



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.862 of 2011

1. V.Rathinam
 2. Mani
 3. Sankar
 4. Ramalingam
 5. Dhanabhakiam (died)
 6. Rukku Ammal
 7. R.Ammani
- ... Appellants/Defendants

7th appellant brought on record as LR's of the deceased 5th appellant, viz, Dhanabhakiam, vide court order dated 30.07.2021 made in CMP Nos.11755, 11756 & 11758 of 2021

Vs.

Durairaj alias Duraikannu ... Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 31.01.2011 passed in A.S. No.27 of 2010, on the file of the Principal Sub Court, Tiruvannamalai, confirming the decree and judgment dated 07.01.2010 passed in O.S. No.359 of 2006, on the file of the Principal District Munsif Court, Tiruvannamalai.

For A1, A3, A4, A6 & A7 : Mr.M.Aswin

For Respondent : Mr.R.Rajarajan
for Mr.G.Rajan

JUDGMENT

The appellants are the defendants in O.S.No.359 of 2006 on the file of the Principal District Munsif, Thiruvannamalai, and appellants in A.S.No.27 of 2010 on the file of the Principal Subordinate Judge, Thiruvannamalai.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.



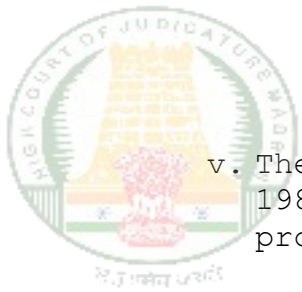
3.The respondent/plaintiff filed a suit against the appellants/defendants for a permanent injunction restraining them (appellants/defendants) from interfering with his possession and enjoyment of the suit property.

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4. The case of the plaintiff was that the suit property situate in Survey No.61/8C measuring 1820-1/4 of Melchettipattu Village, Thiruvannamalai District, was his ancestral property and that in an oral partition between him and his father the suit property was allotted to him. His further contention was that he has been in possession and enjoyment of the suit property and a patta dated 25.04.1992 (Ex.A1) was also issued in his favour. It was his further contention that he has been paying electricity consumption charges and house tax as evidenced by Ex.A4 and Ex.A5 receipts and that the defendants, who are in no way connected with the suit property, were attempting to interfere with his peaceful and possession enjoyment of the suit property.

5. The suit was resisted by the defendants on the following grounds:

- i. The suit property and the properties on the northern and western portions bearing Survey No.44/8 of Melchettipattu Village, Thiruvannamalai District, belonged to the first defendant's paternal grand father Gopala Pillai and his two sons Pachaiyappa Pillai and Varadhan @ Narayanasamy (father of the first defendant) and one Chinnamaniammal (Daughter of Gopala Pillai).
- ii. The first defendant's paternal grand father Gopala Pillai and his two sons partitioned their ancestral properties through a registered partition deed dated 26.09.1924 (Ex.B1), through which Survey No.44/8 and several other properties were allotted to the share of Gopala Pillai.
- iii. The defendants, Gopala Pillai, Varadhan @ Narayanasamy Pillai had dealt with the properties allotted to them by selling the same to various persons through Ex.B2 to Ex.B10. However, they retained six cents in Survey No.44/8, which is the present suit property.
- iv. The plaintiff's father Renukonar was the maternal uncle of the first defendant and since the plaintiff was not owning any house at Melchettipattu Village, he was permitted to occupy a cow shed which was constructed on the north western side of the suit property.



v. The defendants were residing in Meppathurai Village from 1985 to 1995. However, they were in possession of the suit property by storing cow dung and hayrick.

vi. The actual Survey Number of the suit property is 44/8B and that the defendants are in possession of 0.06 acre in Survey No.44/8B.

Therefore, they prayed for dismissal of the suit.

6. The trial Court after framing appropriate issues and after full contest decreed the suit filed by the respondent/plaintiff with costs vide its decree and judgment dated 07.01.2010.

