



S.A.No.38 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.38 of 2017

1.R.Mohanasundaram
2.R.Sridhar

...Appellants

Vs.

1.Dhinasangu
2.Perumal
3.M.Samiyappan
4.R.Samiyappan
5.Raja

..Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 26.10.2016 passed in A.S.No.09 of 2014 by the learned Subordinate Judge, Nagapattinam, reversing the judgment and decree dated 10.02.2014 passed in OS.No.150 of 2012 by the learned District Munsif, Nagapattinam.



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For Appellants : Mr.Kabeer
Senior Counsel
for Mr.S.S.Swaminathan

For Respondents : Mr.S.Palaniswamy
for R1 to R3 & R5

JUDGMENT

The plaintiffs in a suit for injunction are the appellants. The suit was decreed by the trial Court. Aggrieved by the same, the defendants filed an appeal and the same was allowed by reversing the findings of the trial Court. Aggrieved by the said judgment and decree, the plaintiffs have come by way of this Second Appeal.

2. According to the plaintiffs, the suit properties are the ancestral properties. There was a partition in the family of the plaintiffs on 02.12.1954. In the said partition, 40 cents of land in S.No.102/1 and 46 cents of land in S.No.99/2 were allotted to the share of the plaintiffs' father Ramalingam Pillai under 'B' Schedule. Likewise, 2 acres 20 cents in S.No.99/4, 1 acre in S.No.102/2 and 10 cents in S.No.102/2 were allotted to the plaintiffs' father Ramalingam Pillai and his four brothers in common under 'G' Schedule. It was



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asserted by the appellants/plaintiffs that the suit property has been in possession and enjoyment of the plaintiffs family from 1954 onwards.

Subsequently, there was a partition on 08.04.1979 in respect of the property kept as common under 'G' Schedule and in the said partition, the properties kept as common under 'G' Schedule in earlier partition was allotted to the share of the plaintiffs. The plaintiffs submitted an application to Thasildar, Thirukovalai for issue of Natham patta in the name of plaintiffs in respect of Natham sub-division obtained to the suit properties under Natham Nilavari Thittam. Based on the application of the plaintiffs, the Thasildar submitted a report to DRO, Nagapattinam, recommending issue of patta in the name of the plaintiffs based on the title document produced by the plaintiffs. The respondents/defendants without having any manner of right attempted to trespass into the suit property and therefore, the appellants were constrained to file a suit for declaration of title and injunction.

3. The respondents filed a written statement denying the title and possession of the suit property. It is the specific case of the respondents that the suit properties are Government Poromboke lands and the appellants never enjoyed the same. It is also stated by the respondents that under Natham



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Nilavari Thittam, the suit properties were classified as Government Poromboke and hence, the claim made by the appellants over the suit property is not correct. It was pleaded by the respondents that there are 60 houses in the said property wherein different individuals are residing. Thus, by denying the title as well as possession of the appellants in the suit property, the respondents sought for dismissal of the suit.

4. Before the trial Court, the first plaintiff was examined as PW1.

On behalf of the respondents, the first and fifth respondents were examined as DW1 & DW2 and six other witnesses were examined as DW3 to DW8. Three documents were marked on the side of the plaintiffs as Ex.A1 to Ex.A3 and 10 documents were marked on behalf of the respondents as Ex.B1 to Ex.B10. Apart from the same, 7 documents were marked through third parties as Ex.X1 to Ex.X7.

5. The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the appellants /plaintiffs proved their possession over the suit property except item No.6. Therefore, the trial Court granted a decree for permanent injunction in



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respect of item Nos. 1 to 5 and 7 to 11. Aggrieved by the same, the respondents preferred an appeal in A.S.No.9 of 2014 on the file of the Sub-Court, Nagapattinam. The first Appellate Court came to the conclusion that there was a dispute with regard to the title and hence, the suit for bare injunction filed by the appellants was not maintainable and consequently, allowed the appeal by setting aside the judgment and decree passed by the trial Court. Aggrieved by the same, the appellants are before this Court.

6. This Court at the time of admission formulated the following substantial questions of law vide order dated 18.01.2017, which reads thus:

“1. Whether in the absence of any right, title or interest of the defendants over the schedule mentioned property and in the light of Exs.A1 to A3, is the Court below right in allowing the appeal holding that in the absence of the relief of declaration the suit is not maintainable.

2. Whether the Court below is right in allowing the appeal holding that even in the absence of a dispute pertaining to title between owners, a suit for declaration should be filed even at the instance of a third party?



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3. Whether the Court below should have held that

under Ex.A1 to A3 the title to the property vest with the appellants and it cannot be challenged by a third party who has no title to the same and any interference with owners' peaceful possession has to be injuncted under the Specific Relief Act? ”

7. The learned Senior Counsel appearing for the appellants by drawing attention of this Court to the exhibits marked by both the parties submitted that the title of the appellants over the suit property has been proved by Ex.A1 & Ex.A2. The respondents have not produced any documents to create cloud over the title of the appellants. In such circumstances, the conclusion reached by the First Appellate Court as if the respondents created cloud over the title of the appellants is based on no evidence. Therefore, the learned Senior Counsel submitted that the finding rendered by the First Appellate Court is liable to be set aside.

