IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

S.A.NOS.411 AND 445 OF 2010

S.A.No.411 of 2010:

Venkatesan ...Plaintiff/
Appellant/Appellant

.Vs.

1. Kunja Kousalya Ammal
Govindarajan Educational Trust,
rep. by its Chairman,
having office at
K.M.G. College of Arts and Science,
Ammanangkupam Katpadi Taluk,
Gudiyattam.

2. The Tahsildar,
Katpadi Taluk,
having office at Taluk Office,
Katpadi,
Vellore. ...Defendants/
Respondents/Respondents

S.A.No.445 of 2010:

Venkatesan ...Plaintiff/
1st Respondent/Appellant

.Vs.

1. Kunja Kousalya Ammal Govindarajan Educational Trust,
rep. by its Chairman,
having office at K.M.G. College of Arts and Science,
Ammanangkupam Katpadi Taluk,
Gudiyattam. ...1st Defendant/
Appellant/Respondent

2. The Tahsildar,
Katpadi Taluk,
having office at Taluk Office,
Katpadi,
Vellore. ...2nd Defendant/
2nd Respondent/Respondent

Prayer in S.A.No.411 of 2010:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.54 of 2008 on the file of the learned Subordinate Judge, Gudiyattam, Vellore dated 25.11.2009 confirming the Judgment and Decree in O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam, Vellore dated 22.10.2008.

Prayer in S.A.No.445 of 2010:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.53 of 2008 on the file of the learned Subordinate Judge, Gudiyattam, Vellore dated 25.11.2009 confirming the Judgment and Decree in O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam, Vellore dated 22.10.2008.

For Appellant : Ms. V. Srimathi
in both Appeals

For Respondents : Mr.K.A. Ravindran for R1

R2- Served – No appearance

COMMON JUDGMENT

The above Second Appeals arise out of a single suit O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam, Vellore. The plaintiff in the suit O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam, Vellore is the appellant before this Court.

2.S.A.No.445 of 2010 arises against the Judgment and Decree in A.S.No.53 of 2008 on the file of the learned Subordinate Judge, Gudiyattam, Vellore allowing the Appeal filed by the 1st defendant against the Judgment and Decree in O.S.No.466 of 2004 which was a Decree for injunction granted in favour of the plaintiff.

3.S.A.No.411 of 2010 arises against the Judgment and Decree in A.S.No.54 of 2008 on the file of the learned Subordinate

Judge, Gudiyattam, Vellore filed by the plaintiff challenging the portion of the Decree in O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam which was held against him. Since the proceedings arise out a single suit, a common Judgment is being pronounced herein. The parties are referred to in the same litigative status as before the trial Court.

4.The plaintiff had filed the suit O.S.No.466 of 2004 on the file of the learned District Munsif, Gudiyattam for the following reliefs:

> "(a)declaring the plaintiff's tile to the suit property,
>
> (b)granting a permanent injunction restraining the 1st defendant, his men, agents, servants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property,
>
> (c)granting a permanent injunction restraining the 2nd defendant, his subordinates, superiors from measuring the suit property."

5.It was the case of the plaintiff that the schedule mentioned property was his ancestral property and that he and prior to him, his predecessors in title have been in possession and enjoyment of the same for several decades. The Patta in respect of the suit property was mutated in the name of the plaintiff in the year 1976 and the plaintiff has also been issued with the recent patta by the Government. He would submit that he has been paying the necessary Kist to the Government and has been cultivating in the suit property. The 1st defendant who has the men and muscle power, with an intention to grab the suit property, had given a petition to the 2nd respondent to measure the suit property stating that it belongs to them. The plaintiff had given a petition to the 2nd respondent not to measure the suit property.

6.The plaintiff would submit that he has also perfected title by way of adverse possession. Once again, on 07.07.2004, he was served with a Memo by the 2nd defendant that he intended to measure the suit property and therefore asking the plaintiff to be present there. In view of the above attempts to measure the properties at the behest of the 1st defendant which was done with the sole intention of entering into suit property and disturb the plaintiff's possession, the plaintiff had come forward with the above suit.

