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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.No.885 of 2017
and
C.M.P.No.22212 of 2017

Mangai ... Appellant/Respondent/Plaintiff
Vs.

1.Sevathan
2.Kaveri
3.Kaliappan
4.Venkatammal
5.Rajammal
6.Magi

... Respondents

PRAYER: The Second Appeal has been filed under Section 100 of the Civil Procedure Code against the decree and judgment dated 20.04.2017 made in A.S.No.36 of 2017 on the file of the Additional District Court, Krishnagiri, in reversing the judgment and decree dated 27.07.2015 made in O.S.No.50 of 2012 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.C.Prabakaran
For Respondents : Mr.G.Ethirajalu

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J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 20.04.2017 made in A.S.No.36 of 2017 on the file of the Additional District Court, Krishnagiri, in reversing the judgment and decree dated 27.07.2015 made in O.S.No.50 of 2012 on the file of the District Munsif Court, Krishnagiri.

2. The appellant herein filed the suit in O.S.No.50 of 2012 on the file of the District Court, Krishnagiri, for permanent injunction restraining the respondents from interfering



with the peaceful possession and enjoyment of the the suit property by the plaintiff. The suit property is described as a property measuring an extent of 10 cents in S.No.374/3 in Jagathap Village, Kaveripattinam, Krishnagiri District. Even in the description of the suit property, it is mentioned as a Government Poromboke land including the pathway.

3. It is the case of the plaintiff in the plaint that the suit property is a Government Poromboke land and the plaintiff is in enjoyment of the property for more than 20 years. It is also stated in the plaint that about three years back, the plaintiff has laid foundation in an extent of 10 feet x 30 feet. Stating that the defendants in the suit has no right, the plaintiff has come forward with the suit for permanent injunction on the specific allegation that the defendants have entered in the suit property illegally and disturbed the possession of the plaintiff.

4. A written statement was filed by the first respondent specifically denying all the averments in the plaint. It is stated by the defendants that the suit property is an objectionable poromboke land and that the plaintiff has not even described the suit property to identify the land. The plaintiff's father-in-law by name Rangasamy is the elder brother of the defendant. It is also stated that the husband of plaintiff had filed a suit in O.S.No.39 of 2010 for partition and separate possession of property and instigated his wife to file the present suit in O.S.No.50 of 2012. It is the specific case of the first defendant that he has built a residential house in the portion of the suit property and that the defendant is residing in the said house and doing cultivation in the property which is being enjoyed by him along with his patta land.

5. The trial Court after framing necessary issues found that the plaintiff has proved his possession and that the plaintiff who is in possession of the property is entitled for permanent injunction as defendants have not proved their title or enjoyment. Aggrieved by the judgment and decree of the trial Court, the defendants filed an appeal in A.S.No.36 of 2017 before the learned Additional Sessions Judge, Krishnagiri. However, the appeal was allowed setting aside the judgment and decree of trial Court. Hence the plaintiff has filed the above Second Appeal. The Lower Appellate Court found that the finding of trial Court regarding plaintiff's possession is unsustainable as no document is filed by the plaintiff. It is admitted that the first defendant's land is adjacent to the suit property. The witness examined by the plaintiff as PW-2 has admitted that he is the relative of PW-1. Ultimately, his evidence is without knowing



anything about the suit property or plaintiff's enjoyment. The document Ex.A1 is the only document which is stated to be in relation to the suit property. It is stated that Ex.A1 are kist receipts. However, from the discussions and from the judgments of Courts below, learned counsel for appellant is unable to point out that the property which was referred to in Ex.A.1 is the suit property. B-Memo charges are collected from a person, who is in encroachment of Government land. Therefore, Ex.A1 which is referred to as kist receipts cannot be in relation to a poromboke land as Government poromboke lands are not assessed to normal land revenue.

6. This Court may consider the document Ex.A1 as B-Memo for collecting penal charges. But this document is also after suit. However, the document like B-Memo receipt cannot be accepted in evidence to prove one's possession without actual proof of the document by calling upon the V.A.O or a revenue official to speak about the land to which the charges are collected or about the nature of enjoyment. The appellant has marked Ex.A1 as Kist receipts and the learned counsel has not produced the document before this Court. Even assuming that the document was filed to prove that the person from whom the penal charges are collected is in encroachment of the property, it is not desirable in all cases to rely upon the documents like Ex.A1, unless there is cogent evidence to corroborate.

7. In the present case, the plaintiff has produced a photograph, a copy of the complaint receipts obtained from officials in acknowledgment of the complaint submitted by the plaintiff. None of the documents except Ex.A1 have any relevance. In a suit for permanent injunction, the burden heavily lies on plaintiff to prove that he is in physical possession. The relief of injunction is negated by lower Appellate Court. The plaintiff may get permanent injunction only if he is in possession and enjoyment of the property. The appellate Court found that the documents filed by the plaintiff are only receipts for payment of penal charges and photograph and complaint. Though the document namely receipts for penal charges can be admitted, the photograph and complaint to the Police are only self serving. The Lower Appellate Court has given finding that the property is not a patta land and the plaintiff cannot rely upon the revenue documents like B-Memo without examining the revenue officials to prove the same especially when possession is in dispute. Therefore, the Lower Appellate Court has rightly reversed the findings of the trial Court and dismissed the suit.



8. This Court is unable to find any material illegality or irregularity either in the findings on facts or the decision making process. The counsel appearing for the appellant has not pointed out any serious irregularity either in placing burden or in appreciation of oral and documentary evidence. Unless the finding of the Lower Appellate Court is illogic or perverse, this Court can not interfere with the findings of fact under Section 100 of CPC. The burden lies on the plaintiff to prove possession in a suit for bare injunction.

9. In view of the foregoing reasons, this Court is unable to find any merit in the second Appeal and the same is dismissed with costs. confirming the judgment and decree dated 20.04.2017 in A.S.No.36 of 2017 on the file of the Additional District Court, Krishnagiri, in reversing the judgment and decree dated 27.07.2015 made in O.S.No.50 of 2012 on the file of the District Munsif Court, Krishnagiri. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

Pns

To

1. The Additional District Court, Krishnagiri.

2. The District Munsif Court, Krishnagiri.

+1cc to Mr.G.Ethirajulu, Advocate SR.No.10363

+1cc to Mr.C.Prabakaran, Advocate SR.No.10396

S.A.No.885 of 2017

KV(CO)

CB(28/03/2022)