7. Aggrieved over the same, the defendants filed an appeal in A.S.No.27 of 2010 on the file of the Principal Sub Court, Tiruvannamalai. The learned Principal Subordinate Judge, after analysing the evidence on record upheld the findings recorded by the trial court and dismissed the appeal vide decree and judgment dated 31.01.2011.

8. Now the present second appeal is filed by the defendants.

9. Notice of motion was ordered and after several adjournments, the matter is posted today for final hearing.

10. At the outset, it may be observed that the plaintiff has filed the suit only for a bare injunction based on his possession over the suit property. According to the plaintiff, the patta (Ex.A1) in respect of the suit property was issued in his favour and that he has been in possession and enjoyment of the same by paying electricity consumption charges and house tax. However the defendants contended that the suit property is not actually situate in Survey No.61/8C as alleged by the plaintiff and that it is situate only in survey No.44/8B. His further contention is that the total extent of the property in Survey No.44/8B is one acre and out of the same 94 cents were sold to various persons retaining the remaining extent of 6 cents. The specific contention of the appellants/defendants is that the plaintiff is only a permissive occupier of the suit property and that too only in a cow shed that was constructed by the defendants in the suit property.

11. Ex.A1 is the patta issued by Special Tahsildar in favour of the plaintiff. Ex.A1, Ex.A4 and Ex.A5 shows that the



plaintiff has been in possession and enjoyment of the suit property. This is also admitted by the first defendant in his evidence as D.W.1. Moreover, though D.W.1 in his evidence had deposed that his father and his paternal uncle Gopala Pillai sold 80 cents out of one acre in Survey No.44/8 and 14 cents by him and his brother through Ex.B4 & Ex.B5, admitted that in none of the sale deeds it is mentioned that how they became entitled to Survey No.44/8. He could not also produce any documentary evidence to show that after resurvey, Survey No.44/8 was renumbered as Survey No.61/8C. At this juncture, it is seen from Ex.A1 that the patta was given to the plaintiff with specific boundary description. Though the defendants contend that the plaintiff is a permissive occupier of the suit property, did not adduce evidence to substantiate the same. In fact, both the trial court and the first appellate court had gone into this aspect in extenso and had given a specific finding that the plaintiff is not a permissive occupier of the suit property as alleged by the defendants. The first defendant also admitted during the course of cross examination that he did not issue any notice to the plaintiff to vacate the suit property. It is also relevant to point out that the defendants also did not take steps to cancel the patta Ex.A1 issued in favour of the plaintiff. Moreover, the first defendant also admitted in his evidence that the plaintiff has been in possession of the suit property for more than 15 years. In the circumstances, both the courts below had rightly held that the plaintiff is entitled for a permanent injunction as prayed for by him.

12. Mr.M.Aswin, learned counsel appearing for the appellants pressed into service the proceedings of Revenue Divisional Officer dated 03.08.2016 to show that a patta was wrongly issued to the plaintiff. This particular document has not been filed along with a petition to receive additional documents. However, nothing was decided in the said proceedings as regards the Survey No.61/8C (suit property) since the present Second Appeal is pending. Since both the courts below had rightly and concurrently held that the plaintiff is in possession of the suit property, I do not find any reason to upset the findings recorded by both the courts below. Hence, the second appeal deserves to be dismissed. In fact, I do not find any substantial question of law involved in the present Second Appeal.

13. In the result,

- i. the second appeal is dismissed. There shall be no order as to costs.



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ii.the decree and judgment dated 31.01.2011 passed in A.S.No.27 of 2010, on the file of the Principal Subordinate Judge, Tiruvannamalai, and the decree and judgment dated 07.01.2010 passed in O.S. No.359 of 2006, on the file of the Principal District Munsif, Tiruvannamalai, are upheld.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal Subordinate Judge, Tiruvannamalai,
2. The Principal District Munsif, Tiruvannamalai

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.53467

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BS (CO)
CS/23/11/2021