



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 16.11.2021

JUDGMENT PRONOUNDED ON : 26.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)No.186 of 2005

and

C.M.P(MD).No.1625 of 2005

—

M.John Samuel (died) ...Appellant/Respondent/Plaintiff

2.J.Easaiah

3.I.Isravel

...Appellants 2 & 3 /.../.../

(Appellants 2 & 3 are brought on record as legal heirs of the deceased sole appellant vide order dated 22.01.2009)

Vs

Maria Antony

S/o.Gnanaprakasam

...Respondent/Appellant/Defendant

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the decree and judgment dated 10.08.2004 rendered in A.S.No.24 of 2002 on the file of the Subordinate Judge, Srivilliputhur, reversing the decree and judgment dated 27.11.2001 rendered in O.S.No.33 of 2000 on the file of the Additional District Munsif, Srivilliputhur.

For Appellants : Mrs.P.Jessi Jeeva Priya
Advocate

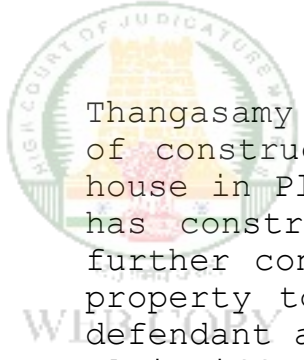
For Respondent : Mr.M.Thirunavukkarasu
Advocate

JUDGMENT

The plaintiff is the appellant herein.

2.The plaintiff filed O.S.No.33 of 2000 on the file of the Additional District Munsif Court, Srivilliputhur for the relief of declaration of title and permanent injunction. The suit was decreed as prayed for. Challenging the same, the defendant has filed A.S.No.24 of 2002 before the Sub Court, Srivilliputhur. The First Appellate Court allowed the appeal and dismissed the suit. As against the same, the plaintiff has filed the above second appeal.

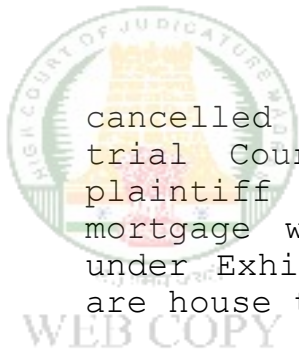
3.The plaintiff had contended that he was originally allotted Plot No.6 in Survey No.328/3 by the Government of Tamil Nadu under Adidraavidar Welfare Scheme by an order dated 18.01.1963. The plaintiff further contended that Plot No.18 was allotted to one



Thangasamy who is the vendor of the defendant. The plaintiff instead of constructing his house in Plot No.6, by mistake, constructed a house in Plot No.18 in the year 1965. According to the plaintiff, he has constructed in the northern half of the plot. The plaintiff further contended that he has obtained a revenue Patta for the said property to an extent of 5 cents. According to the plaintiff, the defendant approached the Adidravidar Welfare Department to evict the plaintiff. The District Revenue Officer, Ramnad had conducted an enquiry and he passed an order allotting Plot No.18 to the plaintiff and cancelled the earlier allotment of Plot No.18 in favour of the said Thangasamy. Hence, the Thangasamy has no right, title or possession over Plot No.18. The said Thangasamy managed to get a joint patta in his favour. The plaintiff further contended that the Thangasamy has sold a portion of the suit schedule property to the defendant and the defendant started to disturb his possession and hence, the present suit for declaration of title and permanent injunction.

4.The defendant filed a written statement contending that only the plaintiff has encroached over Plot No.18. It was originally allotted to his vendor namely Thangasamy. According to the defendant, the said Thangasamy had put up a thatched house in the western side of the suit property in year 1970. Hence, from the year 1970, the plaintiff was in possession of the northern half and the defendant's vendor Thangasamy was in possession of the Southern half of 5 cents in Plot No.18. The defendant further contended that the said Thangasamy has obtained house tax receipts for the thatched house and the said Thangasamy was in continuous possession of the said property. The defendant further contended that the plaintiff had filed O.S.No.37 of 1977 before the District Munsif Court, Srivilliputhur as against his vendor Thangasamy for the relief of declaration of title and permanent injunction. Pending suit, the plaintiff filed I.A.No.344 of 1978 to amend the plaint to seek alternative prayer for recovery of possession. The said amendment application was allowed on 08.06.1978. Thereafter, the plaintiff had chosen to withdraw the suit with liberty to file a fresh suit within a period of six months. However, no suit was filed within the said period and hence, the present suit is not maintainable. The revenue records got mutated in the name of the plaintiff without any notice to the said Thangasamy or the defendant. The defendant further contended that he had purchased the southern half of 2 ½ cents in Plot No.18 and has put up a thatched house in the western half and the eastern half is used as a dumping yard by the defendant. The defendant further contended that he is a *bona fide* purchaser for a valuable consideration and he had purchased the property relying upon the joint patta in the name of the plaintiff and the defendant's vendor Thangasamy. Since the plaintiff is not in possession of the suit schedule property, the prayer for injunction is not maintainable. The trial Court decreed the suit as prayed for by relying upon Exhibits A2 to A5 documents under which the

<https://hcservices.mca.gov.in/hcservices/> for Plot No.18 in favour of Thangasamy was



cancelled and it was allotted in the name of the plaintiff. The trial Court has also relied upon Exhibit A6 under which the plaintiff has created a mortgage and Exhibit A7 under which the mortgage was made over. The plaintiff had redeemed the mortgage under Exhibit A8 and he has also produced Exhibit A9 series which are house tax receipts for a period between 1980 to 1982.

