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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.02.2021

PRONOUNCED ON : 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO. 1553 OF 2008

AND

M.P.NO.1 OF 2008

Kamalam

...Appellant

Vs.

1. Samuel

W/o. Maran @ Devanandam

2. Devasahayam

3. Devadass

4. Yesudass

(Respondents 2 to 4 given up as unnecessary parties)

... Respondents

Prayer: Second Appeal is filed under Section 100 of CPC, 1908 against the judgment and decree dated 31.03.2008 made in A.S.No.109 of 2006, on the file of the Additional District Court, Fast Track Court No.4, Bhavani, confirming the judgment and decree dated 02.02.2006 made in O.S.No.116 of 2005 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : Ms.D.Sathya
for M/s.V.Rajan

For Respondents
For R1 : Mr.N.Manokaran

R2 to R4 : Given up



defendants approached the plaintiff's father seeking permission to cultivate the suit property in the year 1994 and permitted to reside in the thatched shed and promised to vacate and deliver the possession of the suit property to the plaintiff's father as and when demanded by the plaintiff's father and thereafter the plaintiff had approached the defendants to vacate the suit property but they refused to do so. Recently, the defendants are found to be endeavouring to obtain the revenue records in their names qua the suit property. The defendants have no right or title over the suit property and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit by filing the written statement and after denying all the averments contained in the plaint in toto, according to the defendants, the suit property does not belong to the plaintiff's father and belongs to them and it is only the defendants who are in the possession and enjoyment of the suit property till date by paying the kists, etc., and therefore, the claim of title by the plaintiff qua the suit property is not legally sustainable. It is only the defendants' father who had obtained the service connection and enjoying the suit property by paying the necessary charges. The Gobar Gas Stove in the suit property had been put up only by the defendants' father and the plaintiff has no entitlement to the same. The settlement deed had been obtained by the plaintiff from his father forcibly and the settlement had also been executed by the plaintiff's father without any right over the suit property and hence, the settlement deeds said to have been executed by the plaintiff's father in favour of the plaintiff are invalid and would not be the source of title to the suit property and the plaintiff's father had only 1/4 share in the well and the plaintiff, in the guise of the settlement deeds, obtained the revenue records and the other records qua the suit property fraudulently and hence, the plaintiff, not being the owner of the suit property, has no cause of action to lay the suit and the suit is liable to be dismissed.

7. It is found that the suit laid by the plaintiff in O.S.No.116/05 and another suit laid by one Ramayee against the defendants, plaintiff's father, the plaintiff and his brother Daniel and others in O.S.No.118/2005 for the reliefs of



declaration and possession were tried together by the trial court and common evidence had been recorded in both the suits.

8. In support of the plaintiff's case, D.W.1 was examined and Exs.A1 to A18 were marked. On the side of the defendants D.Ws.1 to 3 were examined and Exs.B1 to B18 were marked.

9. On a consideration of the materials placed on record, both oral and documentary, and the submissions put forth by the respective parties, the courts below were pleased to decree the suit in favour of the plaintiff qua the suit property excluding the Gobar Gas Stove and the electric service connection No.514 and accordingly directed the defendants to hand over the possession of the suit property after removing the Gobar Gas Stove and the electricity service No.514 within a stipulated period. Impugning the same, the present second appeal has been laid by the first defendant.

10. At the time of admission of the second appeals, the following substantial questions of law were formulated for consideration in the second appeal.

- 1) Whether the present suit is barred by res judicata in view of the decree obtained in O.S.No.144 of 1972 against the plaintiff's father, through whom the plaintiff claims title?
- 2) Even assuming, but, not conceding the plaintiff's right, whether the decree for delivery of possession can be granted without a valid determination of tenancy?

