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S.A.No.388 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.388 of 2020
and
C.M.P.No.7645 of 2020

1.Vasantha
2.Janaki
3.George

...Appellants/Appellants/Defendants

Vs.

1.Subramani
2.Muthu

...Respondent/Respondent/2nd plaintiff

...Respondent/Respondent/3rd Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 30.04.2019 in A.S.No.8 of 2018 on the file of the learned Subordinate Judge, Thiruvallur, confirming the Judgment and Decree dated 29.11.2017 in O.S.No.86 of 2010 on the file of the learned District Munsif -cum- Judicial Magistrate, Uthukottai, Thiruvallur District.



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For Appellants : Mr.M.L.Ramesh

For Respondents : Mr.A.R.Suresh

JUDGMENT

The defendants before the Courts below are the appellants before this Court. The parties are referred to in the same rank and array as before the trial Court.

2.The brief resume of the facts that has been culminated in filing of the present appeal is narrated herein below:

The suit O.S.No.86 of 2010 was filed by the plaintiffs on the file of the learned District Munsif -cum- Judicial Magistrate, Uthukottai, Thiruvallur District, seeking the relief of permanent injunction restraining the defendants, their men and agents from in any manner trespassing into the 'B' scheduled property. The suit properties have been described as follows:

'A' Schedule of property

In Thiruvallur District, Uthukottai Taluk No.39,

Tharatchi Village Punja S.No.10/3 an extent of 0.02.0



Hectare bounded on the North by Road; South by Survey No.10/8, East by Kandhan land and West by Survey No.10/2.

'B' Schedule property

Item No.1:

In Thiruvallur District, Uthukottai Taluk No.39, Tharatchi Village Punja S.No.10/3B an extent of 1.66 cents out of 0.02.0 Hectare ('A' schedule property) bounded on the North by Road; South by Survey No.10/8 (Rathinam property); East by Kandhan Property and West by Late.Elumalai Share (now defendants property).

Item No.2:

In Thiruvallur District, Uthukottai Taluk No.39, Tharatchi Village Punja S.No.10/3A an extent of 1.66 cents out of 0.02.0 Hectare ('A' schedule property) bounded on the North by Road; South by Survey

*No.10/8 (Rathinam property); East by Elumalai Share
(now defendants property) and West by Govindan
land.”*

3.The 'A' schedule property is the ancestral property of the plaintiffs and the UDR Patta bearing No.462 jointly stands in the names of Elumalai, son of Perumal, Kullan, son of Sengan and Kattan, son of Raghavan. They are equally entitled to a share in the 'A' schedule mentioned property. The said three persons died. The 1st plaintiff is the grandson of Kullan. The plaintiffs 2 and 3 are the sons of late.Kandhan. As such, the 1st plaintiff is entitled to 1/3rd share in the 'A' schedule property and the plaintiffs 2 and 3 are together entitled to 1/3rd share in the 'A' schedule property. Likewise, the legal heirs of Late Elumalai were also entitled to 1/3rd share in the A schedule property. The 'A' schedule property has been divided into three parts and the 1st plaintiff was allotted the Eastern side portion and the plaintiffs 2 and 3 were allotted to the Western side portion. The legal representatives of Elumalai have been allotted the share between the



shares allotted to the 1st plaintiff and the plaintiffs 2 and 3. The 'A' schedule property was subdivided into S.No.10/3A and 10/3B. Each of the shareholders had a 1.66 cents in the 'A' schedule property. The plaintiff's property is shown as Item No.1 and the properties of the plaintiffs 2 and 3 are shown in the Item No.2 in the 'B' schedule property herein. The patta for Item No.2 stands in the name of the plaintiffs 2 and 3 as Patta No.384. The patta in respect of the Item No.1 stands in the name of the 1st plaintiff's grandfather Kullan and Late Elumalai as Patta No.462.

