



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.(MD)No.698 of 2011

Appadurai

... Appellant/Respondent/Defendant

Vs.

Saraswathy

... Respondent /Appellant/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment in A.S.No.6 of 2011 passed by Additional District Judge, (Fast Track Court) No.1, Thoothukudi, dated 18.06.2011 reversing the decree and judgment in O.S.No.70 of 2006 passed by the District Munsif Sathankulam, dated 25.03.2009.

For Appellant : Mr.M.P.Senthil
for Mr.T. Lenin Kumar
For Respondent : Mr.M.C.Swamy

JUDGMENT

Aggrieved over the judgment of the first Appellate Court, reversing the findings of the trial Court, the present second appeal is filed.

2. The parties are referred to as per their rank before the trial Court.

3.The brief facts, leading to file this Second Appeal, are as follows:-

It is the case of the plaintiff that the suit property belonged to the ancestress of the plaintiff and they were in possession and enjoyment from more than 100 years. The father of the plaintiff viz., Thirumal Nadar inherited the same and in peaceful possession and enjoyment of the same till his death. After his death, the property was enjoyed by his wife and his daughters, as legal heirs of the said Thirumal Nadar. Thereafter, in the year 1990, as per the oral partition, the schedule property was allotted to the share of the plaintiff. From that onwards, the plaintiff is in the peaceful possession and enjoyment of the suit property. The plaintiff has constructed a small hut in the suit property and residing there. The plaintiff is regularly paying the house tax, bearing old No.2/126-B and the new No.2/127. The defendant herein is an utter stranger to the property trying to interfere with the peaceful possession and enjoyment of the suit property. Hence, the suit.



4. The contention of the defendant is that the suit property is a natham land. The boundaries given in the suit property is not correct. The total extent of Survey Nos.860/26 and 860/28 is 1 acre and the same is belonging to the Hindu Nadar Community, wherein temples were situated. The plaintiff has no right whatsoever in the suit property, except a small hut put up by her in the northern side and she is not in possession of the entire suit property. The plaintiff has encroached the northern portion of the suit property and other vacant area of the suit property is in possession of the defendant. Hence, prays for dismissal of the suit.

5. The trial Court, based on the above pleadings, framed the following issues:

- 1) *Whether the plaintiff has proved her possession and title to the property?*
- 2) *Whether there is no cause of action for filing the suit?*
- 3) *Whether the suit is bad for non joinder of necessary parties?*
- 4) *Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 5) *To what other reliefs, the plaintiff is entitled?*

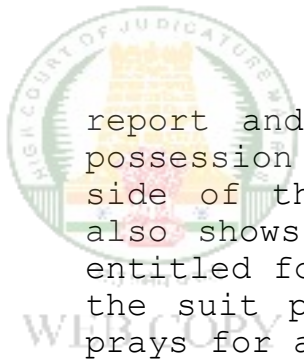
6. On the side of the plaintiff, P.W.1 to P.W.3 were examined and Ex.A1 to A4 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and no exhibits were marked. Ex.C1 and Ex.C2 were marked on the side of the Court.

7. Based on the evidence and materials, the trial Court dismissed the suit, whereas the appellate Court reversed the findings of the trial Court and granted permanent injunction. As against which, the present second appeal is filed.

8. While admitting the Second Appeal, the following substantial questions of law have been framed:-

- a) *Whether the first Appellate Court is wrong in allowing the appeal without considering about non impleadment of Temple in the party array even though Court decided the cause of action on the basis of construction material heaped at the Temple premises? and*
- b) *The Court failed to presume under Section 114 of Evidence Act about the possession of plaint schedule property by the Temple, because of the physical features regarding existence of the plaint schedule property inside the compound wall of the Temple?*

9. The learned counsel appearing for the appellant submitted that except a small hut in the northern side, other area of the suit property is under the control of the Temple Trust and the defendant is only managing the temple properties and the plaintiff has never in possession of the entire property. The Commissioner's



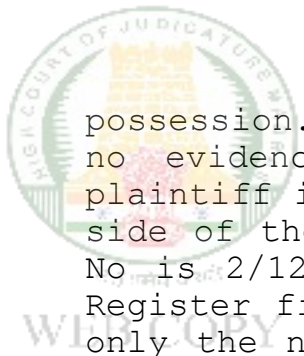
report and the sketch clearly indicate that the plaintiff is in possession of a small hut, which is marked as 'EDGF' on the northern side of the suit property. The document filed by the plaintiff also shows the above said fact. Therefore, the plaintiff is not entitled for permanent injunction as far as remaining vacant land of the suit property, which is in possession of the temple. Hence, prays for allowing the appeal.