11. The plaintiff has laid the suit against the defendants qua the suit property for declaration, possession and future mesne profits. Though the defendants had not put forth as to how they claim title to the suit property as such, however, would contend that the Gobar Gas Stove and electricity service connection No.514 belong to them and it is only the defendants who are enjoying the suit property independently and in particular, denied the plaintiff's claim of title to the suit property and also disputed the case of the plaintiff that his father Maran @ Devanandam had been granted the assignment in respect of the suit property on 29.08.1958 and therefore, also put forth the case that Maran @ Devanandam had no entitlement or competency to settle the suit property in favour of the



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plaintiff as put forth in the plaint and therefore, according to the defendants, by virtue of the settlement deeds projected by the plaintiff, he would not be entitled to claim valid title to the suit property.

12. The plaintiff claims title to the suit property on the footing that his father had been assigned the suit property on 29.08.1958 in recognition of his enjoyment of the same and subsequent thereto, his father had settled the suit property in favour of the plaintiff and his brother by way of the settlement deeds dated 21.01.2004 and 23.11.2004 and thus it is the case of the plaintiff that his father and the plaintiff has been in the possession and enjoyment of the suit property by paying the kists, etc., and the patta had also been issued in favour of the plaintiff qua the suit property and according to the plaintiff, the defendants are cultivating the suit property based on the permission granted to them by the plaintiff's father in 1994 and as the defendants failed to hand over the vacant possession of the suit property, despite repeated requests, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs. The courts below, particularly, the first appellate court in its judgment and decree has held that the property involved in O.S.No.144/72 on the file of the Subordinate Court, Erode, O.S.No.118/05 laid by Ramayee on the file of the Principal District Munsif Court, Bhavani and in the present suit i.e. O.S.No.116/05 is one and the same and only the extent differ, however, the boundaries and the survey numbers are found to be similar in all the abovesaid suits. That the abovesaid determination of the first appellate court is not shown to be erroneous by the plaintiff as well as the defendants.

13. Considering the materials placed on record in toto, it is found that in respect of the suit property, one Maran had laid the suit against the plaintiff's father and one Guruva Boyan in O.S.No.144/72 for the reliefs of declaration and possession. It is found that the abovesaid Maran had also claimed title to the suit property by way of the assignment from the Government. The abovesaid suit was contested by the plaintiff's father by contending that it is only he who had been granted the patta qua the suit property on 29.08.1958 in respect of the extent of 4.46 acres in S.F. No.1209/02 as well as the other properties. The abovesaid suit laid by Maran against the



plaintiff's father and Guruva Boyan ended in favour of Maran and thereby it is found that it is only Maran who had been declared to be the owner of the suit property and entitled to recover the possession of the same. Challenging the judgment and decree dated 31.07.1976 passed in O.S.No.144/72 on the file of the subordinate court, Erode, the plaintiff's father preferred the first appeal in A.S.No.177/1976 on the file of the District Court, Coimbatore. The abovesaid first appeal laid by the plaintiff's father had come to be dismissed by the first appellate court vide judgment and decree dated 30.07.1977 and the same has been marked as Ex.B11 in the present proceedings. The decree passed in A.S.No.177/1976 has been marked as Ex.B10. On a reading of the judgment passed in A.S.No.177/1976, it is seen that the first appellate court also disbelieved the case of the plaintiff's father that he had been granted the assignment of the suit property on 29.08.1958 and on the other hand, held that it is only the plaintiff Maran who had been granted the patta and after discussing the issues in detail, even further holding that the plaintiff's father has failed to establish his claim of title to the suit property based on adverse possession and thereby holding that the suit laid by the plaintiff Maran is not barred by limitation and finally dismissed the appeal preferred by the plaintiff's father. As against the same, there is no material as to whether the plaintiff's father preferred any challenge. It is thus found that it is only Maran who had been declared to be the owner of the suit property and entitled to recover the possession of the suit property in the abovesaid proceedings. The claim of the title put forth by the plaintiff's father qua the suit property had been negatived in the abovesaid proceedings.

