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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04..10..2021
Judgment Pronounced on : 22..11..2021

CORAM

THE HON'BLE MRS.JUSTICE S.KANNAMMAL

Second Appeal No.225 of 2019
and
C.M.P.No.23010 of 2019

Radhakrishnan ...Plaintiff/Appellant/Appellant

-Versus-

1.Thilagam
2.Prakash
3.Prabu

...Defendants/Respondents/
Respondents

This second appeal is filed against the judgment and decree dated 20.09.2018 passed by the learned Principal Subordinate Judge, Cuddalore, in A.S.No.26 of 2018 confirming the judgment and decree dated 08.01.2018 passed by the learned Principal District Munsif, Cuddalore, in O.S.No.127 of 2014.

For Appellant : Mr.N.Suresh
For Respondent(s) : Mr.T.S.Baskaran for RR1 to 3

JUDGMENT

The plaintiff, who had lost his suit before the trial court and appeal suit before the first appellate court has come up with this second appeal.

2. The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. Originally the suit was filed for permanent injunction and subsequently the plaint was amended by substituting the relief of permanent injunction with reliefs of declaration of title and for a consequential relief of recovery of possession and also damages for use and occupation of the suit land at the rate of Rs.500/-

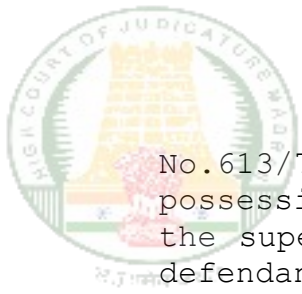


per month from the date of suit till date of delivery of possession.

3. For the sake of convenience, the parties in this second appeal will hereinafter be referred to as per their array before the trial court.

4. The plaint was filed on the pleadings inter alia that the suit property measuring 33 cents comprised in New S.No.439/7 (Old S.No.613/6) situated at Ramapuram Village, Cuddalore Taluk and District originally belonged to the grand father of the plaintiff one Muthu Padayachi. He had mortgaged the above said property on 16.03.1922. He had two sons namely, Gopal Padayachi and Arumuga Padayachi who divided the property by way of oral partition in which 14 cents were allotted to Gopal Padayachi and 19 cents were allotted to Arumuga Padayachi. Later on, Gopal Padayachi and his minor son Manikandan sold 14 cents to Arumuga Padayachi, the father of the plaintiff, on 03.06.1958. The said Arumuga Padayachi sold 14 cents, which was purchased by him, to his wife Pownambal on 22.08.1978 and she in turn settled the same on the plaintiff on 16.12.1987. The plaintiff's paternal uncle Gopal Padayachi, the father Arumuga Padayachi, mother Pownambal and the plaintiff have been in possession and enjoyment of the suit property with country tiled house and a hut. The property of the plaintiff for 21 cents in New S.No.439/7 measuring 0.08.5 Ares corresponds to old S.No.613/6 situated at Ramapuram Village, was attached by the Principal District Judge, Cuddalore. The defendants or their predecessor had no title over the suit property. The suit property is not the ancestral property of the defendants. The defendants herein have no semblance of right or title over the suit property.

5. The defendants were putting up construction in the suit property despite objection made by the plaintiff from the very beginning. Since the plaintiff had undergone a surgery, he could visit the property. Taking advantage of the situation, the defendants had been continuing the construction activities hurriedly from 3rd week of March and hence, a suit was filed for permanent injunction restraining the defendants from putting up any further construction in the suit property and for other reliefs. During the pendency of the suit, despite an order of interim injunction granted in I.A.No.274 of 2014, the defendants have put up construction in the suit property which amounts to denial of title of the plaintiff to the suit property. The attitude of the defendants is deliberate and unjustified. The defendants are in occupation of property including the suit property measuring 12 cents comprised in New S.No.439/7 (Old



No.613/7). The defendants are therefore liable to surrender possession of the vacant land to the plaintiff after removal of the superstructure. Since possession of the suit property by the defendants is unlawful, they are liable to pay damages for the use and occupation to the plaintiff in respect of suit vacant land at the rate of Rs.500/- per month from the date of suit till date of delivery.