5. In view of the above said documents, the trial Court found that the plaintiff is the owner of the suit schedule properties for the entire extent of 5 cents in Plot No.18. The trial Court rejected the Exhibits B8 to B11 house tax receipts filed on the side of the defendant and found that they did not establish the possession of the either Thangasamy or the present defendant. Further, the trial Court has also held that the defendant being a Christian is not entitled to purchase a property assigned in favour of a person owned by Adidravidar Welfare Department. On the above said grounds, the suit was decreed as prayed for.

6. Before the First Appellate Court, the defendant filed I.A.Nos.61 of 2003 and 23 of 2004 to receive documents as additional evidence. I.A.No.61 of 2003 was dismissed on the ground that the documents sought to be marked as additional evidence are irrelevant documents. I.A.No.23 of 2004 was allowed partly permitting to mark documents 1 and 2 in the said petition and the said documents were marked Exhibits B14 and B15 before the First Appellate Court. The First Appellate Court gave a finding that though the plaintiff contended that the said Thangasamy was evicted from the property in the year 1982, no oral or documentary evidence has been let in to the said effect. The First Appellate Court also found that Exhibit B2 plaint will reveal that the plaintiff had chosen to amend the plaint on the ground that the said Thangasamy had trespassed into the suit schedule property pending O.S.No.37 of 1977. The First Appellate Court also gave a finding that the said Thangasamy is being in possession of the Southern portion of Plot No.18, based on Exhibits B2 to B9, B14 and B15. Since the plaintiff was not able to prove his possession over the suit schedule properties, the decree for declaration and permanent injunction was reversed by the First Appellate Court and the suit was dismissed. As against the same, the present second appeal has been filed.

7. The Second Appeal was admitted on the following substantial questions of law:

"1. Can the Appellate Court reverse the findings of the trial Court without giving reasons for its disagreement with the findings of the trial Court?"

2. When the Government was the owner of the land and when the government distributed the lands to the land less poor under the provisions of the Government Grant Act, can the orders of the assignment be not treated as



the title deeds to those persons in whose names the orders of assignment had been granted.

3. When there was no adjudication of any right in the earlier suit, especially when the suit had been withdrawn with a liberty to file a fresh suit, can the second suit be characterised as one barred under Section 11 of the code of Civil Procedure as resjudicata?

4. Whether a Christian can claim the benefits, as the Scheduled Tribe /Caste Community, and so, whether the claim of possession is valid violating Article 14, 21, 38, 39 and 46 of the Constitution of India?

8. Heard the learned counsel for the appellants and the learned counsel for the respondent.

9. A perusal of exhibit A2 will clearly show that originally the plaintiff was allotted Plot No.6 and the defendant's vendor Thangasamy was allotted Plot No.18. However, by mistake, the plaintiff has put up a construction in Plot No.18. Thereafter, a complaint was lodged by the allottee of Plot No.18 namely Thangasamy to the authority concerned. During the hearing, the allotment in favour of Thangasamy for Plot No.18 was cancelled and the said plot was allotted to the plaintiff under Exhibit A2. This order of cancellation of allotment of Plot No.18 was not challenged by the said Thangasamy. Thereafter, a provisional Patta was granted by the Settlement Tahsildar under Exhibit A4 in favour of the plaintiff after hearing the said Thangasamy. This order was also not challenged.

10. The above documents will clearly indicate that the plaintiff is the absolute owner of Plot No.18 in Survey No.327/23.

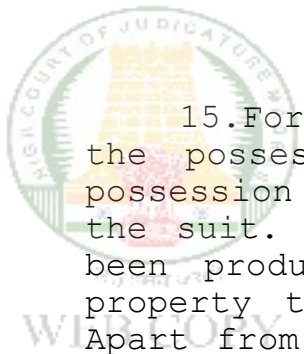
11. It is not in dispute that the plaintiff has put up a construction in the northern 2 ½ cents and he is residing there. Only the southern 2 ½ cents is in dispute between the parties. Even in the South 2 1/2 cents, the present suit has been filed for the western portion of the south 2-1/2 cents namely 1122 sq.ft, wherein a thached house is located. The eastern portion of the south 2-1/2 is not the subject matter of the suit. The defendant is said to have purchased the suit schedule properties from Thagasamy under Exhibit B12 on 11.08.1999 and hence, the said thached house is the subject matter of the suit. When this Court has come to a conclusion that the plaintiff is the absolute owner of the entire 5 cents in Plot No.18, the issue now arises for consideration is whether the plaintiff is also entitled to get a decree for permanent injunction with regard to the south-west portion of Plot No.18. In othe words, whether the plaintiff has established his possession on the date of plaint over the suit schedule properties is the issue to be decided.



