by obtaining service connection and the suit has come to be laid by the plaintiff on 21.02.1997. From the materials placed on record by the plaintiff, it is found that the plaintiff has filed the receipts for his possession and enjoyment right from 09.05.1973 to 20.02.1997 marked as Exs.A1 to A22. As regards the "B" memo charges, the plaintiff has marked Exs.A23 to A25, to evidence that the plaintiff has been running a tea shop in the premises put up by him in the suit property, the professional tax receipts have been marked by the plaintiff as Exs.A26 to A29 and to show that he has been enjoying the suit property by obtaining the service connection, the EB book issued by the Electricity Board and the electricity bills have been marked as Exs.A30 & A31 by the plaintiff. The license issued to the plaintiff for running the tea shop by the Panchayat and the other receipts related to the payment made by the plaintiff to the Panchayat have been marked as Exs.A32 to A37. The other receipts have been marked by the plaintiff Exs.A38 & A39. It is thus found that the plaintiff has been able to substantiate his possession and enjoyment of the suit property as claimed by him right from 1973 onwards, particularly, the plaintiff is able to substantiate his claim of possession and enjoyment of the suit property prior to the institution of the suit and also subsequent to the institution of the suit. Despite the abovesaid factors, it is found that the trial Court has failed to consider the abovesaid documents projected by the plaintiff in the proper perspective and proceeded to hold that the plaintiff has failed to establish his possession and enjoyment of the suit property from 1973 to till date by producing necessary "B" memo charges. As rightly concluded by the first appellate Court as and when the demand of "B" memo charges are made by the Government, the plaintiff would be necessitated to pay the same. When the plaintiff is able to substantiate the payment of "B" memo charges during 1987 and 89



as Exs.A23 to A25 and also produced the kist receipts right from 1993 to 1995 and to show his enjoyment prior to the institution of the suit also produced the kist receipts dated 20.02.1997 as Ex.A22 and when he is able to substantiate his claim of enjoyment of the suit property by obtaining service connection and also by running a tea shop, the reasonings of the trial Court that the plaintiff has failed to establish his claim of possession and enjoyment of the suit property by acceptable and reliable documents, as such, cannot be countenanced in any manner.

13.As above pointed out, the defendants have not come out with the clear case as to on what basis, they claim in the possession and enjoyment of the suit property. All the documents projected by the defendants are found to be after the institution of the suit. Furthermore, the defendants, during the course of evidence, would endeavour to say that the plaintiff has alienated the suit property to the first defendant and in this connection, the signature contained in the unregistered sale deed dated 01.02.1999 has been marked as Ex.B2. As rightly concluded by the first appellate Court, the defendants have not pleaded about the sale arrangement by the plaintiff to them qua the plaint schedule property by way of an unregistered sale deed. According to the defendants, the plaintiff had alienated the suit property to the first defendant on 01.02.1993 for a sum of Rs.27,000/-. By way of the abovesaid plea, it is found that the defendants have admitted the claim of the possession and enjoyment of the suit property by the plaintiff till the date of the alleged sale. It is the case of the defendants that only pursuant to the abovesaid alleged sale, they have been entrusted the possession and enjoyment of the suit property by the plaintiff. However, there is no material on the part of the defendants to hold that the plaintiff had entrusted the possession of the suit property to them following the alleged sale arrangement, particularly, to evidence that they have been in the possession and enjoyment of the suit property prior to the institution of the suit. As above pointed out, all the documents of possession projected by the plaintiff have come into existence after the institution of the suit and therefore, no reliance could be placed on the same to uphold the defendants' claim of possession and enjoyment of the suit property. As above pointed out, the defendants having not pleaded about any sale arrangement between them and the



plaintiff qua the suit property, therefore, the abovesaid case projected in the course of evidence cannot be countenanced and the first appellate Court is found to be justified to reject the abovesaid case of the defendants sans any plea put forth by the defendants pointing to the same in the written statement.