6. The defendants resisted the suit inter alia contending that the plaintiff had suppressed the very material fact that Muthumani Padayachi had four sons namely, (1) Gopal, (2) Rajamanickam, (3) Chakrapani and (4) Arumugam. In the suit survey number Gopal and Chakrapani were allotted 14 cents each. The father of the plaintiff and his brother Rajamanickam were allotted properties on the north of the suit survey number. The properties allotted to Arumugam and Rajamanickam were situate by the side of the main road which are most valuable properties. The allegation in the plaint that the father of the plaintiff was allotted 19 cents in the suit survey number is utter false. The father of the plaintiff had no right, title or possession over the property for an extent of 14 cents which was purchased by the paternal grand mother Dhanabackkiyam Ammal from Chakrapani under a registered sale deed dated 27.06.1953. Since the date of purchase, Dhanabackkiyam Ammal had been in possession and enjoyment of the property by constructing a thatched house in the same and she had been residing with her family. Later, Dhanapackkiyam Ammal, the paternal grandmother of the defendant had executed and registered a settlement deed on 05.08.1970 in favour of her minor son Arumugam in respect of the suit property and other properties. The settlement deed is true and valid and it was duly executed, validly attested and accepted and acted upon. In pursuance of the settlement deed, the guardian took possession of the property and later the settlee took possession of the properties and has been residing in the suit property.

7. The said Arumugam, son of Dhanabackkiyam, died on 14.05.2010 leaving behind the defendants as his heirs. After his death, these defendants have been in possession of the property. As the thatched house got damaged, the 1st defendant had put up a tiled house in the suit property. The construction was started in 2012, it gradually proceeded and it was completed ten days back. Recently the plaintiff has come out that he has obtained patta for 19 cents by illegal means. As already stated, the father of the plaintiff had purchased only an extent of 14 cents from Gopal Padayachi. So, the plaintiff cannot make a claim for more than 14 cents. The plaintiff and the defendants are equally entitled to the available property. The defendants were got given any notice



before the patta was granted in favour of the plaintiff. So, it will not bind on these defendants. The description of the property given by the plaintiff is patently wrong. With dishonest intention to grab the property of these defendants, the plaintiff has wantonly given wrong boundaries. Within the stated boundaries the property owned and possessed by these defendants is also situate. The plaintiff, out of envy, has filed the most vexatious suit without any iota of truth. The boundaries given in the documents of the plaintiff are sufficient to falsify the case of the plaintiff. In all the documents of the plaintiff, the eastern boundaries is mentioned as Dhanabackkiyam Ammal's land. So the plaintiff is estopped from disputing the title and possession of these defendants over an extent of 14 cents. He, therefore, prayed for dismissal of the suit with exemplary costs.

8. The plaintiff in his rejoinder inter alia contended that the vendor of the grand mother of the defendants 2 and 3 have no title or right over the suit property and the sale deed in favour of Dhanabackkiyam Ammal itself was not valid. The settlement deed executed by Dhanabackkiyam Ammal in favour of Arumugam is not valid. So, neither the defendants nor the settlee have any title over the suit property and their claim is fraudulent one. The sale deed in favour of Dhanabackkiyam Ammal and the settlement deed in favour of the father of the defendants are concocted with the aim to grab the property belonging to the plaintiff. It is false to state that the boundaries given in the plant schedule are wrong.

9. In the additional written statement filed by the 2nd defendant and adopted by the other defendants, the 2nd defendant inter alia contended that the plaintiff has deliberately not given Natham survey number for obvious reasons. The old survey No.613/6 comprises a total extent of 33 cents. Even before institution of the suit, the lands were surveyed under Natham Scheme. Old Survey No.439/7 was assigned with new S.No.439/15 and old survey No.439/8 was assigned as new S.No.439/16. Though the plaintiff was entitled to only 780 square meters, he had managed to get patta No.436 for 850 square meters. The land measuring 850 square meters is comprised in Natham S.No.439/15 and lies on the west and north of Natham Re-survey No.439/16. Though this defendant is entitled to 570 square meters, patta was granted to him in respect of 500 square meters in patta No.38. The boundaries mentioned in the plaint actually refers to Natham Re-survey No.439/6. If Natham survey number is given, it will expose the case of the plaintiff. That is the reason why, the plaintiff has deliberately not furnished the Natham resurvey number. In fact, Natham re-survey number 439/7 comprises a total



extent of 21 cents. The plaintiff is not entitled to any extent more than half of the total extent because the total extent comprised in old survey number 613/6 was 33 cents.

10. It is further stated by the 2nd defendant that his grand mother Dhanabackkiyam Ammal purchased 14 cents from Chakrapani Padayachi under sale deed dated 27.06.1953. She was enjoying the properties purchased by her. During every survey, the plaintiff was shrewed enough to encroach the properties of other and managed to get patta for an extent of 850 square meters equivalent to 21 cents in Natham resurvey number 439/15. The plaintiff's avarice for encroachment has not stopped and he is emboldened to claim this defendant's property by deliberately describing the suit property with wrong boundaries. In short, he has ventured this litigation with an intention to take the entire property of this defendant which is sandwiched by the property of Vadivel, Son of Govinda Padayachi on the east and the property comprised in Natham resurvey number 439/15 on the west and north. He has emboldened to claim the suit property since he had already annexed this defendant's property having 2 cents. The plaintiff has come to court with dishonest intention and is successfully preventing this defendant from enjoying his property peacefully. This defendant is not liable to deliver vacant possession of the suit property or pay any damages. The suit is liable to be dismissed with exemplary costs.

