



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2021

PRONOUNCED ON : 18.02.2022

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

S.A.No.1131 of 2005
and CMP No.15579 of 2005

Athiyannan

..Appellant/first Respondent/
first Defendant

vs.

1.Chinnapappa

2.Palani Gounder

3.Muthusamy

4.Ramasamy

..Respondents/Appellants/ Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 18.06.2004 passed in A.S.No.4 of 2004 on the file of the Subordinate Judge, Sankagiri reversing the Judgment and Decree dated 23.10.2002 passed in O.S.No.218 of 1998 on the file of the District Munsif, Sankagiri.

For Appellant : Mr.M.Balasubramanian

For Respondents : Mr.R.Ezhilarasan for R1
No appearance
R2 to R4 given up

JUDGMENT

Challenge in this second appeal is to the Judgment and Decree dated 18.06.2004 passed in A.S.No.4 of 2004 on the file of the Subordinate Judge, Sankagiri reversing the Judgment and Decree dated 23.10.2002 passed in O.S.No.218 of 1998 on the file of the District Munsif, Sankagiri.

2.For the sake of convenience, the parties are referred to as per the trial Court. The first defendant is the appellant herein.



3.Suit is for permanent injunction.

4.The case of the plaintiff is that the plaintiff bought the property through an unregistered document for a sale consideration of Rs.1,500/- and was in peaceful possession and enjoyment for more than 15 years. The said property was subsequently subdivided and she is paying necessary kist and patta was also issued in her favour. The defendants compelled the plaintiff to sell the property for lower value, which was not accepted by the plaintiff and hence, the defendants, with the help of their men, demolished the compound wall of the hut of the plaintiff and thereby caused loss to the tune of Rs.2,000/- and hence, a complaint has been lodged by the plaintiff before the Sankagiri Police Station. However, no action whatsoever was taken against the defendants. Therefore, the plaintiff filed a suit for permanent injunction restraining the defendants from interfering with the property, more particularly, the house in occupation of the plaintiff.

5. The defendants resisted the claim of the plaintiff by stating that the suit is not maintainable. The property belongs to Mariamman Koil in S.No.826/3, which has been given freely to one Chemban Navidhar and S.No.826/4 was given to one Gundu Vannaan for constructing a house by the erstwhile Trustees/Dharmakarthas of Mariamman Koil. After the demise of the erstwhile Trustee/Dharmakartha and his son, the said property was subsequently given to the plaintiff by the subsequent Trustee, who is the grandson of the erstwhile Trustee. It is not true to state that the plaintiff has built a hut and a house in the suit property. There is a difference with regard to the survey number in the plaint filed by the plaintiff and the sale deed and it is not true to state that in order to grab the said suit property, the defendants have threatened the plaintiff and demolished the compound wall of the hut and caused damaged to the tune of Rs.2,000/- and prayed for dismissal of the suit.

6.In order to prove the case of the plaintiff, PW.1 was examined and Exs.A1 to A5 were marked. On the side of the defendants, Palani Gounder was examined as D.W.1 and no documents were marked on behalf of the defendants.

7.On considering the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to partly decree the suit in favour of the plaintiff and the defendants are enjoined from interfering with the suit property.



8. Impugning the same, the plaintiff herself has preferred the first appeal. The first appellate Court, on a consideration of the materials placed and the submissions made, was pleased to answer in favour of the plaintiff thereby modifying the judgment and decree of the trial Court to the effect that the defendants are permanently enjoined from interfering with the peaceful possession and enjoyment of the plaintiff in the entire suit property. Impugning the same, the present second appeal has been preferred by the first defendant.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"In the absence of any specific boundaries or identifying features of the extent of the property not covered under the unregistered sale deed, can a Court of Law grant a decree of permanent injunction in respect of such property?"

10. Heard the learned counsel for the appellant/first defendant and the learned counsel for the respondents.

11. The learned counsel for the appellant/first defendant made the following submissions:

The finding rendered by the first appellate Court in modifying the portion of the judgment and decree is contrary to law. The first appellate Court failed to consider that in the unregistered sale deed, the first respondent/plaintiff has purchased certain extent from one Sengodan and based on which, she obtained patta including 8' x 19' situated adjacently, which belongs to Mariamman Temple by way of misrepresentation before the revenue authorities. The first appellate Court has failed to consider the legal aspect that an unregistered instrument could be relied on only for collateral purpose and hence, the finding rendered by the first appellate Court needs interference. The first appellate Court ought to have drawn an adverse inference against the plaintiff for having obtained patta in respect of the temple land measuring 8' x 19', which has nothing to do with the portion covered under the unregistered sale deed. The finding rendered by the first appellate Court holding that the entire land in S.Nos.826/3 and 826/4 is a natham poramboke and the plaintiff was issued with patta including the extent of 8' x 19' belonging to Mariamman Temple is totally baseless and contrary to the materials. For all these reasons, the learned counsel for the appellant prays interference of this Court.



12. There is no representation on behalf of the first respondent/plaintiff either in person or through counsel.

13. It is seen that the trial Court on consideration of the oral and documentary evidence has chosen to grant an injunction in respect of the property that is covered under the unregistered sale deed. Pointing out that the patta is in respect of excess portion of 19/8 feet, the relief of injunction has been refused. As far as the first appellate Court is concerned, there is a finding that the suit property is a natham poramboke that the plaintiff has purchased the same on 14.07.1982 and that thereafter resurvey has been done and patta has been issued in favour of the plaintiff. The first appellate Court has also taken note of the fact that kist has been paid for a long number of years that is from 1984 to 1998. When there was interference in the possession of the property, complaint has also been laid before the concerned police and a copy of the complaint has also been relied upon. The first appellate Court has pointed out that the trial Court should have relied upon the patta that has been issued in favour of the plaintiff and should not have relied upon the unregistered sale deed and therefore, should not have refused the relief of injunction in respect of 18 x 9 feet. Challenging the well considered judgment of the first appellate Court, the second appeal has been filed.

14. A perusal of the judgment of the trial Court would go to show that the trial Court has relied upon the unregistered sale deed and granted the relief of injunction in respect of part of the property. Though it is true that the sale deed could not be marked for want of registration of the sale deed, but for a limited purpose of finding out the nature of the possession, the sale deed can be looked into, of course, after making the document admissible on payment of proper stamp duty.

15. The most important document in the hands of the plaintiff was the patta issued in her favour. The patta is not a document of title, yet compared to the documentary evidence available in the hands of the plaintiff and in the hands of the first defendant, the plaintiff is in a better position by having patta in her favour. In the absence of the document in the hands of the first defendant, the only reliable document is the patta, which can be relied upon to the extent of showing that the plaintiff had been in possession of the property. Therefore, the first appellate Court has relied upon the patta issued in favour of the plaintiff and by considering the entire circumstances has granted the relief of injunction in respect of



the suit property.

16. The contention of the first defendant that the first appellate Court should have remanded the matter is not proper, as there is no scope for remanding the matter. This simple suit for injunction is pending from the year 1998 and the scope of consideration is also very limited. If there is a necessity, there is power vested with the appellate Court to record evidence and to decide the issue instead of remanding the matter. As pointed out already, there is no necessity to remand the matter. Factually and legally the first appellate Court has considered all relevant documents and has arrived at a right conclusion. Therefore, the second appeal has no merit and it is liable to be dismissed.

17. In fine, the second appeal is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

RR

To

1.The Subordinate Judge,
Sankagiri.

2.The District Munsif,
Sankagiri.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.M.Balasubramanian, Advocate SR.No.10462

S.A.No.1131 of 2005

GP(CO)
GN(28/03/2022)