12. It is also not in dispute that the plaintiff had originally instituted O.S.No.37 of 1977 on the file of the District Munsif Court, Srivilliputhur as against the vendor of the present defendant originally seeking the relief of declaration and permanent injunction. Pending suit, the plaintiff had filed I.A.No.344 of 1978 to amend the plaint for seeking an alternative relief of recovery of possession of the southern portion of Plot No.18 from the defendant. Exhibit B2 is the amended plaint in O.S.No.37 of 1977. In paragraph 10 of the said amended plaint, the plaintiff has contended that pending suit, the defendant has trespassed into the suit property and hence, the alternative relief of recovery of possession is being prayed. However, the said suit was dismissed as withdrawn under Exhibit B6 dated 07.02.1979 with liberty to file a fresh suit on the same cause of action within a period of six months. Though such an order was passed on 07.02.1979, the plaintiff has chosen to file the present suit for declaration and permanent injunction with regard to a portion of the suit property only on 21.01.2000. The plaintiff in the present suit has not made any averment with regard to the previous suit and its withdrawal in the original plaint. Only in the reply statement, the plaintiff has admitted about the filing of the previous suit and contended that the said Thagasamy was evicted from the suit property on 15.12.1983 based upon the complaint lodged by the plaintiff to the Special Tahsildar, Adidravidar Welfare Department. According to the plaintiff, the said Thangasamy was evicted with Police help on 15.12.1983. However, no document has been filed with regard to the said complaint or the alleged eviction of Thagasamy on 15.12.1983.

13. Under Exhibit A4, provisional Patta has been granted by the Special Tahsildar in favour of the plaintiff on 14.02.1995. The said order refers to the fact that the Thangasamy had produced house tax receipts for Door No.52 and 52-C for the period of 1981-82 to 1985-86 and 1992 -93 and 1994 -95. The said Exhibit A4 order also refers to the fact that the Thangasamy has put up two small thatched houses in Survey No.327/3 adjacent to the plaintiff's house and the said Thangasamy is also paying house tax to those thatched houses. This order has been passed on 14.02.1995. Hence, it is evident that the contention of the plaintiff that the Thangasamy was evicted on 15.12.1983 is not correct and he was in possession till 1995. That part, the defendant had produced Exhibit B8 tax receipts which disclose the property tax payment for Door Nos.52 and 53-C. The sale deed in favour of the present defendant under Exhibit B12 reveals that Door Number as 53-C. Under Exhibit B11, the Thagasamy has been included in Patta No.1042 along with the plaintiff by an order of Tahsildar. This order been passed on 23.09.1996.

14. The above said discussions about the documents will clearly reveal that the said Thangasamy was in possession of the suit schedule property till Exhibit B12 and the present defendant is in possession of the said property after Exhibit B12 sale deed.



15. For granting a decree for permanent injunction, to protect the possession, the plaintiff has to establish that he is in possession of the suit schedule properties on the date of filing of the suit. In the present case, only the revenue records that has been produced by the plaintiff is Exhibit A9 series which are property tax receipts covering the period between 1980 to 1982. Apart from this, no other revenue record has been produced by the plaintiff to establish his possession on the date of filing of the suit, namely 21.01.2000. Hence, the plaintiff is not entitled to get a decree for permanent injunction.

16. The defendant either in his original written statement or in his additional written statement has not pleaded adverse possession as against the plaintiff. When the defendant has not pleaded adverse possession as against the plaintiff, the plaintiff is entitled to get a decree for declaration of title over the suit schedule properties. The said Thagasamy is in possession of the suit schedule properties atleast from the year 1980 onwards which is revealed through Exhibits B8 and B9. Thereafter, the said Thangasamy had sold away the property in favour of the defendant under Exhibit B12 on 11.08.1999. The defendant had paid house tax under Exhibit B13. These documents would reveal that the defendant and his vendor Thangasamy are in settled possession of the suit schedule properties and they could be evicted only by due process of law. Since the title of the plaintiff has been upheld by the Court and the defendant has not pleaded adverse possession, the plaintiff would be at liberty to initiate separate proceedings for recovery of possession from the defendant.

17. In view of the above said discussion, the judgment and decree of the First Appellate Court is set aside and the second appeal is partly allowed and the following decree is passed:

(i) the plaintiff is entitled to a decree for declaration of title for the suit schedule properties.

(ii) the suit is dismissed with regard to the prayer for permanent injunction.

(iii) the plaintiff is entitled to initiate separate proceedings to recover possession from the defendant subject to the law of limitation.

(iv) the judgment and decree of the First Appellate Court are modified to the above said extent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Subordinate Judge
Srivilliputhur
- 2.The Additional District Munsif
Srivilliputhur
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai (2 Copies)

+1 CC to M/s.M. THIRUNAVUKKARASU, Advocate (SR-35987[F]
dated 26/11/2021)

Judgment made in
S.A. (MD) No.186 of 2005
and
C.M.P (MD) .No.1625 of 2005
26.11.2021

KMK (CO)
GC(06.01.2022) 7P 6C