



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2021

PRONOUNCED ON : 01.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.134 of 2010

&

M.P.No.1 of 2010

Karuppusamy ..Appellant/Appellant/Defendant

Vs.

Rangasamy ...Respondent/Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 09.12.2009 made in A.S.No.70 of 2008 on the file of the learned Principal Subordinate Judge, Gopichettipalayam, confirming the judgment and decree dated 24.06.2008 made in O.S.No.13 of 2004 on the file of the learned District Munsif, Sathyamangalam.

For Appellant : Mr.R.T.Doraisamy

For Respondent : Mr.Titus Enock
for Mr.I.C.Vasudevan

J U D G M E N T

Aggrieved over the concurrent findings, made in A.S.No.70 of 2008 dated 09.12.2009 on the file of the learned Principal Subordinate Judge, Gopichettipalayam, and in O.S.No.13 of 2004 dated 24.06.2008, on the file of the learned District Munsif, Sathyamangalam, the defendant in the above referred suit, preferred the second appeal praying to set aside the judgment and decree passed by the Courts below.

2. The respondent filed a suit as against the appellant in O.S.No.13 of 2004 on the file of the learned District Munsif, Sathyamangalam, seeking the relief of permanent injunction



restraining the appellant from interfering with his physical possession and enjoyment of the suit schedule property.

3. By judgment and decree dated 24.06.2008, the learned District Munsif, Sathyamangalam, allowed the suit in entirety and granted the decree for permanent injunction. In the appeal preferred by the defendant in A.S.No.70 of 2008, the learned Subordinate Judge, Gopichettipalayam, by judgment and decree dated 09.12.2009, confirmed the findings arrived at by the learned District Munsif, Sathyamangalam and dismissed the appeal. Feeling aggrieved by the same, the defendant is before this Court with the present second appeal.

4. For the sake of convenience hereinafter the appellant is called as 'defendant' and the respondent is called as 'plaintiff'.

5. The laconic averments made in the amended plaint, are as follows:

Vide sale deed dated 10.09.1973, the plaintiff purchased two vacant house sites from one Kaliyanna Gounder. After made purchase, he constructed his house in one house site and left the other house site vacant, without making any development. The defendant is residing on the south of the plaintiff's property. Since a portion of the plaintiff's property is a vacant site, the defendant asked permission from the plaintiff to dump the wooden logs and the same was refused by the plaintiff. The plaintiff was residing in Chinnaparusapalayam village, which is situated 2 kms away from the property. By utilising the opportunity as the plaintiff was not residing in the suit property, the defendant attempted to use the same. The attempt made by the defendant in the year 2003 was managed by the plaintiff. In order to avoid further consequences, the plaintiff in his vacant site, had put the haystack and also planted some vegetable plants. Even after the same, the defendant attempted to encroach the plaintiff's property and hence, the suit.

6. The case of the defendant, as averred in the written statement, is as follows:

The alleged sale deed dated 10.09.1973 is a sham and nominal document and the same was not acted upon. In the plaint, in description of property, the plaintiff has not stated about the survey numbers wherein the suit schedule property was situated. The suit property is a vacant site comprising survey No.408/9. For the past 50 years, the defendant alone enjoyed



the suit schedule property. Hence, he perfected the title through adverse possession. After knowing the same, the plaintiff purchased the suit schedule property. The suit schedule property is a government poramboke. Therefore, it is quite impossible for the plaintiff to purchase the suit land. The suit is bad for non-joinder of necessary parties. Without asking declaratory relief, praying for permanent injunction cannot be maintained. Hence, the suit filed by the plaintiff is liable for dismissal.

7. Based on the above pleadings, the learned District Munsif, Sathyamangalam, framed necessary issues and tried the suit. Before the trial Court, the plaintiff Rangasamy examined himself as PW1. On his side, he examined two more witnesses as PW2 and PW3 and marked three documents as Ex.A1 to A3. Likewise, on the side of the Defendant, the defendant-Karuppusamy examined himself as DW1. Further, he examined one Rangasamy as DW2. Apart from that, four documents were exhibited as Ex.X1 to X4.

