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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2021	Pronounced on: 29.03.2021
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CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A.No.415 of 2010

Kaliyaperumal ...Plaintiff/Appellant /Appellant

Vs.

Marimuthu ...Defendant/ Respondent/ Respondent

PRAYER: This Second Appeal is filed under Section 100 of C.P.C, against the judgement and decree dated 06.08.2009 in A.S.No.9 of 2009 of the file of the Court of Subordinate Judge at Nagapattinam confirming the judgement and Decree dated 08.04.2008 in O.S.No.284 of 2000 on the file of the Court of District Munsif at Nagapatinam.

For Appellant : M/S.RT.Shyamala

For Respondent: Mr.V.Venkatesan

for M/S.V.Raghupathi

JUDGMENT

This Second Appeal has been preferred against the judgement and decree dated 06.08.2009 in A.S.No.9 of 2009 of the file of the Court of Subordinate Judge at Nagapattinam confirming the judgment and Decree dated 08.04.2008 in O.S.No.284 of 2000 on the file of the Court of District Munsif at Nagapatinam.

2. The Appellant is the plaintiff in the suit.

3. The short facts of the plaintiff case are as follows:-

The suit property is a part of poramboke property situated in survey No. 22/2 of Puthur, Anthanampettai, Nagapattinam taluk and which had a total extent of 1.92 acres. The said survey number has been sub-divided into 22/2, 22/5 A, 5 C, 5 D, 22/6 and 22/7. The survey No.22/2 was allotted to the enjoyment of the Jayaveera Anjaneyar Temple. The property in survey No.22/6 was in enjoyment of the father of the plaintiff as its lessee. The defendant's father requested permission from the father of the plaintiff a small portion to build a house for him.



Accordingly defendant's father was permitted to build a house in the site measuring about 26' x 18' feet and the defendant and his father are in enjoyment of the same. Subsequently Government gave patta for 8 cents in survey No.22/5 C to the defendant's father. In the said property, the defendant built a house and later he died. Since the defendant's father had built a house in the land allotted to him through patta, plaintiff revoked the permission and requested to give back the suit property. But the defendant had refused to hand over the same. So this suit is filed for recovery of possession.

4. A short facts of the written statement of the defendant are as under:

82 cents in survey No.22/6 has been vested with the government in view of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30/1963 which came into force on 24/10/1969. The survey No.22/2 does not belong to the Jayaveera Anjaneyar Temple and hence there is no lease agreement in favour of the plaintiff. So it is false to state that the plaintiff and his father were in enjoyment of the suit property from the year 1933. It is also equally false to state that the plaintiff's father had given permission to the defendant's father to build a house. Actually this defendant's grandfather viz., Velayutha Nadar was in enjoyment of the property before 100 years by putting up a hut there. Since the defendant's grandfather was a coolie worker, he was staying there; the house tax assessment and electricity bill connection stood in his name. The defendant was in continuous enjoyment of the suit property. Besides he was given with patta for 8 cents in survey No.22/5 C. Therefore, there is no cause of action for the suit and hence this suit should be dismissed.

5. On the side of the plaintiff one witness was examined and Exs.A1 to A30 were marked. On the side of the defendant one witness was examined as DW.1 and Exs. D1 to D5 were marked.

6. After the trial, the trial Court dismissed the suit. Aggrieved over the same the plaintiff filed a First Appeal and the First Appeal was also dismissed. Hence the plaintiff has filed this Second Appeal and it has been admitted on the following substantial questions of law:

"1.Whether the courts below have given a perverse finding that the plaintiff has not proved the possession of the suit property by the defendant to be a permissive one, in the light of the admission made by D.W.1, which runs contra to the plea taken in the written statement?



2. Whether the finding of the courts below that the plaintiff is not a lessee in respect of the suit property to non-suit the plaintiff is perverse? "

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7. The suit property is an extent of 468 sq.ft, in survey No.22/6. The measurement of the suit property is shown as 26 ft on the East-West and 18 ft on the North-South. The appellant/plaintiff admits that the suit property is a government poramboke.

8. According to the plaintiff, the larger survey No.22/2 has been sub divided into several survey Numbers and in the sub divided survey No.22/6 is comprised of an extent of 1.13 acres. The plaintiff produced certain lease deeds which have been marked as Exs.A1 and A2 in respect of survey No.22/7. He has alleged that the sub divided survey No.22/6 belongs to Jayaveera Anjaneyar Temple and from the trustees of Jayaveera Anjaneyar Temple, the plaintiff's father got lease deed and was in enjoyment of the same.