11. Based on the above pleadings of either parties, originally the trial court had framed the following issues and additional issues for trial:-

Issues:-

(1) Whether the plaintiff is in possession and enjoyment of the suit property?

(2) Whether the plaintiff is entitled for the relief of permanent injunction?

(3) To what other relief the plaintiff is entitled for?

Additional Issues:-

(1) Whether the plaintiff is entitled to the relief of declaration and recovery of possession as prayed for?

(2) Whether the plaintiff is entitled to get damages for the use and occupation as prayed for?

Subsequently, in view of the amendment of relief, the trial court held that the Issues 1 and 2, which were originally framed based on the relief of bare injunction, had become redundant and as



such the trial court had struck off those issues and enlisted the Additional Issues 1 and 2 as Issues 1 and 2.

12. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and produced as many as 20 documents as Ex.A1 to A20 and on the side of the defendants, the 3rd defendant examined himself as D.W.1, apart from examining one Vadivelu as D.W.2, Ranganathan as D.W.3 and Rajadurai as D.W.4 and produced as many as 28 documents as Ex.B.1 to Ex.B.28.

13. The learned Principal District Munsif after having considered the oral and documentary evidence adduced by either parties had concluded that the plaintiff was not entitled to more than 14 cents purchased by his father and there were sufficient oral and documentary evidence to hold that the settlement made in favour of the father of the defendants by his mother Dhanabackkiyam Ammal was valid and the plaintiff, being third party to the family of the defendant, has no right to challenge the settlement deed as well. Holding so, the learned Principal District Munsif, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal which was also dismissed by the first appellate court. Challenging the concurrent findings of both the courts below, the unsuccessful plaintiff has come up with the present second appeal.

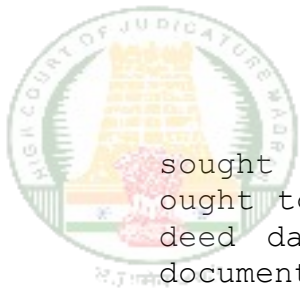
14. The second appeal has been admitted on the following substantial question of law:-

(1) Whether the plaintiff is entitled for a decree of declaration and recovery of possession and damages for the use and occupation of the suit property from the defendants on the basis of Ex.A2 sale deed dated 03.06.1958?

(2) Whether the courts below have erred in holding that the plaintiff is not entitled to not more extent than 14 cents purchased by his father under Ex.A2 sale deed dated 03.06.1958?

(3) Whether Ex.B4 sale deed dated 27.06.1953 is valid when the vendor did not have any semblance of right of the property comprised in S.No.613/6 situated at Ramapuram village, Cuddalore Taluk and District?

15. The learned counsel for the appellant/plaintiff submitted that the courts below have failed to consider that in Ex.B.4 it has been clearly mentioned that in order to discharge the due under Ex.A13 mortgage dated 19.05.1951, the property was



sought to be sold to Dhanabackkiyam Ammal. The courts below ought to have called upon the defendants to produce the mortgage deed dated 19.05.1951 and if the defendants had produced the documents the fraud committed by them would have been exposed. Therefore, the courts below ought to have drawn an adverse inference against the defendants.

16. The learned counsel for the appellant/plaintiff further submitted that vendor of the grandmother of the defendants 2 and 3 did not have right or title over the property comprised in S.No.613/6 as it could be evident from the mortgage deed dated 19.05.1951 and Chakrapani was allotted 12 cents only in S.No.613/7 out of 23 cents and not in S.No.613/6. The defendants do not have any semblance of right in S.NO.613/6 corresponding to S.No.439/7. Out of 33 cents in S.NO.613/6, 14 cents were sold to the father of the plaintiff by Gopal Padayachi and the plaintiff is entitled to succeed to the remaining property by succession.

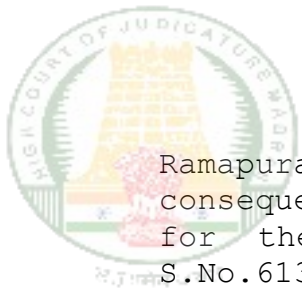
17. The learned counsel for the appellant/plaintiff lastly submitted that the courts below have not properly appreciated the facts and the evidence available on recorded. The findings records by both the courts below are perverse and bad in law. Therefore, the second appeal is liable to be allowed.