7.The 1st defendant had resisted the suit inter alia denying the allegations contained in the Plaint and contending that the suit properties originally belonged to one Neegala Mahadeva Naidu and Muguntha Naidu who are the sons of Neegala Krishnaiya who have purchased the same under a registered Sale Deed from one Chinnathaimmal and others. Originally, the suit Survey Number of the property was 4/3 and the total extent was 0.77 cents. Later on, Neegala Mahadeva Naidu sold 0.39 cents to the 1st defendant under a registered Sale Deed dated 19.08.1992 and Muguntha Naidu sold 0.38 cents to the 1st defendant under another Sale Deed on the same date. By reason of these two Sale Deeds, the 1st defendant became the owner of the suit property. From the said date the 1st defendant has been in continuous possession and enjoyment of the properties in question and the defendant has been paid Kist to the Government. The Patta and other revenue records stood in the name of the 1st defendant. The definite case of the 1st defendant was that the plaintiff was never in possession of the properties and it was only they who have been in possession of the same. The 1st defendant also set up a plea of adverse possession.

8.To substantiate the respective contentions, the plaintiff had examined himself as PW1 and one G.Rajendran as PW2 and had marked Ex.A.1 to Ex.A.11. On the side of the defendants, one K.M.G. Rajendran was examined as D.W.1 and Ex.B.1 to Ex.B.5 were marked. Pending the suit, the Advocate Commissioner has also visited the suit property and filed a Report and a Plan which was marked as Ex.C.1 and Ex.C.2.

9.One of the issues that have been framed by the trial Court (re-casted issue) was: Whether the plaintiff was in possession and enjoyment of the suit property?. The trial Court had returned a finding stating that the plaintiff had filed documents from the year 1997 which would show that he is in possession of the suit property, however, the learned trial Judge had held that the plaintiff has no title to the suit property and he has not produced any document to prove his title and on the contrary, had pleaded adverse possession which was in direct contradiction to his plea of the ownership. The trial Court therefore decreed the suit only with reference to the relief of enjoyment of the suit property and dismissed the suit in all other respects.

10.Challenging that portion of the Decree that had been dismissed the plaintiff preferred an Appeal in A.S.No.54 of 2008 and the 1st defendant had filed A.S.No.53 of 2008 in respect of the portion decreed in favour of the plaintiff. The Appellate Court allowed the Appeal filed by the 1st defendant, i.e, A.S.No.53 of 2008 and dismissed the suit even with reference to the relief of injunction. However, the Appellate Court dismissed the Appeal filed by the plaintiff i.e., A.S.No.54 of

2008 and as a result, the suit came to be dismissed. It is challenging the said Judgment and Decree that the plaintiff is before this Court.

11.Both the Second Appeals were admitted on the following Substantial Questions of Law on 28.04.2010 :

> "1) When the grant of patta had not been challenged by the defendant in a manner prescribed under the provision of Patta Pass Book Act, is he not estopped from challenging the title of the plaintiff?
>
> (2)Is the Lower Appellate Court right in holding that claim of title on the ground of adverse possession contradicts the claim of title and in not appreciating the prescription of title by adverse possession is only a form of assertion of title under Section 27 of Limitation Act?
>
> (3)Whether the finding of the Lower Appellate Court that the plaintiff is not in possession of the suit property to form the basis for dismissal of the claim for injunction is perverse?"

12.Ms.V.Srimathi, learned counsel appearing for the appellant would submit that the plaintiff has filed the revenue documents right from the year 1976 onwards. Ex.A.1 is the Patta in respect of the suit property which would clearly show that the plaintiff is in possession of the suit property. She would further argue that the plaintiff has produced Kist Receipts right from the year 1979 onwards. She had argued that the 1st defendant claims ownership of the suit properties under Ex.B2 and Ex.B.3. She would submit that a perusal of Ex.B2 and Ex.B.3 would clearly show that the property was not purchased by the 1st defendant but it was purchased by one Thiruvalluvar Teacher Training Institute. The same is once again reflected in Ex.B.9 - Patta.

13.That apart, DW1 has himself admitted that the property does not stand in the name of the 1st defendant. She would further submit that there is a discrepancy even with reference to the extent of the suit properties in the two documents, namely, Ex.B.2 and Ex.B.3. She would further contend that though the trial Court has held that the plaintiff is in possession of the property the Appellate Court had wrongly reversed the said finding. She would argue that considering the fact that the plaintiff has proved their possession of the suit property even assuming that they are the trespassers they can be evicted only in the manner known to Law, particularly, taking into consideration the fact that they have been in possession for well over the statutory period. The Appellate Court has merely arrived at a conclusion that the plaintiff is not in possession of the property. In the oral evidence of DW1, he deposed that there are a number of trees standing in the suit property. The Appellate Court has totally failed to appreciate that none of the document filed by the 1st defendant show that they are in possession of the properties.

