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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1482 of 2008

K.Sournam
W/o. Krishnan

...Appellant/Defendant

Vs.

J.M.Rahamatulla
S/o. Mohamed Ismail

...Respondent/Plaintiff

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 01.08.2008 passed in A.S.No.29 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 14.09.2007 passed in O.S.No.247 of 2005 on the file of the District Munsif Court, Mannargudi.

For Appellant : Mr.B.Ramamoorthy

For Respondent : Mr.K.Chandrasekaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 01.08.2008 passed in A.S.No.29 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 14.09.2007 passed in O.S.No.247 of 2005 on the file of the District Munsif Court, Mannargudi.

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

3.The defendant in O.S.No.247 of 2005 is the appellant in this second appeal.

4.Suit for permanent injunction.



5. Briefly stated, the case of the plaintiff is that the suit property and the other properties belong to the plaintiff's family ancestrally and by way of the document No.695/60 dated 05.04.1960, the suit property and the other properties had been allotted to the plaintiff as 'C' schedule and it is only the plaintiff, who has been enjoying the suit property by paying kist. Though the patta stands in the name of the plaintiff's mother and the patta for the suit survey number has been jointly issued in favour of the plaintiff's mother, the plaintiff and one Natarajan and the plaintiff has been enjoying the suit property as described in the plaint by raising coconut and teak trees and the defendant has no manner of right, title, possession and enjoyment of the suit property and he is a total stranger and taking advantage of the plaintiff's living at a distance from the suit property, endeavoured to disturb the plaintiff's possession and enjoyment of the suit property one way or other and in that connection, the police complaint has also been lodged and as the defendant acts persisted, according to the plaintiff, the suit has been laid for appropriate relief.

6. The defendant resisted the plaintiff's suit contending that the claim of the plaintiff that the suit property has been in his possession and enjoyment following the document dated 05.04.1960 as 'C' schedule is incorrect and considering the property involved in O.S.No.79 of 2003 laid by the plaintiff's sister, the suit property is not mentioned and when the case of the plaintiff that the joint patta had been issued in respect of the suit survey number, his case that he is in the exclusive possession and enjoyment of the suit property is untenable and the suit property is in the possession and enjoyment of the defendant and it is only the defendant, who has been enjoying the coconut and teak trees available in the suit property and the plaintiff has not placed any document to evidence that he has a valid title to the suit property and therefore, according to the defendant, the plaintiff has not entitled to secure the relief prayed for and the suit is liable to be dismissed.

7. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendant, DWs1 & 2 were examined and no documentary evidence has been marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth, the trial Court was pleased to dismiss the plaintiff's suit. On appeal by the plaintiff, the first appellate Court, on an appreciation of the materials available, both oral and documentary and the submissions put forth by the respective parties, was pleased to set aside the judgment and decree of the



trial Court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Impugning the judgment and decree of the first appellate Court, the second appeal has been preferred by the defendant.

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

"a. Whether the plaintiff who files a suit for permanent injunction against the defendant, who is in possession of the suit property is entitled for a decree of permanent injunction on the basis of title?

b. Whether the plaintiff in a suit for permanent injunction is entitled for a decree even if he is owner of undivided interest without sub division and without exclusive possession of suit property?

c. Whether the onus of proving possession of suit property is on the plaintiff or defendant in a suit for permanent injunction?"

10. The suit has been laid simplicitor for the relief of permanent injunction by the plaintiff. The plaintiff claims title to the suit property by way of Ex.A1 partition deed dated 05.04.1960 and according to the plaintiff, the suit property has been allotted to him under Ex.A1 partition deed as 'C' schedule and since then it is only the plaintiff, who has been in the possession and enjoyment of the suit property by paying kist etc., and evidencing his claim of possession and enjoyment, the plaintiff has marked the Chitta extract and Adangal extract as well as the receipt marked as Exs.A2 to A6. The defendant, without any entitlement to the suit property, endeavoured to disturb his possession and enjoyment and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for the relief of permanent injunction.

11. The defendant would resist the plaintiff's suit contending that the plaintiff has no title, possession and enjoyment of the suit property and it is only the defendant, who is in the possession and enjoyment of the suit property and therefore, the plaintiff's suit is not maintainable and liable to be dismissed.