14. It is found that the defendants predecessor in interest Palani had laid the suit against the plaintiff's father and Maran, the plaintiff in O.S.No.144/1972, seeking for the relief of permanent injunction on the footing that it is he who has been enjoying the suit property as the cultivating tenant and as the plaintiff's father and Maran attempted to disturb his possession, he had been necessitated to lay the suit against them in O.S.No.105/1981 on the file of the District Munsif Court, Bavani. The abovesaid suit had been contested by the plaintiff's father and it is found that the said suit ended in dismissal. Challenging the same, Palani preferred the first appeal in A.S. No.92/1985 on the file of the subordinate court,



Gobichettipalayam, and after contest, the abovesaid appeal ended in favour of Palani and though in the abovesaid appeal proceedings, the appellate court in its judgment and decree dated 25.09.1987, the copy of which has been marked as Ex.B15 in the present proceedings, had noted that Palani had taken the lease of the suit property from the plaintiff's father, however, proceeded to hold that it is only Maran, who had been arrayed as the second defendant in the said proceedings, is the owner of the suit property and held further that until the second defendant Maran initiates the steps to recover the suit property from Palani in the manner known to law, Palani's possession and enjoyment should not be disturbed and resultantly by setting aside the judgment and decree of the trial court in O.S.No.105/1981 allowed the appeal preferred by Palani and thereby granted him the relief of permanent injunction as prayed for.

15. It is thus found that in A.S.No.92/1985 also it has been only held that Maran is the owner of the suit property and the plaintiff's father has not been declared to be the owner of the suit property.

16. The defendants are claiming to be in the possession and enjoyment of the suit property only through Palani, their predecessor in interest. When Palani has not set up any independent claim of title to the suit property and only would claim that he is the cultivating tenant, in such view of the matter, as rightly put forth by the plaintiff's counsel, the defendants cannot be allowed to contend that they have independent title to the suit property. Though the defendants would claim independent claim to the suit property, however, as above pointed out, in the written statement, the defendants have not come forward with the clear case as to how they trace title to the suit property.

17. Be that as it may, when the plaintiff has levied the present suit against the defendants seeking for the recovery of the possession of the suit properties on the footing that he is the owner of the suit property and the defendants are only in the permissive occupation of the suit property under him and his father and when the defendants have challenged the claim of title of the plaintiff, it is for the plaintiff to sustain his claim of title to the suit property in the manner known to law.



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The plaintiff, in the plaint, would only claim title to the suit property through his father based on the settlement deeds said to have been executed by his father marked as Exs.A2 and A3. Further according to the plaintiff, as averred in the plaint, his father had been granted assignment of the suit property on 29.08.1958. However, the said assignment order has not been produced by the plaintiff for the reasons best known to him. As above pointed out, the plaintiff's father in the earlier proceedings i.e. in O.S.Nos.144/1972 and 105/1981 had also claimed title to the suit property based on the assignment dated 29.08.1958. However, his case had been disbelieved and rejected in the abovesaid proceedings and it has been held that only Maran who had title to the suit property and not the plaintiff's father. Accordingly, Maran's title in O.S.No.144/1972 has been upheld both by the trial court as well as the appellate court. Even in A.S.No.92/1985 preferred by Palani against the judgment and decree passed in O.S.No.105/1981 it is only Maran's title which had been upheld by the concerned courts. When the plaintiff's claim of title to the suit property, through his father, had been challenged by the defendants in toto, it is for the plaintiff to establish that his father had a valid claim of title to the suit property. However, to sustain the plaintiff's case, as above pointed out, the plaintiff has not even endeavoured to produce the assignment order issued in favour of his father qua the suit property. In such view of the matter, when the plaintiff's father's entitlement to the suit property has not been established by the plaintiff and when the competent courts had also declared that the plaintiff's father has no title to the suit property and only Maran had title to the suit property and the plaintiff having also not endeavoured to examine his father to establish as to how he had acquired title to the suit property, particularly, whether he had been granted any assignment qua the suit property, when the so called assignment said to have been issued in favour of the plaintiff's father dated 29.08.1958 had been disbelieved and rejected by the competent counts in the earlier proceedings, as rightly contended by the first defendant's counsel, the plaintiff's father would have no entitlement or competency to settle the suit property in favour of the plaintiff and his brother by way of Exs.A2 and A3 settlement deeds. Thus, it is found that by way of Exs.A2 and A3 settlement deeds, the plaintiff would not derive a valid title to the suit property. Resultantly, the plaintiff's claim of issuance of patta in his favour qua the



suit property based upon the settlement deeds said to have been executed by his father, cannot at all be accepted in any manner and therefore, the further claim of the plaintiff that he has been enjoying the suit property by paying the kists, etc., also would be of no use to uphold his claim of title to the suit property.