14.On the contra, even the Sale Deeds Ex.B.2 and Ex.B.3 would show that the title to the suit property stands in the name of Thiruvalluvar Teacher Training Institute and not the 1st defendant. Therefore, the finding of the Appellate Court that the 1st defendant is in possession of the suit property is without any basis. She would submit that the plaintiff has filed the Revenue records from they year 1976. Being an ancestral property, the plaintiff can prove his right only with the Revenue Records. She would submit that the Appeal has to be allowed.

15.Mr. K.A.Ravindran, learned counsel for the appellant would submit that no doubt, Ex.B.2 and Ex.B.3 do not stand in the name of the 1st defendant, but however, the suit has been filed by the plaintiff against the wrong defendant. He would however submit that Thiruvalluvar Teacher Training Institute is also a part of the 1st defendant/Trust and therefore, their possession has been confirmed through Ex.B.2, Ex.B.3 and Ex.B.5. He would argue that the Appellate Court has clearly found possession with the 1st defendant and this finding cannot be set aside. He would submit that assuming that this Court were to hold in favour of the plaintiff with reference to possession liberty should be given to the defendants to file appropriate proceedings for recovering the possession of the suit property.

16.Heard the learned counsels appearing on either side and perused the records.

17.The plaintiff has come forward with a case that the suit property is their ancestral property and that he is in possession and enjoyment of it for several decades. The plaintiff has also pleaded adverse possession. Therefore, there is a presumption that the plaintiff has accepted the title of the 1st defendant to the suit property. The defendant's case is that they have become the owners of the suit property by virtue of Ex.B.2 and Ex.B.3 - Sale Deeds. However, if Ex.B.2 and Ex.B.3 are perused, the purchaser is not the 1st defendant herein but one Thiruvalluvar Teacher Training Institute is the owner.

There is no document filed on the side of the 1st defendant to connect the 1st defendant to Thiruvalluvar Teacher Training

Institute and neither has the defendant raised a defence in their Written Statement that the suit is filed against the wrong party.

18.On the contrary, the 1st defendant had held out that they are the owners of the properties and it is only when the documents were marked the plaintiff came to realise that the documents do not relate to the 1st defendant. On the side of the plaintiff, the plaintiff has only produced the documents from the year 1976 though it is their specific contention that they and their ancestors have been in possession and enjoyment of the properties for several decades. The plaintiff has not filed any of the earlier revenue records. The trial Court and the Appellate Court have rightly rejected the claim of the plaintiff for a declaration.

19.The plaintiff who has set up a plea of adverse possession had not pleaded the exact date on which possession turned hostile and in the absence of such a proof, the plea of adverse possession cannot be accepted. Therefore, the Decree with reference to declaration has been rightly rejected by the trial Court and confirmed by the Appellate Court. It is needless to state that the Revenue records are mere documents to prove the possession and does not confer title. I therefore answered the Substantial Questions of Law 1 and 2 against the plaintiff.

20.As regards possession, the plaintiff has let in evidence to show his possession right upto the time of filing of the suit and the documents and the records produced on the side of the defendants are only subsequent to the suit. Further, they do not stand in the name of the 1st defendant. Having found possession with the plaintiff, the trial Court had rightly decreed the suit for the relief of injunction. However, the Appellate Court has relied on the evidence of D.W.1 and the Commissioner's Report and Plan, to come to the conclusion that the 1st defendant is in possession and enjoyment of the property.

21.As already stated, neither the documents nor the revenue records stand in the name of the 1st defendant, but only in the name of Thiruvalluvar Teacher Training Institute. Therefore, the observations of the learned Subordinate Judge, Gudiyatam, Vellore, is contrary to the records. Further, the plaintiff having proved their possession even assuming that they are the trespassers, they can be evicted only in the manner known to Law and till such time their possession needs to be protected.

In the result, S.A.No.445 of 2010 is allowed and the Judgment and Decree in A.S.No.53 of 2008 on the file of the learned Subordinate Judge, Gudiyattam, Vellore is set aside and the Judgment and Decree of the learned District Munsif, Gudiyattam in O.S.No.466 of 2004 is restored. S.A.No.411 of 2010 is dismissed and the Judgment and Decree in A.S.No.54 of 2008 on the file of the learned Subordinate Judge, Gudiyattam, Vellore, is confirmed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Gudiyattam,
Vellore.

2.The District Munsif,
Gudiyattam,
Vellore.

3.The Tahsildar,
Katpadi Taluk,
having office at Taluk Office,
Katpadi,
Vellore.

+1cc to Ms. V. Srimathi, Advocate, S.R.No.33409

S.A.Nos.411 and 445 of 2010

SVI(CO)
PM/30/11/2021