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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

PRONOUNCED ON : 02.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1380 of 2011

and

M.P.No.1 of 2011

1. Kandasamy Chettiar

2. Palaniammal

...Appellants/Plaintiffs/Defendants

Vs.

1. Muthusamy

2. Ponnusamy

...Respondents/Defendants/Plaintiffs

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 29.03.2010 made in A.S.No.151 of 2008 on the file of the learned Subordinate Judge, Thiruchengode, reversing the judgment and decree dated 30.04.2008 made in O.S.No.189 of 2001 on the file of the District Munsif, Thiruchengode.

For Appellants : Mr.T.L.Thirumalaisamy

For Respondents : Mr.P.Valliappan

J U D G M E N T

The Second Appeal is focused as against the judgment and decree dated 29.03.2010 passed in A.S.No.151 of 2008 by the learned Subordinate Judge, Thiruchengode, in reversing the judgment and decree dated 30.04.2008, made in O.S.No.189 of 2001 by the learned District Munsif, Thiruchengode. The suit is for the relief of permanent injunction.

2. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

3. The laconic averments made in the plaint, are as follows:

(i) The suit properties are originally natham lands in Survey No.102/3. The plaintiffs and their ancestors were



residing therein along with their family members and plaintiffs have now shifted their residence to other place. As of now, there is a cattle shed in the 1st item of the suit schedule property. The plaintiffs stored their cattle feed and tethering their cattle in the suit schedule property. The Special Tahsildar of natham lands after recognising the plaintiffs possession issued patta in the name of the plaintiffs. When at the time of issuing patta, the suit schedule property was assigned with new Survey Number as 335/9 and 335/10. The plaintiff paid kist also.

(ii) The defendants are having their residential house on the East of the 1st item of the suit schedule property. There is also a vacant land on the East of the 2nd item of suit schedule property, which they have encroached. The defendant having succeeded in their ignoble goal and in avariciousness are planning to encroach the suit properties. They have no right to interfere with the plaintiffs' peaceful possession.

(iii) On 07.07.2001, the defendants attempted to trespass and encroach the suit properties. The plaintiffs managed the same. Now, the defendants openly proclaimed that they are going to come with large men and at any cost going to achieve their ignoble goal. Therefore, it would be necessary to grant a decree for permanent injunction, restraining the defendants in any way interfering with the plaintiffs' peaceful possession. Since the plaintiffs 1 and 2 are father and son and further, as they are not having any conflicting interest, they joined together and filed a single suit.

4. The averments found in the written statement filed by the 2nd defendant, are as follows:

(i) The suit properties does not belong to the plaintiffs. The same has been purchased by Kuppu Chettiar, the grandfather of the defendant herein. The said Kuppu Chettiar has purchased the suit properties under a registered sale deed dated 29.06.1934, from one Nallaia Gounder, Vaiyapuri Gounder. Both are the sons of the Kutty Gounder. After his death, his second son Gurunatha Chettiar was in the possession of the suit properties. When he shifted his family to some other place for want of livelihood, his son along with other brothers viz., Gurusamy, another Gurusamy and Kanagaraj, all jointly executed a unregistered sale deed in favour of the defendant herein on 22.12.1996. Therefore, the suit properties are the ancestral properties of the defendants herein.



(ii) From the date of purchase by the Kuppu Chettiyar, his successors-in-title are in possession and enjoyment of the suit schedule property continuously without any disturbance. Very often, the plaintiffs entered into the suit properties unlawfully and illegally and when they tried to put up a hut, the leading Goundars, including the President of Panchayat Board prevented the unlawful acts of the plaintiffs. Just two days back before filing this suit, the plaintiffs unlawfully trespassed into the suit property and put up a thatched shed in one night. The defendants convened a Panchayat and in that Panchayat, the plaintiffs agreed before the Panchayat to remove the cattle shed from the suit schedule properties. Thereafter, instead of complying the undertaking given before the Panchayat, they have filed the present suit. Hence, the prayer sought by the plaintiffs, cannot be entertained.