18. When the plaintiff's father has no entitlement to the suit property and as above discussed when the plaintiff has also miserably failed to establish his claim of title to the suit property through his father under Exs.A2 and A3, the case projected by the plaintiff that the defendants had been permitted to occupy the suit property by the plaintiff's father, as such, cannot be accepted in any manner. Though in A.S.No.92/1985 it has been observed that Palani, the predecessor in interest of the defendants had taken the lease of the suit property from the plaintiff's father, however, when in the abovesaid proceedings also, only Maran had been declared as the owner of the suit property and further when it has been held that until Maran initiates steps to recover the possession of the suit property from Palani in the manner known to law, Palani's possession and enjoyment of the suit property should not be disturbed, in all, the claim of the plaintiff that his father had granted permission to the defendants to occupy the suit property and cultivate the same, as such, cannot be believed and accepted. On the other hand, it is found that the defendants are continuing to enjoy the suit property through Palani and accordingly, enjoying the same by putting up Gobar Gas Stove and obtaining service connection, etc.

19. It is not the case of the plaintiff that his father had acquired title to the suit property through Maran and from the materials available on record, it is found that one Ramayee, daughter of Maran has levied the suit against the defendants, the plaintiff, the plaintiff's father and others for declaration and possession qua the suit property in O.S.No.118/05. However, the abovesaid suit had come to be dismissed by the courts below on the footing that inasmuch as Ramayee's father Maran had already obtained the decree for declaration and possession qua the suit property, her suit for the same reliefs for the second time is not maintainable.



property only through his father, there is no question of declaring the plaintiff's title to the suit property and granting him the decree for the recovery of possession of the suit property from the defendants and accordingly the substantial questions of law formulated in the second appeal are answered in favour of the defendants and against the plaintiff.

23. In support of his contentions as regards the averments contained in the written statement barely denying the averments contained in the plaint and the failure of the defendants to plead as to how they trace title to the suit property, pointing to the same, the plaintiff's counsel placed reliance upon the following decisions reported in

- 1) (2013) 2 Supreme Court Cases 606 (Gian Chand and brothers and another vs. Rattan Lal Alias Rattan Singh)
- 2) (2017) 8 Supreme Court Cases 592 (Jaspal Kaur Cheema and another vs. Industrial Trade Links and others)

Though the defendants have not traced the title to the suit property in the written statement, however, they had vehemently challenged the claim of plaintiff's title to the suit property as well as his father's claim of title to the suit property and in such view of the matter, the plaintiff having laid the suit for the reliefs of declaration and possession, it is for the plaintiff to establish his case and he cannot be allowed seek the reliefs prayed for by taking advantage of the weakness of the defence version, without establishing his case as per law. The plaintiff has to stand or fall on the strength of his own case. However, the principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

24. In conclusion, the judgment and decree dated 31.03.2008 passed in A.S.No.109 of 2006, on the file of the Additional District Judge, Fast Track Court No.4, Bhavani, confirming the judgment and decree dated 02.02.2006 passed in O.S.No.116 of 2005 on the file of the Principal District Munsif Court, Bhavani, are set aside and consequently the suit laid by the plaintiff in O.S. No.116 of 2005 is dismissed with costs.



Resultantly, the second appeal is allowed with costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court No.4,
Bhavani.
2. The Principal District Munsif Court,
Bhavani.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.Zeenath Begam, Advocate, S.R.No.15892

+1cc to M/s.N.Manokaran, Advocate, S.R.No.15977

S.A.No.1553 of 2008

RGN(CO)
RLP(08/11/2021)