



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 16.12.2021

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THE HON'BLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

S.A.(MD) No.384 of 2011

and

CMP(MD) No.4986 of 2021

1. Kokila
2. Nithya
3. Selvakumar

... APPELLANTS/APPELLANTS/
DEFENDANTS

vs.

P.Ramasamy

... RESPONDENT/RESPONDENT/
PLAINTIFF

Second Appeal filed under Section 100 of CPC against the Judgment and Decree passed in A.S. No.53 of 2019 on the file of the I Additional Subordinate Judge, Tiruchirapalli dated 21.11.2019 affirming the judgment and decree passed by the Additional District Munsif, Manaparai in O.S. No.238 of 2012 dated 24.01.2019.

For Appellants

: Mr.N.Vallinayagam

JUDGMENT

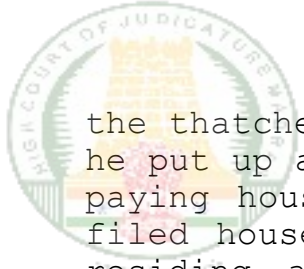
This Second Appeal is directed against the Judgment and Decree passed in A.S. No.53 of 2019 on the file of the I Additional Subordinate Judge, Tiruchirapalli dated 21.11.2019 affirming the judgment and decree passed by the Additional District Munsif, Manaparai in O.S. No.238 of 2012 dated 24.01.2019.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3. The suit has been filed seeking for declaration and recovery of possession.

4. The case of the plaintiff, in brief, as per the averments made in the plaint, reads as follows:-

The Suit 'A' schedule property is described a natham land wherein the plaintiff was in occupation for more than three decades. The revenue authorities had issued patta for the said property in Patta No.172. The said patta was filed by the plaintiff to prove his possession and enjoyment. Originally, the suit property belongs to his grand mother later on to his mother who is living in



the thatched house. Later when the plaintiff came to the said house he put up a tiled house. He also obtained electricity connection and paying house tax and electricity charge. The plaintiff has also filed house tax receipt and electricity bills to show that he was residing and enjoying the said property. The suit 'B' schedule property is lying on the western portion of the suit 'A' schedule property, which forms part of suit 'A' schedule property. The plaintiff was using the suit 'B' schedule property to store the thatthering and cattle's and fire woods and the suit 'B' schedule property was kept vacant for the above use. The defendant started encroaching upon a portion of the property. The second and third defendants are the son and daughter of the first defendant, who had trespassed into the suit 'B' schedule property on the western portion of the suit 'A' schedule property, five months ago and hence, he requested him to vacate the said place but the defendant failed to do so and he encroached upon the same as trespasser. Hence, the plaintiff filed a suit for relief of declaration and consequential relief of recovery of possession.

5. The 1st defendant filed written statement and adopted by other defendants contending among otherthings that the suit 'B' scheduled property is enjoyed by the defendants along with their property situated on the western side by constructing a house and had also put up a compound wall and the plaintiff has got no right over the area on the eastern side of the defendants house and the plaintiff property is only 'A' schedule property and patta given in favour of the plaintiff has been denied. The patta issued in favour of the plaintiff in 'B' schedule property would not bind the defendants, as the said property was occupied Natham.

6. The trial Court has formulated the following three issues while deciding the suit:-

a) Whether the plaintiff is entitled to the relief of declaration as prayed for in the plaint?

b) Whether the plaintiff is entitled for recovery of possession as prayed for in the plaint ?

c)Any other relief he is entitled to ?

7. During the trial, on the side of the plaintiff, the power agent of plaintiff was examined as PW1. One Sivasubramanian was examined as PW2 and through him Ex.X.1 to X.4 were marked. Exs.A1 to A6 were also marked on the side of the plaintiff. One Kokila was examined as DW1 and through her Ex.B.1 to Ex.B4 were marked. One Ponnusamy was examined as DW2 and no documents was marked through him. Court



documents were marked as Ex.C1 to C3.

8. On analysis of the oral and documentary evidence, the trial Court has allowed the suit. Aggrieved by the same, the defendant has preferred an appeal in A.S. No.53 of 2019, on the file of the learned 1st Additional Subordinate Judge, Trichy.

9. The first appellate court, upon considering the oral and documentary evidence of the parties, had confirmed the findings of the trial Court. Aggrieved by the Judgment and decree passed by the first appellate Court, the present Second Appeal has been filed the defendants.

10. The learned counsel appearing for the appellants / defendants would submit that the Courts below failed to note that the plaintiff has only right over the area beyond the compound wall on the east of the defendants property, but, the Courts below erred in findings that the compound wall is in existence between the property of the defendants and the plaintiff. The patta obtained by the plaintiff will not bind the defendants, as it was obtained without any notice to them. The plaintiff was never in possession of the property as described in the plaint. The courts below erred in holding that the defendants encroached the suit property in the year 2010 and further erred in granting relief on the above basis, when the case of the defendant is that the alleged encroachment was made 5 months before the suit. The Courts below failed to note that the plaintiff has not even clear about the measurement of 'B' schedule properties and has changed his stand on the basis of Commissioner's report. The plaintiff had abandoned the earlier suit in O.S.No.10 of 2008 on the file of the District Munsif, Manaparai for the same property. Further, the suit is hit by Order 2, Rule 2 CPC., as the plaintiff has not sought for declaration in the earlier suit O.S.No.10 of 2008. The Suit is barred by law of limitation as the denial of the title was made in the earlier suit O.S.No.10 of 2008 in the year 2008 itself while the present suit for declaration was filed in the year 2012, which is beyond three years. Hence, the learned counsel prays for dismissal of the Judgments of the Courts below.