5. Based on the above said averments, the trial Court framed necessary issues and tried the suit. On the side of the plaintiffs, PW1 and PW2 were examined and nine documents were marked as Ex.A1 to Ex.A9. Similarly, on the side of the defendants, DW1 to DW5 were examined and eight documents were marked as Ex.B1 to Ex.B8.

6. Having considered the materials placed before him, the learned District Munsif, Thiruchengode, came to the conclusion that the plaintiffs have not proved their case and ultimately dismissed the suit.

7. In the appeal filed by the plaintiffs in A.S.No.151 of 2008, the learned Subordinate Judge, Thiruchengode, reversed the findings arrived at by the trial Court and granted a decree of injunction in favour of the plaintiffs.

8. Feeling aggrieved over the findings arrived at by the lower appellate Court, the defendants have filed the present Second Appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether the lower appellate Court is correct in law in calling upon the appellants/defendants to prove their case overlooking the axiomatic principle of law that the respondents/plaintiffs have to succeed or fall on the basis of their case and cannot rely on case put forward by appellants/defendants?

2. Whether the Lower Appellate Court is correct in law in discarding Ex.B1 dated 29.06.1974 and



accepting Exs.A-1 and A-2 patta without giving proper findings?

3. Whether the Lower Appellate Court is correct in law in not considering the well settled principle of law that the boundaries will prevail over the extent?"

9. Heard Mr.T.L.Thirumalaisamy, the learned counsel appearing on behalf of the appellants/defendants and Mr.P.Valliappan, the learned Counsel appearing on behalf of the respondents/plaintiffs and perused the materials available on record.

10. It is the case of the plaintiffs that their ancestors are permanently residing in the suit schedule property. Later after leaving the suit schedule property as a cattle shed, they shifted their family. The Government also after recognising the lawful possession of the plaintiffs, under Natham Survey scheme, issued a patta in the name of the plaintiffs and therefore, it should be decided that the plaintiffs are in the lawful possession of the suit schedule property.

11. On the other hand, it is the case of the defendants that, the suit schedule property has been purchased by Kuppu Chettiyar, the grandfather of the defendant vide an unregistered sale deed dated 29.06.1934. After the death of Kuppu Chettiyar, his second son, Gurunatha Chettiyar was in the possession of the suit property. When at the time, the said Gurunatha Chettiyar shifted his family to some other place, his legal heirs on 22.12.1996, sold the suit property in favour of the defendants through an unregistered sale deed. Accordingly, the suit properties are the ancestral properties of the defendants.

12. Before the trial Court, in order to prove their title and possession, the plaintiffs produced nine documents as Ex.A1 to Ex.A9. Ex.A1 and Ex.A2 are the pattas, which stands in the name of the 1st and 2nd plaintiffs, in respect to Survey Nos.335/9 and 335/10, respectively. Exs.A3, A4 and A7 are the tax receipts which stands in the name of the plaintiffs. Further, Ex.A9, is the series of receipts for paying Electricity consumption charges pertaining to Service Connection No.453. In respect to the genuineness of the said documents, there was no denial on the side of the defendants as those documents are fabricated one. Therefore, since Ex.A1 and Ex.A2 had been issued in favour of the 1st and 2nd plaintiffs, respectively, under natham survey scheme, as per the Tamilnadu Survey and



Boundaries Act, the same becomes final through which the Government recognised the possession of the plaintiffs.

13. In the said situation, in order to prove their title and possession on the side of the defendants, eight documents were produced as Ex.B1 to Ex.B8. Ex.B1 is the sale deed dated 29.06.1974, through which one Kuppu Chettiyar, purchased a land along with a thatched house. In the said sale deed, the said Kuppu Chettiuyar has purchased the said land with four boundaries. On the other hand, in respect to Survey Number and other things, nothing has been mentioned in the said sale deed. Therefore, without any specific evidence to show that the property covered under Ex.B1 is the suit schedule property, mere oral evidence given by DW1 to DW5 is not having any effect over the title having by the defendants. Secondly, the patta stands in the name of the husband of the 2nd defendant was marked as Ex.B2. Now, on going through the said document, the said patta has been issued only in respect to S.No.335/7 and not in respect to the suit schedule property.

