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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HON'BLE MR. JUSTICE S.S.SUNDAR

S.A.No. 237 of 2017

Kaliya Perumal ...Appellant/Respondent/Defendant

Vs

Dharmaraj ... Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 of CPC., r/w Order XLI Rule 1 of CPC., against the Judgment and decree dated 23.01.2015 in A.S.No.29 of 2012 on the file of the Subordinate Judge, Mannargudi reversing the judgment and decree passed in O.S.No.104 of 2010 dated 29.02.2012 on the file of The District Munsif, Mannargudi.

For Appellant : Mr. P.B. Ramanujam

For Respondent : Ms. P.T. Ramadevi

JUDGMENT

The defendant in the suit in O.S.No.104 of 2010 on the file of the District Munsif Court, Mannargudi is the appellant in this second appeal. The respondent in this second appeal filed the suit in O.S.No.104 of 2010 on the file of the District Munsif Court, Mannargudi for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property is a land measuring an extent of 2.5 ares out of an extent of 11.5 ares in Survey Number 282B/4B in Mukkulam Sathanur Village, Mannargudi Taluk.

2. The case of the plaintiff is that the suit property is the ancestral property of his father. A patta was given to the plaintiff's father on 10.07.1991. The plaintiff claimed title to the property by succession. It is also the case of the plaintiff that the patta was transferred in the name of the plaintiff by Deputy Tahsilar on 29.04.2004. It is stated that he is in peaceful possession and enjoyment of the suit property. It is contended that the defendant has no right or title or interest over the suit property and that the defendant who was unable to purchase the suit property from the plaintiff, with an intention to grab the suit property,



attempted to encroach into the suit property by putting up fence on 30.06.2010. Therefore, the plaintiff has filed the suit for permanent injunction against the appellant.

3. The defendant filed his written statement denying the averments in the plaint. It is contended by the defendant that the plaintiff cannot maintain the suit for the relief of bare injunction. It is further stated that there is a dispute between the plaintiff and the defendant over the suit property for a long time and the plaintiff has come forward with the suit for bare injunction. The specific case of the defendant is that the suit property is the ancestral property of defendant's family and it was allotted to the defendant in a family arrangement in 1925. The defendant is having a house in the suit property and he was residing there for more than 50 years.

4. Based on the objections raised by the defendant, it is stated that the request of the plaintiff to the Revenue Officials to survey the land had been refused. The appellant claimed title over the suit property through one Mr. Pazhaniyappa Thackiliyar. The appellant contended that there was a family arrangement in the year 1925 and that the property was allotted to one Ramaiyah and Lakshmanaiya who enjoyed the suit property by putting up constructions independently. The appellant claimed to have obtained ownership and enjoyment of the suit property through Lakshmanaiya. It is the case of the appellant that he is in possession by putting up a residential house in the suit property. Though the appellant admitted grant of patta in respect of the suit property in favour of the plaintiff, it is stated in the written statement that the appellant is taking steps to cancel the patta that was issued in the name of the plaintiff.

5. On the side of the plaintiff PW1 to PW5 were examined and Ex.A1 to Ex.A5 were marked. On the side of the defendant DW1 and DW2 were examined and Ex.B1 to Ex.B35 were marked. Mr. Pazhanidurai, was examined as DW2 to support the case of the defendant. He admitted that the plaintiff is related to the defendant and the defendant is his brother. The Trial Court after framing of necessary issues, dismissed the suit on the ground that the plaintiff has failed to prove his physical possession and enjoyment of the suit property. The Trial Court considering the discrepancy in the oral evidence of the plaintiff's witness found that the plaintiff is not entitled to the relief of permanent injunction. Since the suit property is located in front of the house of the defendant and the plaintiff's house is located in a different place, the Trial Court after considering the evidence of PW1, PW2 and PW4, came to the conclusion that the plaintiff is out of possession and the defendant is in possession of the suit property. The Trial Court has also relied upon the documents produced by the defendant which are property tax receipts and



receipts for electricity consumption charges.

6. Aggrieved by the judgment and decree passed by the Trial Court, the plaintiff has preferred an appeal in A.S.No. 29 of 2012 before the Subordinate Judge, Mannargudi. The First Appellate Court set aside the findings of the Trial Court and came to the conclusion that the plaintiff has proved the title over the suit property and he is entitled to the decree for permanent injunction as the suit property is only a vacant land. Aggrieved by the judgment and decree passed by the learned Subordinate Judge, Mannargudi, the above Second Appeal has been preferred by the defendant.

7. At the time of admitting the Second Appeal, the following substantial questions of law were framed by this Court:-

(a) Whether the Lower Appellate Court was right in ignoring the vital admissions regarding possession in a suit for permanent injunction?