10. The learned counsel appearing for the respondent would contend that no documents have been filed by the defendant to prove their possession over the vacant land, whereas the respondent/plaintiff has filed a document to show that she is in possession of the property and regularly paying the house tax to the concerned authorities. It is his further contention that the defendant himself was admitted in their written statement about the possession of the plaintiff. Similarly, the defendant has admitted in his written statement that the defendant has no right in the suit property. Though the property belongs to the Government, the plaintiff is having better right, but the defendant has no right whatsoever in the suit property. Hence, the finding of the first appellate Court does not warrant interference.

11. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondent and perused the materials available on record carefully.

12. The suit has been filed for permanent injunction as against the defendant for interfering with the entire suit property. The suit has been laid for an extent of 387 sq.mts. It is admitted by both sides that the suit property is originally belonging to the Government property. The plaintiff sought for an injunction in respect of the above extent, whereas the specific contention of the defendant is that he is only managing the temple run by the Trust and the entire vacant land, except the small hut up by the plaintiff in the northern side, are within the possession and enjoyment of the Temple. The trial Court has, after considering the entire evidence, dismissed the suit. However, the first appellate Court, taking note of the admission in the written statement, decreed the suit.

13. This Court has also perused the entire pleadings. What was admitted in the written statement is that the plaintiff is in possession of the suit property on the northern side. Therefore, merely there is some admission with regard to the one portion, where the plaintiff resides. Such admission cannot be taken in its entirety and construe that the defendant has admitted the plaintiff's case in its entirety. Plaintiff come before this Court for seeking equitable relief for injunction for larger extent viz., 387 sq. mts. Admittedly, the suit property is belonging to the Government, no body is able to prove any title to the suit property. Therefore, being a vacant land, the plaintiff must prove



possession. There must be some evidence on that. However, there is no evidence. Except the house tax receipt to show that the plaintiff is residing in the small hut put up by her in the northern side of the suit property, bearing old door No.2/126-B and the New No is 2/127, no further document whatsoever filed. Ex.A3-Adangal Register filed by the plaintiff, indicates that Survey No.860/26 is only the natham vacant site and the adjourning property in survey No.860/28 shows as temple properties. Therefore, when the entire property, in respect of which the injunction is sought, appears to be a vacant land, it is for the plaintiff to establish her possession in the entire land by concrete evidence. Therefore, admittedly, the plaintiff has no title whatsoever with regard to the entire suit property. Such being the position, to prove her possession in respect of the vacant land, some other documents ought to have been filed. However, except house tax receipt, in respect of the house, which is situated on the northern side of the suit property, no other document is filed. In the absence of documents, the trial Court has rightly appointed an Advocate Commissioner to file a report indicating the physical features of the suit property. The Commissioner's Report and Sketch have been marked as Ex.C1 and Ex.C2. The same clearly indicate that the plaintiff is in enjoyment of a small hut put up by her in the northern side of the suit property. The sketch appended to the Commissioner's Report clearly proves the fact that the remaining vacant land, in the same survey number, were covered by the compound wall put up by the temple authorities. The Commissioner's Report also indicates that the compound wall appears to have been put up 15 years back and the report further indicates that the plaintiff is not in possession of the entire vacant land, except a small hut in the northern side, whereas other remaining vacant land was surrounded by the compound wall put up by the Temple. The Commissioner's Report clearly indicates the access to the house i.e., hut put up by the plaintiff from the main road that itself indicating the factor that the plaintiff is not in possession of the entire suit property, except the small house put up in the northern side of the suit property.

14. In such view of the matter, this Court is of the view that as the plaintiff has failed to prove her exclusive possession over the entire extent, the first appellate Court decreeing the suit in its entirety merely, on the basis of admission with regard to the small extent, is not according to law. Therefore, the judgment of the first appellate Court, granting injunction in respect of the entire suit property, is set aside. However, taking note of the evidence adduced by the plaintiff and the Commissioner's Report and also the admission made by the defendant about possession in respect of a small hut, which is clearly demarcated and identified by the commissioner in the sketch, the injunction is restricted only in respect of the small hut and area shown in the Commissioner's report and plan. Since the defendant is running the Temple, non-impleading the temple not prejudiced the Temple.



15. Accordingly, this Second Appeal is partly allowed. The judgment of the first appellate Court is modified to that effect as discussed above. Considering the nature of the suit and the status of the parties, there shall be no order as to costs.

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Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

To

1.The Additional District Judge, (Fast Track Court) No.1,
Thoothukudi

2.The District Munsif Sathankulam.

3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.LENIN KUMAR, Advocate (SR-390[F] dated 07/01/2021)

+1 CC to Mr.G.RAJARAMAN, Advocate (SR-522[F] dated 07/01/2021)

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06.01.2021

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