14. The other documents, which are all relied on by the defendants, are the house tax receipts and the objections letter sent to Tamil Nadu Electricity Board. Those documents are not relevant to accept the title of the defendants. Therefore, in the absence of any reliable evidence in respect to the title alleged to be having by the defendants, this Court cannot come to the conclusion that the case filed by the plaintiffs is a false one.

15. It is the specific submission made by the learned counsel appearing for the appellants/defendants that since there has been a cloud over the title having by the plaintiffs, it would be necessary to amend the prayer for declaration. But herein it is a case, the plaintiffs have filed the present suit only for the relief of injunction simpliciter and therefore, the same cannot be maintained.

16. Now, on considering the said submissions, in general, if there was a cloud over the title in respect of the suit schedule property, it would be necessary for the party, who sought the relief of injunction, to amend the prayer for declaration also. But herein it is a case, Ex.A1 and Ex.A2 confirmed title to the plaintiffs.

17. In this regard, in support of his claim, the learned counsel appearing for the respondents/plaintiffs relied on the judgment in Yadhavan and another Vs. Md.Dayanudin and 2 others,



reported in 1997 (1) CTC 407, wherein this Court has held as follows:

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"No doubt, this observation seems to suggest that in no case, where the defendant denies the title of the plaintiff, the plaintiff can file a suit for bare injunction against possession interference. But, with due respect, I am unable to agree with the above said view expressed so absolutely, as has been done in the above said judgment, in the light of several other decisions, holding differently. For example in Veerappa Vs. Arunachalam, AIR 1936 Madras 200 : 43 L.W. 334 it has been held that the fact that the question of title also may have to be incidentally gone into in deciding whether an injunction can be given or not, is not any justification for holding that the suit is for a declaration of title and for injunction, and that there can be no objection to the maintainability of a suit for only an injunction. In Ponnuswami v. Sinnana, AIR 1956 Mad. 52 : 1955 (68) L.W. 578, a bare injunction suit was allowed as maintainable. Vide also Kondaiah v. Ramanareddy, and Venkata Ranga Rao v. Ramachandra Rao, AIR 1941 Mad. 91 : 52 L.W. 610. Further, in Purushottam Dass v. Har Narain (F.B.) it has been held that the prayer for declaration will be a surplusage if the plaintiff can get the relief for injunction without praying for declaration, but that the declaration has to be prayed for where an obstacle has to be removed before the plaintiff can claim the relief of injunction simpliciter. In the present case, there is no such obstacle for granting the relief of injunction in the light of the above said factual findings of the Court below."

18. Applying the principles set out in the above referred judgment to the case in hand, herein it is a case, the defendants did not show any obstacle over the title, having by the plaintiffs. In respect to Ex.A1 and Ex.A2, the defendants have not denied as the same is a false one. Further, the documents relied on by the defendants are not related to the suit survey numbers. Therefore, without any obstacles in respect to the title, it would not be necessary for the plaintiffs to ask the relief of declaration.



numbers. After excluding the documents relied on by the plaintiffs, accepting the oral evidence given by DW1 to DW5, is not sustainable. Therefore, the judgment and decree passed by the first appellate Court, do not warrant any interference and the same is confirmed. The substantial questions of law framed, are answered as above.

23. In the result, the second appeal fails and the same is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

Copy to

The Section Officer
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High Court, Madras 104.

+1 CC to Mr.P.Valliappan, Advocate sr 6567
+1 CC to Mr.T.L.Thirumalaisamy, advocate sr 6402.

S.A.No.1380 of 2011

RR(CO)
SP(09/03/2022)