11. The learned counsel appearing for the respondent/ defendant would vehemently oppose the Second Appeal by contending that the well considered Judgments of the Courts below need not be interfered with, as there is no question of law involved in this Second Appeal and prayed for dismissal of the Second Appeal.

12. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

13. According to the plaintiff the Suit 'A' schedule property is described a natham land wherein the plaintiff was in occupation for more than three decades. The Revenue Authorities had issued patta for the said property in Patta No.172. Originally, the suit



property belongs to the grand mother later on to his mother and living in the thatched house. Later, when the plaintiff came to the said house he put up a tiled house. He also obtained electricity connection and paying house tax and electricity charge. The suit 'B' schedule property is in western portion of the suit 'A' schedule property, which forms part of suit 'A' schedule property. The plaintiff was using the suit 'B' schedule property to store the thatthering and cattle's and fire woods and the suit 'B' schedule property was kept vacant. The defendant started encroaching upon the portion of the property. The second and third defendants are the son and daughter of the first defendant, who had unauthorizedly trespassed into the suit 'B' schedule property on the western portion of the suit 'A' schedule property.

14. According to the defendants, the suit 'B' scheduled property is enjoyed by the defendants along with their property situated on the western side by constructing a house and had also put up a compound wall and the plaintiff has got no right over the area on the eastern side of the defendants house and the plaintiff property is only 'A' schedule property. The patta issued in favour of the plaintiff in 'B' schedule property would not bind the defendants, as the said property was classified as Natham land.

15. It is not in dispute that the suit property is a natham property. Grama Natham land was never vested with the Government or Town Panchayat. In respect of grama natham land, the 1st occupier is the owner of the particular land. Furhter, P.W.1, who is the power agent of plaintiff, in cross deposed that the suit property was ancestral property of the plaintiff. D.W.1 in her cross admitted that the plaintiff resided in the suit property for 10 years and before that his grandmother Subbammal resided in the above property. D.W.2 in cross deposed that the plaintiff Ramasamy resided in the Sui property for more than 40 years. Ex.A1 is the House Tax Receipt, dated 19.04.2002, which is issued ten years before filing of the suit. So, the conjoint reading of evidence of DW.1, D.W.2 and P.W.1 and Ex.A1 would show that the plaintiff perfected his title over the suit property. Ex.C1 is the Commissioner's Report. The Advocate Commissioner in his report observed that the defendant encroached east-west 5 feet and north-south 46 feet in the suit property and to that effect, there was no objection by the defendant. Furhter, D.W.1 in her cross admitted that the new building was put up by her in the year 2010. So, a conjoint reading of Ex.C1 and evidence of D.W.1 would show that D.W.1 encroached the suit property in the year 2010, after the plaintiff occupied the suit property, which is natham land and perfected his title.

16. Insofar as the contention of the defedant that earlier, the plaintiff had instituted a suit in O.S.No.10 of 2008, for the relief of permanent injunction, before the learned District Munsif, Manapparai, which was dismissed for default. The plaintiff,



suppressing the earlier Suit, instituted the present suit and therefore, under Order 2, Rule 2 of Code of Civil Procedure, the subsequent suit in respect of relinquishment or part of claim is barred with respect to the relief arising out of same cause of action, as the plaintiff has not obtained leave of the Court. The cause of action for the earlier suit viz., O.S.No.10 of 2008 and the present suit is a different one and it would not create cloud upon the title of the plaintiff. According to the defendant, he had put up construction only in the year 2010 and the Suit for declaration and recovery of possession was filed in the year 2012, which is within the period of limitation. The defendants' case was rightly rejected by the Courts below, and this Court finds no reason to interfere with the well reasoned Judgments of the Courts below and also there is no question of law much less substantial question of law involved in this Second Appeal for consideration by this Court.

17. In view of the forgoing discussions, this Court is not of the view that the findings rendered by the trial court and upheld by the first appellate Court, do not warrant any interference by this Court, as the findings given on the issues framed by the Courts below as well as specifically taken up by this Court to reach the root of the controversy, appears to be based upon correct appreciation of oral as well as documentary evidence. Hence, the present appeal fails and is dismissed, accordingly. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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 I Additional Subordinate Judge, Tiruchirapalli.
2. The Additional District Munsif, Manaparai.



3.The Section Officer,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.VALLINAYAGAM, Advocate (SR-39081[F] dated 16/12/2021

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and
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KS (CO)
KB (28.02.2022) 6P 6C