18. Per contra, the learned counsel for the respondents/defendants submitted that both the court below have rightly appreciated the facts and the evidence available on record and no illegality or perversity could be attributed to the findings of the courts below. The plaintiff had failed to make out and establish his case for granting a decree of declaration and for other reliefs. The plaintiff has not approached the court with clean hands. It is for the plaintiff to establish his case and weakness, if any, of the case set up by the defendants would not be a ground to grant the relief to the plaintiff. The alleged mortgage would not throw any light on the fact at issue and therefore, no adverse inference could be drawn against the defendants for having not produced the alleged mortgage deed. Therefore, the learned counsel for the respondents/defendants prayed this court for dismissal of the second appeal.

19. This court considered the rival submissions carefully and also perused the materials placed on record carefully.

Substantial Questions of Law 1 to 3:-

20. The suit was filed for declaration of title in favour of the plaintiff in respect of the suit property situated at



Ramapuram Village, Cuddalore Taluk and District and for a consequential relief of recovery of possession and for damages for the use and occupation of the suit property, namely S.No.613/6 and its new survey No. is 439/7. Muthumani Padayachi, the paternal grand father of the plaintiff had an extent of 33 cents in S.No.439/7 (Old S.No.613/6) apart from some other properties which were not the subject matters of the suit. Ever since the date of purchase, the said Muthu Padayachi was in possession and enjoyment of his properties. The said Muthu Padayachi had mortgaged some of his properties including the above said 33 cents of land on 16.03.1922

21. It is not in dispute that the said Muthumani Padayachi had owned 33 cents in Old S.No.613/6. According to the plaintiff the said Muthumani Padayachi had two sons namely, (1) Gopal Padayachi and (2) Arumuga Padayachi and the brothers had orally partitioned 33 cents of property wherein 14 cents were allotted to Gopal Padayachi and 19 cents were allotted to Arumuga Padayachi. But, admittedly, there was no evidence let in by P.W.1, the plaintiff to conclude that Arumuga Padayachi got 19 cents in an oral partition effected between his brother Gopal Padayachi. Yet, it could be seen from Ex.A.2 sale deed dated 03.05.1958 that Gopal Padayachi was allotted 14 cents out of 33 cents and he, in turn, sold it to his wife Pownambal under Ex.A.3 on 22.08.1979. This was not disputed by the plaintiff. The said Pownambal is none other than the mother of the plaintiff and she, in turn, settled the property purchased by her under Ex.A.3 on his son, the plaintiff herein on 14.12.1987 under Ex.A.4 settlement deed. Thus, it is clear that the property measuring 14 cents which was allotted to the share of Gopal Padayachi came to the hands of the plaintiff.

22. Here, it is necessary to state that Muthumani Padayachi actually had four sons (1) Gopal, (2) Rajamanickam, (3) Chakrapani and (4) Arumugam and not two sons namely, Gopal Padayachi and Arumuga Padayachi as averred by the plaintiff in the plaint. This was admitted by the plaintiff himself in his cross examination. The courts below have therefore held that the plaintiff had suppressed the material facts. It is to be noted that even prior to the sale deed in favour of the father of the plaintiff, one of the sons of Muthumani Padayachi, namely Chakrapani had executed a sale deed dated 27.06.1953 in favour of one Dhanabackkiyam Ammal, who is none other than the grand mother of the defendants 2 and 3. Ex.B.4 sale deed proved that out of 33 cents owned by Muthumani Padayachi in old S.No.613/56, Chakrapani was allotted with 14 cents in the same manner as Gopal Padayachi was allotted with 14 cents. There is not even a single piece of



evidence produced by the plaintiff to show that he got title over entire 33 cents. Thus, the plaintiff cannot claim title than the extent which was settled on him by his mother under Ex.A4 Settlement Deed dated 10.03.2014 Ex.A.5 order of attachment relied upon by the plaintiff which was passed based on certain revenue records by the Principal District Judge would be of no help to his case, as the same would not confer any title to the plaintiff and it is the settled position that revenue records are not the documents of title. Further, as rightly held by the trial court, though the defendants have contended that the remaining five cents out of 33 cents were divided between Rajamanickam and Arumugam, who are the other two sons of Muthumani Padayachi, there was absolutely no pleading to that effect and on other hand, the same has been disproved by Ex.B4 sale deed.