4.It is the case of the plaintiff that the 1st defendant is the daughter -in- law of Vellaikan, the brother of Elumalai. The 2nd and 3rd defendants are the grandsons of the said Vellaikan. They are in possession and enjoyment of the property of the share of Elumalai. They are entitled to an extent of 1.66 acres. While that being so, the defendants are attempting to trespass into the Western side of the Item No.1 and the Eastern side of the Item No. 2 of the 'B' schedule property. The 'B' Schedule property is vacant and the plaintiffs are



using the same to store manure and other waste things. The defendants who have absolutely no right or title over the 'B' schedule property attempted to trespass into the suit property on 16.08.2010 along with some unknown persons. This was prevented by the plaintiffs. The defendants are residing near the suit property, hence, the plaintiffs have apprehension that the defendants may at any time trespass into the suit property fence the same. Hence, the suit.

5.The 1st defendant had filed a Written Statement *inter alia* denying the various allegations contained in the Plaint. He would at the outset state that Patta No.462 was wrongly issued in the name of Kullan and Kattan and the suit property originally belonged to Elumalai, Vellaikan and Jittu Govindan. In the family partition, the suit property was allotted to the share of Vellikan. Vellikan had three sons, namely, Kishtan, Bairi and Mariyappan. In the subsequent partition, the suit property was allotted to the share of Mariyappan. Mariyappan died in the year 1982 and the defendants are the legal representatives of Mariyappan. They have been in peaceful possession



and enjoyment of the suit property for the past 30 years. The said Kullan and Kattan are father and son and they were not related to Elumalai. Therefore, the plaintiffs are not entitled to any share in the suit property.

6.The 1st defendant would contend that the suit property comprising in S.No.10/3 measures 5 Ares and not 2 Ares. As contended, the entire 12 cents belonged to one Perumal. After his death, the property devolved on his sons Elumalai, Vellaikan and Jittu Govindan. The legal heirs of Elumalai, namely, Kishtan, bairi and Mariyappan enjoyed their share and the said Kishtan and Bairi sold their shares and settled in some other places. The legal representatives of Mariyappan are only in possession and enjoyment of the suit property for 30 years. The plaintiffs were never in possession of the property.

7.The 1st defendant would submit that she is residing on the

Western side of the S.No.10/3 to an extent of 6 cents and she is paying the house tax to the Authorities. The description of the property as given in the Plaint is totally wrong since there is no proper partition between the ancestors of Elumalai. The schedule given by the plaintiffs are totally wrong. There was no such 'A' schedule or 'B' schedule properties in existence. The 1st defendant would submit that since the 2nd plaintiff is working as Thalayari in the Revenue Department he altered the patta. Therefore, they prayed for dismissal of the suit.

8.The learned District Munsif -cum- Judicial Magistrate, Uthukottai, Thiruvallur District, had framed the following issues for trial:

“(1)Whether the plaintiffs are in possession and enjoyment of the suit property?

(2)Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

(3)To what other relief the plaintiffs are entitled



to?"

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9.The learned Judge recorded a finding that from a perusal of Ex.A.1 – UDR Patta, the properties in S.No.10/3 and S.No.10/10 appears to be in possession of Elumalai, Kullan and Kanthan. The plaintiffs 2 and 3 are the sons of Kanthan. The learned Judge would submit that Ex.A.6 patta has been issued in the name of the plaintiffs in the year 1998 itself for the property in S.No.10/3A to an extent of 0.005 ares. It is the second item of the 'B' schedule property. The learned Judge has observed that the revenue records show that the possession of this property is with the plaintiffs. As regards the 1st item of the property, the learned Judge relied upon the admission of PW1 in his cross examination that the defendants are residing in the suit property. The learned Judge held that the plaintiff had not proved his possession over the 1st item of 'B' schedule property and rejected the relief insofar it related to the 1st item, but however, in respect of the 2nd item of the 'B' schedule property the suit was decreed. Aggrieved by the said Judgment and Decree, the defendants had



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preferred an appeal in A.S.No.8 of 2018 on the file of the learned Subordinate Judge, Thiruvallur. The learned Judge also concurred with the finding of the trial Court and dismissed the appeal. Challenging the same, the defendants are before this Court.

10.The Second Appeal is admitted on the following Substantial Questions of Law:

“i)Whether the Courts below were right in granting a decree for permanent injunction when P.W.1 has specifically admitted that the defendants are in possession of the property?”

11.Heard the learned counsels appearing on either side and perused the papers.