(b) Whether the Lower Appellate Court was right in requiring the defendant to establish his title in a suit for permanent injunction being defended by him?

8. Though the learned counsel appearing for the appellant pointed out some discrepancies in the deposition of the witnesses, this Court is of the considered view that substantial questions of law were framed by this Court did not carry any weight in view of the admitted facts and the findings of Lower Appellate Court in this case. Admittedly, the suit property is a vacant land. Even according to the learned counsel appearing for the appellant, the suit property is a house site which is a vacant land situate adjacent to the property of the defendant where the defendant has put up a residential building. The documents filed by the defendant did not relate to the suit property but relates to the house that has been constructed by the defendant adjoining the suit property. Even in the written statement, it is stated that the plaintiff has obtained patta in 2004 and the defendant has filed a petition to cancel the patta. Thus, it is admitted that patta has been given in the name of the plaintiff.

9. When the suit property is a vacant land, the principle "possession follows title" should be applied and the plaintiff will succeed in getting a decree for permanent injunction if he establishes the title over the suit property. Though the defendant has not produced any document or the learned counsel could place reliance upon any document to support the plea of the defendant regarding title, the Trial Court considered the only issue whether the plaintiff has



proved physical possession over the suit property and dismissed the suit. It is the case of the plaintiff that the plaintiff acquired the property from his father one Selvam. From the documents that were filed, it is seen that the suit property was standing in the name of the plaintiff's father named Selvam and the plaintiff got the property and transferred the patta in his name after the life time of his father. The "A" Register, Patta, Chitta and Adangal were produced by the plaintiff in respect of the suit property which shows that the property stands in the name of the plaintiff's father and he was shown as the registered land owner of the suit property. By transferring the patta in favour of the plaintiff, the plaintiff established that he is the person who is recognized as the registered owner of the property as per the Revenue records. Though patta is not a document of title as declared by this Court in several decisions, in the absence of any evidence contrary to the patta, a patta issued by the Revenue Officials under Tamil Nadu Patta Pass Book Act will be considered as a document of title in respect of ryatwari lands. In the present case, no document has been produced by the defendant to prove the defendant's ownership of the property. The documents or receipts for electricity consumption charges or the house tax receipts are in respect of the building owned by the defendant. Merely because the defendant's house is situated adjoining the property of the plaintiff, there cannot be a presumption that the suit property is also in enjoyment of the defendant or it can be presumed that the defendant is the real owner. On the other hand, the plaintiff by filing documents, proved his ownership over the suit property.

10. The Trial Court in the present case, based on the oral evidence of witnesses examined on behalf of the plaintiff concluded that the plaintiff's witnesses have admitted that the defendant enjoyed the suit property. After scrutiny of the oral evidence, the trial court concluded that the plaintiff was prevented by the defendant from enjoying the suit property. When the property is a vacant land and when no document or oral evidence is adduced to prove the physical possession by the defendant, it cannot be presumed that the defendant has proved his possession and enjoyment over the property. Mr. Pazhanidurai (DW2) examined on behalf of the defendant states that the defendant is in possession of the property by putting up a residential building. When the defendant himself admits that he has not put up any construction in the suit property and the construction is adjoining the suit property, the evidence of DW2 is not helpful to the defendant to establish his possession. When the defendant in the course of his examination admits that the suit property is a vacant land, he cannot claim to be in possession of the property without any document to prove the overt act by the defendant to claim physical possession. In the absence of any evidence in favour of the defendant to prove physical possession, it should be presumed that the



possession is with the actual owner of the property. The plaintiff who is the registered owner has produced documents to prove his title. In the absence of any evidence to suggest physical possession by the defendant, it can be held that possession of vacant site is with the true owner. Therefore, this Court is unable to interfere with the findings of the Appellate Court by setting aside the Judgment and Decree passed in O.S.No.104 of 2010 on the file of District Munsif, Mannargudi. There is no substance in the questions of law framed in view of the findings of Lower Appellate Court.

11. In view of the foregoing discussions, this Court is unable to entertain this second appeal. The Second Appeal is dismissed. However, there shall be no order as to costs. Accordingly, the Judgment and Decree passed by the First Appellate Court in A.S.No.29 of 2012 on the file of the Subordinate Judge, Mannargudi reversing the Judgment and Decree passed in O.S.No.104 of 2010 dated 29.02.2012 on the file of the District Munsif, Mannargudi is confirmed.

Sd/-

Deputy Registrar (Lok Adalat)

//True copy//

Sub Assistant Registrar

msm

To

1. The District Munsif, Mannargudi.
2. Subordinate Judge, Mannargudi.

+1cc to Mr.P.B.Ramanujam, Advocate SR.No.28192

+1cc to Ms. P.T.Ramadevi, Advocate SR.No.27979

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PMK (CO)

GMV (28/10/2021)