8. Mr.S.Palaniswamy, the learned counsel appearing for the respondents 1 to 3 & 5 submitted that the appellants being the plaintiffs who filed a suit for bare injunction, miserably failed to prove their possession over the suit property on the date of filing the suit and hence, the First Appellate



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Court is justified in dismissing the suit by reversing the findings of the trial

Court. The appellants/plaintiffs filed the suit in respect of 11 items of the suit properties. The suit properties are described as vacant site in the plaint description. In order to prove the title of the appellants the partition deed dated 02.12.1954 was marked on behalf of the appellants.

9. A perusal of Ex.A1 coupled with Ex.A3 would suggest that item Nos.1 and 11 were allotted to the share of the plaintiffs' father Ramalingam Pillai under 'B' Schedule to the said partition deed. Item Nos.4, 5 and 7 to 10 were allotted to the share of Ramalingam Pillai and his brothers under 'G' Schedule. As far as item No.6 is concerned, the trial Court dismissed the suit and the same has not been disputed. The suit item Nos.2 & 3 were not dealt by Ex.A1 partition deed. Therefore, there is no evidence available on record to show that the plaintiffs have got any title in respect of item Nos.2 & 3. Ex.A2 is the death certificate of Ramalingam Pillai.

10. It is the case of the appellants that after the death of Ramalingam Pillai they have been in possession and enjoyment of the suit properties. As far as item Nos.4, 5 and 7 to 10 are concerned those items were



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allotted to the share of Ramalingam Pillai and his brother. Therefore, the plaintiffs as the co-owners of the property are entitled to maintain the suit for injunction against the third parties. Ex.A3 is the report submitted by Thasildar in response to the application filed by the appellants seeking issue of Natham patta in respect of sub -division of survey numbers.

11. A perusal of Ex.A3 would suggest that Thasildar on consideration of Ex.A1 partition deed produced by the appellants came to the conclusion that the above mentioned items of suit properties were enjoyed by the appellants/plaintiffs family and therefore, recommended issue of patta in the name of appellants. Therefore, by producing Ex.A1 to Ex.A3 the appellants proved their right as well as possession over the suit property. Even otherwise the suit properties are described as vacant sites in the plaint and the same has been confirmed in the report of Thasildar, which was marked as Ex.A3. The adangal extract relating to the suit property marked by the respondents as Ex.B8 also would suggest that the suit properties are vacant sites. In such circumstances, the plaintiffs, who established their title over the above mentioned items of the suit properties are entitled to claim possession based on the well settled principle of law “possession follows title.”



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12. The first Appellate Court set aside the findings of the trial Court mainly on the ground as if there was a dispute with regard to the title. The respondents/defendants have not produced any title documents in their name to create cloud over the title of the appellants traceable to Ex.A1.

13. In such circumstances, the conclusion reached by the First Appellate Court as if there was a cloud over the title of the appellants is based on no evidence and hence, the same is liable to be set aside. Therefore, the conclusion reached by the First Appellate Court that the suit for bare injunction was not maintainable without prayer for declaration of title is liable to be set aside.

14. The learned counsel appearing for the respondents submitted that the appellants have not proved their possession on the date of suit. Though the appellants can take advantage of legal position “possession follows title”, the said principle can be pressed into service only in the absence of any evidence on either side to prove possession. The respondents examined nearly 8 witnesses on their side to prove their alleged possession. The oral



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testimony of the defendants witnesses were not at all considered by the first Appellate Court. More over, the First Appellate Court has not rendered a definite finding with regard to the possession of the parties. Being a final Court of facts, the first Appellate Court ought to have rendered a finding with regard to possession based on evidence available on record.

15. In such circumstances, this Court feels that the matter should be sent back to the file of the first Appellate Court to consider the rival claim of the parties with regard to the possession. Accordingly, the judgment and decree passed by the First Appellate Court is set aside and the matter is remitted back to the file of the First Appellate Court for a fresh consideration with regard to the possession of the parties.

16. In view of the above discussion, the substantial questions of law framed at the time of admission are answered in favour of the appellants and against the respondents. Consequently, the judgment and decree passed by the First Appellate Court are set aside and matter is remitted back to the file of the First Appellate Court for fresh disposal on merits. Accordingly, the Second Appeal is allowed, with the above observations. The First



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Appellate Court shall dispose of the appeal on merits and in accordance with law within a period of six months from the date of receipt of copy of this order. In the facts and circumstances of the case, there shall be no order as to costs.

11.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

- 1.The Subordinate Judge, Nagapattinam.
- 2.The District Munsif, Nagapattinam.



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S.SOUNTHAR, J.
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