14. The trial Court seems to have placed the reliance upon the Commissioner's report for non suiting the plaintiff. However, considering the Commissioner's report and plan exhibited in the matter and the evidence of the Commissioner examined as CW1, it is noted that the Commissioner has not even endeavoured to locate and identify the suit property in his plan and the Commissioner, during the course of his evidence, would also go to depose that he has failed to include the Western portion of ABCD shown in his plan as forming part and parcel of the suit property. It is thus found that the Commissioner's plan is palpably incorrect and misleading. That apart as could be seen from the Commissioner's evidence, he has also deposed that the portion lying behind the portion shown as ABCD is also the suit property, however, the report and plan filed by him has not pointed out any portion behind the portion of ABCD as forming part and parcel of the suit property. It is thus noted that the Commissioner is not sure as to what where actually the suit property lies, what is the actual extent of the suit property and therefore, when the Commissioner is not able to clearly point out the lie of the suit property and on the other hand, considering the inconsistencies between his report and plan and the evidence adduced by him, in all, as rightly contended by the plaintiff's counsel, no reliance could be placed on his evidence as well as his report and plan for upholding that it is only the defendants, who are in the possession and enjoyment of the suit property as determined by the trial Court. Even as per the Commissioner's report and plan, it is found that the portion shown as ABCD is only in the plaintiff's possession and enjoyment, whereas the portion shown on the West is claimed to be in the possession and enjoyment of one Partheeban. As pointed out, only in the course of evidence, the Commissioner would state that the portion in the occupation of Partheeban is also within the suit property. No such contradictory version of the Commissioner can be relied upon. As rightly concluded by the first appellate Court, the Commissioner's report and plan cannot be the basis for deciding as to which of the rival parties is in the possession and enjoyment of the property in issue,



particularly, when various inconsistencies are in the Commissioner's report and plan vis-a-vis his evidence and in such view of the matter, the first appellate Court is found to be justified in not placing reliance of the Commissioner's report and plan and his evidence. Therefore, the argument put forth by the defendant's counsel that the abovesaid approach of the first appellate Court is vitiated, as such, cannot be countenanced in any manner.

15. Considering the reasonings and conclusions of the first appellate Court, for proper and valid reasons, it had rightly rejected the testimony of the commissioner, his report and plan, particularly, noting the inconsistencies in his evidence, vis-a-vis his report and plan and rightly concluded that the Commissioner's report and plan cannot be the basis for deciding the factum of possession.

16. As above discussed, the defendants have not come forward with any specific case as to on what basis they claim to be in the possession and enjoyment of the suit property and also failed to substantiate that they are in the possession and enjoyment of the suit property on the date of the suit or prior to the institution of the suit, their claim to have secured the possession and enjoyment of the suit property from the plaintiff by way of unregistered sale arrangement cannot be legally accepted, particularly, in the absence of any plea projected by the defendants towards the same, hence their abovesaid case cannot be accepted in any manner.

17. In the light of the abovesaid factors, the first appellate Court is found to be justified in upholding the plaintiff's claim of possession and enjoyment of the suit property and thereby, rightly granted the relief of permanent injunction prayed for by the plaintiff by setting aside the judgment and decree of the trial Court. I do not find any valid reason warranting interference with the abovesaid judgment and decree of the first appellate Court.

18. For the reasons aforesaid, the substantial questions of law formulated in this second appeal are accordingly answered against the defendants and in favour of the plaintiff.



In conclusion, the Judgement and Decree dated 28.03.2008 passed in A.S.No.20 of 2007 on the file of the Subordinate Court, Cheyyar, reversing the Judgment and Decree dated 20.04.2007 passed in O.S.No.56 of 1997 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Vandavasi, are confirmed. Accordingly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

sms

To

1.The Subordinate Judge,
Cheyyar.

2.The Principal District Munsif Cum
Judicial Magistrate,
Vandavasi.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.Mani, Advocate SR.No.8234
+2cc to Mr.G.Thangavel, Advocate SR.No.7969, 8438
+1cc to the Government Pleader SR.No.8311

S.A.No.1233 of 2008

SSI(CO)
RVM(08/09/2021)