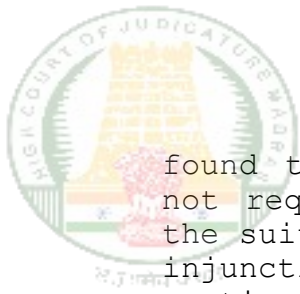
12. Considering the evidence adduced in the matter, both oral and documentary, particularly, the evidence of DWs1 & 2, it is



found that as rightly held by the appellate Court, the plaintiff has title to the suit property by way of Ex.A1 partition deed and when the defendant's witnesses have clearly admitted that the suit property belongs to the plaintiff's family, it is evident that the suit property is in the possession and enjoyment of the plaintiff's family. Now, according to the plaintiff, the suit property had been allotted to him in Ex.A1 partition deed, more so, when as held by the first appellate Court, the defendant herself has admitted that the suit property is in the joint possession of the plaintiff and his family members impliedly thereby the title of the plaintiff as one of the coowners of the suit property having been admitted by the defendant and as above pointed out, when Ex.A1 partition deed go to show that the suit property had been allotted to the plaintiff as 'C' schedule, considering the abovesaid facts in toto as held by the first appellate Court, the plaintiff is found to be the owner or at least the coowner qua the suit property and in such view of the matter, the plaintiff as the coowner of the suit property, in my considered opinion, is entitled to maintain the suit against the defendant for claiming the relief of permanent injunction.

13. When the defendant has not established her source of her title to the property and also her claim of possession and enjoyment of the suit property in any manner and when the defendant has not come forward with any specific pleas pointing to the same and to capt it all, when the defendant has failed to place any document to sustain her claim of title, possession and enjoyment of the suit property in any manner and on the other hand, when DWs1 & 2 have clearly admitted the title, possession and enjoyment of the suit property by the plaintiff's family, as reasoned by the first appellate Court, the first appellate is found to be justified in upholding the maintainability of the plaintiff's suit and granting the relief of permanent injunction as prayed for by the plaintiff.

14. The contention has been raised by the defendant's counsel that the first appellate Court should not have granted the relief of permanent injunction in favour of the plaintiff mainly on the basis of the title as according to him, the plaintiff is only one of the coowners and not established his exclusive possession and enjoyment of the suit property. When as above pointed out, the plaintiff has established his claim of title to the suit property on the basis of Ex.A1 partition deed and the same has also been admitted by the defendant's witnesses as held by the first appellate Court rightly and even assuming for the sake of arguments, the plaintiff is one of the coowners of the suit property, when the coowner is entitled to maintain the suit for permanent injunction on behalf of the other coowners and when the defendant has failed to establish her claim of title, possession and enjoyment of the suit property in any manner, in all, it is



found that considering the abovesaid factors, the plaintiff is not required to seek the relief of declaration for maintaining the suit and the suit laid by him seeking the relief of permanent injunction based on title is found to be legally sustainable, particularly, when the defendant has not come forward in any manner as to how she claims title, possession and enjoyment of the suit property. In such view of the matter, the contention put forth by the defendant's counsel that the appellate Court should not have upheld the plaintiff's suit in the absence of the relief of declaration sought for by the plaintiff, as such, cannot be countenanced.

15. On a reading of the reasonings and conclusions of the first appellate Court, it is found that the first appellate Court has properly assessed, analysed and considered the materials placed on record, both oral and documentary and rightly held that the plaintiff has established his claim of title, possession and enjoyment of the suit property and the defendant having failed to establish her claim of title, possession and enjoyment of the suit properties in any manner and when the judgment and decree of the first appellate Court are not shown to be perverse, illogical and irrational, in my considered opinion, no substantial question of law is involved in this second appeal. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly, answered against the defendant and in favour of the plaintiff.

In conclusion, the judgment and decree dated 01.08.2008 passed in A.S.No.29 of 2007 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 14.09.2007 passed in O.S.No.247 of 2005 on the file of the District Munsif Court, Mannargudi, are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Judge,
Subordinate Court,
Mannargudi.



2. The District Munsif,
Mannargudi.

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

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.11321

S.A.No.1482 of 2008

SR(CO)
RLP(01/09/2021)