23. The sale under Ex.B4 was made on 27.06.1953 almost five years prior to the sale made by Gopal Padayachi under Ex.A2 dated 03.06.1958. When the Ex.A.2 sale was executed by Gopal Padayachi, the eastern side boundary was shown to be Dhanabackkiyam Ammal's land. Thus, Gopal Padayachi admitted that Chakrapani Padayachi was allotted with 14 cents. Interestingly, the plaintiff in his cross examination did not deny the title of the the said Chakrapani and the plaintiff had admitted the relationship of Muthu Padayachi and Chakrapani.

24. Admittedly, the old survey number of the suit property is 439/16 and its corresponding new number is 439/7. On the eastern side of S.No.439/7 one Vadivel's land is situated and the property of the defendants situated within the Survey No.439/7 that is, on the eastern side of the property belonged to the plaintiff and covered under Ex.A.2 sale deed and Ex.A4 settlement deed.

25. Further, it could be seen that not only Gopal Padayachi had admitted and recognized the title and right of Chakrapani and Dhanabackkiyam Ammal but also, the father of the plaintiff while executing a sale deed in favour of his wife shown the eastern side boundary as Dhanabackkiyam Ammal's land. In fact, Muthumani Padayachi from whom the plaintiff partly claimed title had himself attested Ex.B.4 Therefore, as rightly concluded by the courts below this would only disprove the case of the plaintiff.

26. It is the settled law that patta cannot confer title and in a recent judgment in Jitendra Singh v. State of M.P., 2021 SCC OnLine SC 802, decided on 06.09.2021, the Honourable Supreme Court has held that the mutation of entries in revenue records do



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not confer any right, title or interest in favour of the person and the mutation entries in the revenue records are only for the fiscal purposes. In a suit for declaration of title, the burden always lies upon the plaintiff to make out and establish a clear case for granting such a declaration and weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. In the instant case, the plaintiff had not only suppressed the material particulars that Mutumani Padayachi had four sons including Chakrapani from whom the grand mother of the defendants 2 and 3 had purchased 14 cents and later on settled it in favour of her son, the then minor Arumugam the father of the defendants on 05.08.1970, but had chosen to suppress the name of the owner of the eastern side of his property and described as if East by Vadivel's land. Therefore, as rightly held by the courts below, the plaintiff cannot claim right more than 14 cents which was settled in his favour by his mother under Ex.A.4 settlement deed and the patta said to have been given for 21 cents will not confer any title on him for 21 cents except 14 cents which was settled in his favour by his mother under Ex.A.4 settlement deed. Therefore, the trial court was right in holding that the plaintiff was not entitled to not more extent than 14 cents originally purchased by his father.

27. Coming to the argument of the learned counsel for the plaintiff that the trial court had failed to draw an adverse inference against the defendants when they had totally suppressed the mortgage deed dated 19.05.1951 particularly, when they were called upon to produce it in I.A.S.No.922 of 2014, this court has no hesitation to reject the same for the reason that the rule of adverse inference is a rule of prudence and application thereof depends on the conclusion whether the party against whom such inference is required to be drawn for withholding the evidence from the court and the provision is not available to help the opposite party in establishing his case which he is bound to do on his own. In the instant case, the alleged mortgage cannot throw light on the fact at issue. Admittedly, the mortgagor Chakrapani had mortgaged several of his properties but, he did not include the suit survey number. The plaintiff himself admitted the purchase made by Dhanabackkiyam Ammal from Chakrapani under Ex.B.4 sale deed dated 27.06.1953 and the four boundaries of the property. Thus, the trial court was right in not drawing adverse inference against the defendants and even if the alleged mortgage deed was produced that would no way helpful to the plaintiff to establish his title to the property more than 14 cents which was settled in his favour by his mother.



28. For the foregoing discussions, this court is of the view that as rightly held by the courts below, the appellant/plaintiff is not entitled for a decree of declaration of title in respect of entire 33 cents of property described under the plaintiff schedule as he cannot claim title more than 14 cents settled by his mother under Ex.A.4. Therefore, the plaintiff is not entitled for any of the reliefs as claimed in the suit and the second appeal also deserves only to be dismissed.

In the result, the Second Appeal is dismissed and the judgment and decree made by both the courts below stand confirmed. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs in this court. Consequently, connected CMP stands closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

kmk

To

1.The Principal Subordinate Judge, Cuddalore.

2.The Principal District Munsif, Cuddalore.

+3cc to Mr.T.S.Baskaran, Advocate SR.No.60205

+1cc to Mr.N.Suresh, Advocate SR.No.60445

Second Appeal No.225 of 2019

AK(CO)

CB(05/01/2022)