9. The defendant submitted that the learned Trial Judge has made an observation that the property in Ex.A1 has been described as Inam Punjai and its total extent is 1.92 acres in survey No.22/2. Ex.B1 is the judgment passed in an earlier suit in O.S.No.61/96 filed for Permanent Injunction. In the said suit, the plaintiff represented one Thangavelu Pillai as his power agent. It is stated that the plaintiff's father had surrendered the lease hold right to Thangavel Pillai and the plaintiff claimed that he was a cultivating tenant and conducted the suit. But the said suit was dismissed. The suit property which was originally classified as Inam property got converted into a Government poramboke after the Minor Inam Abolition Act-1969 came into force. Subsequent to that no patta has been granted to anyone in his personal name. All documents produced by the plaintiff in respect of survey No.22/2 prior to 1963 can not be of any use. Though the plaintiff claims that he has fishing right in survey No.22/6 by virtue of an order issued by the Collector on 19/03/2002, that is only a right of license given by the Government.

10. The learned counsel appearing for the appellant/plaintiff invited the attention of this Court to the evidence of the defendant who was examined as DW1. DW1 has stated that survey No.22/6 belongs to one Venkata Ramarao. He has further stated that the plaintiff's father was in enjoyment of the lands in survey No.22/2 as its lessee.

11. Whatever may be the status of the property before 1963, the property has been classified later as Natham poramboke. In Natham poramboke no one can claim title or exclusive right of



possession unless the Government grants a patta. Any one can be in possession of poramboke properties by occupying it. But such enjoyment of the poramboke, is subject to the risk of eviction by the Government. As submitted by the plaintiff his father might have been in enjoyment of the property in survey No.22/6 or 22/2 at some point of time. But that can not be construed as a continuous enjoyment unless it is recognized by the Government by way of granting a patta in his favour.

12. Though plaintiff alleged that his father was in enjoyment of the suit property and he only gave permission to the defendant's father to erect the hut there, he did not specify the date or year in which such a permission was granted and when it was cancelled. Further, the property being Government poramboke no one can have a superior right to give permission to some one to enjoy the same. Whoever occupies and resides there by putting up a hut or house, will enjoy the same until he is evicted by the Government or approved by the Government by grant of patta.

13. Even for the sake of arguments if it is accepted that the plaintiff's father had the right to give permission to the defendant's father, there is no evidence to show that he had revoked that permission during his life time. The plaintiff was given with the right to fish in a pond in Survey No.22/6 thorough the proceedings dated 19.03.2002 of the Sub-Collector, Nagapattinam District (Ex.A11). Ex.A12 is an another order of the Sub collector dated 22.07.2002 in which it is stated that the license given to the plaintiff to catch fish in the local pond is protected by a decree of the Court. The defendant has stated in his evidence that the defendant has prevented the fishing right enjoyed by the plaintiff. But that will not give cause of action for the plaintiff to evict the defendant from his occupation of the suit property, which is a Natham poramboke. The Courts below have correctly evaluated the evidence available on record and arrived at a conclusion that the continuous possession of the plaintiff's father in the suit site as claimed by the plaintiff was not proved. By virtue of holding a license to catch fishes in the pond in survey No.22/6, the plaintiff cannot claim that he was in continuous enjoyment of every bit in Survey No. 22/6.

14. As I find no perversity in the appreciation of evidence by the Courts below, to dismiss the suit filed by the appellant/ plaintiff, it does not warrant any interference. Hence the substantial questions law are answered against the plaintiff/appellant.



In the result the Second Appeal is dismissed and the Judgment and the decree of the First Appellate Court is confirmed. No costs. The connected Miscellaneous Petitions if any are also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs

To

1. The Subordinate Court, Nagapattinam
2. The District Munsif Court, Nagapattinam.

Copy to

The Section Officer,
V.R.Section, High Court,
Madras-104.

+1 CC to Mr.V. Raghupathi, Advocate sr 21128

+1 Cc to M/s.R.T. Shyamala, Advocate sr 20799.

S.A.No.415 of 2010

PPA (CO)

SP(03/09/2021)