12.From a reading of the Complaint, it is seen that the properties originally belonged to Elumalai, Kullam and Kanthan under the UDR Patta. On their death, the plaintiffs inherited the said property as the



grandson of Kullan (the 1st plaintiff) and the sons of late Kandhan (the plaintiffs 2 and 3). They have also pleaded a partition. However, no documents have been filed to prove the same. The defendants on the other hand have filed a Written Statement in which they have contended that Kullan, Kattan and Kanthan under whom the plaintiffs claimed right were not entitled to Patta No.462 since in the family partition, the property had been allotted to Vellaikan. The defendants' case is that the property belonged to Elumalai, Vellaikan and Jittu Govindan and in the family partition, it was allotted to Vellaikan. Vellaikan had three sons and in the subsequent partition between them, the property was allotted to the share of Mariyappan who died in the year 1982. The defendants are the legal representatives of the said Mariappan being his wife and children. A reading of the Complaint does not give any clarity as to how Kandhan is related to Elumalai, Kullan and Kandhan and therefore, the plaintiffs 2 and 3 who claimed under the said Kandhan have not been able to clearly describe the genealogy and trace their title to the suit property.



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13.The plaintiff would contend that it is the 'A' schedule property which has been divided into three portions. Further, a reading of the Plaint would indicate that the plaintiffs have filed the suit for a bare injunction on an apprehension. The plaintiffs have stated as follows in Para 6 of their Plaint:

“While that being so the defendants trying to trespass into the Western side of Item No.1 and Eastern side of Item No.2 of the 'B' schedule. The 'B' schedule mentioned properties are vacant. The plaintiffs are using the same to store manures and other waste things. The defendants have not right over in the 'B' schedule mentioned properties. In fact on 16.08.2010, the defendants along with some unknown persons and tried to fench the 'B' schedule mentioned properties. The same has been prevented by the plaintiffs. The defendants are residing near in the suit property. Hence, the plaintiffs got apprehension that the defendants may at any time be able to continue their



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illegal acts of trespassing into the suit property by fencing the same.”

14.Hence, the plaintiffs on the basis of an apprehension that at any time there would be a trespass by the defendants have filed the suit for a bare injunction. However, there is no proof to show that there was a trespass on 16.08.2010 as alleged. The documents that have been filed does not relate to the suit property. On the contrary, the defendants have filed Ex.B.1 to Ex.B.9 showing their possession of the superstructure that is put up in the suit schedule property. That apart, the 2nd plaintiff as PW1 has admitted in the Plaint through his evidence that he is working as Office Assistant with the Village Administrative Officer (Thalayari). He has been in the said post from the year 1981 till 2015. He has also in his cross examination admitted that it is during his tenure that the patta has been issued in his name. The genealogy which comes out from the evidence of PW1 does not tally with the genealogy as provided in the plaint. He has also deposed that besides the sons, there were daughters as well and there is no



explanation as to how they have been ignored in the alleged partition.

PW1 has stated in his cross examination as follows:

“பிரதிவாதிகளின் வீடு தற்போது வழக்கு
சொத்தில் குடி இருக்கிறார்கள். கடந்த 5, 6
வருடங்களாக பிரதிவாதிகள் குடியிருக்கிறார்கள்.
வழக்கு தாக்கல் செய்த பிறகுதான் பிரதிவாதிகள்
வீட்டை கட்டினார்கள்.”

15.This statement coupled with the documents filed by the defendants clearly clinches the fact that it is the defendants who are in possession of the suit property and not the plaintiffs. Being the persons who had instituted the suit, the plaintiffs ought to come to Court with a definite case however in the instant case this clarity is lacking. Both the Courts below have not appreciated this admission on the side of PW1 and also the fact that from a reading of the Plaint, the relationship of the parties and how they trace their title to the suit property has not been clarified. It is needless to state that the plaintiffs



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have not come to Court with a definite case. Therefore, the substantial question of law is answered in favour of the defendants.

Accordingly, this Second Appeal is allowed and the Judgment and Decree of the Courts below is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

16.11.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

1.The Subordinate Judge,
Thiruvallur.

2.The District Munsif -cum- Judicial Magistrate,
Uthukottai,
Thiruvallur District.



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P.T. ASHA, J,

mps

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