8. Having considered all the materials placed before her, the learned District Munsif, Sathyamangalam, concluded the suit that the plaintiff is entitled to the relief of permanent injunction. In the appeal filed by the defendants before the Principal Subordinate Judge, Gopichettipalayam, in A.S.No.70 of 2008, the findings arrived at by the trial Court was confirmed vide judgment and decree dated 09.12.2009.

9. Feeling aggrieved over the concurrent findings of the Courts below, the defendant is before this Court with this present second appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether the plaintiff can maintain the bare injunction suit, without a prayer for declaration of title when the title of suit property is questioned by the defendant?

2. Whether the Courts below are correct in deciding the title of plaintiff against suit property without framing necessary issues for the same?

3. Whether the plaintiff is entitled to claim ownership of suit property based on the Sale Deed Ex.A-1, when the Revenue Records reveals the fact that the suit land is a Government Poromboke land?

4. Whether the Courts below are correct in granting injunction in favour of the plaintiff, when



the plaintiff is not able to identify the suit property with measurements and boundaries?"

Substantial Question of Law Nos. 1 to 4:

10. Heard Mr.R.T.Doraisamy, learned counsel appearing on behalf of the appellant and Mr.Titus Enock, learned counsel appearing on behalf of the respondent and perused the materials available on record.

11. The learned counsel for the appellant would contend that before the trial Court, the plaintiff has not proved the identity of the property. The Courts below after concluding that the suit property is a vacant land, granted a decree in favour of the plaintiff, which is perverse in law.

12. It is the further submission of the appellant that the alleged sale deed pertains to the suit land is not having any survey number. Only during the pendency of the trial before the District Munsif Court, Sathyamangalam, after getting permission from the District Munsif, the plaint was amended and consequentially, the survey number was added as 408/9. Therefore, in the absence of any survey number in the sale deed stands in the name of respondent, the same cannot be accepted for deciding the title. Thereby, it cannot be held that the plaintiff herein purchased the suit schedule property vide Ex.A1. Accordingly, he prayed to set aside the findings rendered by the Courts below.

13. Opposing the submission made by the learned counsel for the defendant/appellant, the learned counsel appearing on behalf of the respondent/plaintiff would contend that initially the suit schedule property was the property of one Kaliyanna Gounder. Way back in 27.06.1961, in a partition effected in the family of said Kaliyanna Gounder, the suit property was allotted in his favour. In order to confirm the same, the son of Kaliyanna Gounder was examined as PW2. Only upon the contents found in the partition deed, the said Kaliyanna Gounder sold the suit land in favour of the plaintiff and then only the defendant created a problem and attempted to dispossess the plaintiff.

14. It is the further submission made by the respondent's counsel that the four boundaries in respect to the suit schedule property is in accordance with the partition deed dated 27.06.1961. Since the said document is a 30 years old document, the Courts below after appreciating the same as genuine came to the conclusion that the plaintiff is the owner of the suit schedule property. Further, in respect to the survey number,



20. In the present case, as already observed though the plaintiff proved his title by way of producing Ex.A1 and Ex.A3, title deeds, in order to show his possession, he has not chosen to produce any relevant document. In the said circumstances, it would be necessary to see the judgment of our Hon'ble Apex Court in a case of State of Andhra Pradesh Vs. M/s.Star Bone Mill & Fertiliser Co. [Civil Appeal No.6690 of 2004] dated 21.02.2013, wherein our Hon'ble Apex Court has held in respect to the possession and title as follows:

"13. The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the afore-said provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It infact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of satisfactory evidence, circumstances that favour his version. Even,



confirming the judgment and decree dated 24.06.2008 made in O.S.No.13 of 2004 on the file of the learned District Munsif, Sathyamangalam, is confirmed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

To

1.The Principal Subordinate Judge, Gopichettipalayam

2.The District Munsif, Sathyamangalam

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.I.C.Vasudevan, Advocate sr 63058.

S.A.No.134 of 2010

AJS (CO)
SP(30/12/2021)