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S.A.No.547 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2022

Pronounced on : **05.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.No.547 of 2017

Vasantha

Vs.

... Appellant

1.Rasokkiam

2.Jayamani Chettiar

... Respondents

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 07.04.2015 passed by the Principal District Judge, Ariyalur, in A.S.No.38 of 2014, reversing the decree and judgment in O.S.No.155 of 2005 on the file of the Principal District Munsif, Ariyalur, dated 16.08.2011.

For Appellant : Mr.K.Soundararajan

For Respondents : Mr.K.Premkumar

J U D G M E N T

The plaintiff in the suit in O.S.No.155 of 2005 on the file of the Principal District Munsif, Ariyalur, is the appellant in the above Second Appeal.



S.A.No.547 of 2017

WEB COPY

2.The appellant filed the suit before the Vacation Court, Perambalur (which was later transferred to District Munsif Court, Ariyalur, and numbered as O.S.No.155 of 2005) for permanent injunction restraining the respondents herein from interfering with the peaceful possession and enjoyment of the suit property. The suit property is described as an extent of 12 sq.m. in New Survey No.464/18, Old Survey No.424, Reddipalayam Majura Muniyankurichi Village, Ariyalur Taluk, Perambalur District.

3.The case of the appellant in the plaint is that the suit property is originally a Natham Poramboke and his patta land is on the eastern side of the suit property. It is further stated that the suit property, which is just in front of his Patta land, is in his possession and he is running a Tea Stall in the suit property for more than 30 years. It is also stated that, based on plaintiff's long enjoyment, the Special Tahsildar (Natham Settlement) issued Patta by proceedings dated 25.07.1994. The appellant further stated in the plaint that he is paying House Tax for the suit property and had obtained electricity service connection in the name of her husband. Alleging that the defendants/respondents are trying to interfere with the plaintiff's peaceful possession of the suit property, the suit came to be filed by the appellant.



S.A.No.547 of 2017

WEB COPY

4.The respondents herein are the defendants 1 and 2 in the suit, who filed a written statement denying all the averments made in the plaint. Along with the written statement, the defendants filed a plan. It is the specific case of respondents that the property shown as 'ABCD' in the plan appended to the written statement was the property purchased by 1st defendant under a registered sale deed dated 08.07.1996 and that the total extent of land purchased by the 1st respondent is measuring 66 x 48 feet. It is further contended that the defendant was enjoying the suit property by putting up a thatched house and by establishing an Oil Expeller Unit (*Naattu Chekku*). It is the specific case of the defendant that the portions shown as 'REGB' and 'EFGD' are the portions occupied by the plaintiff. It is the further case of defendants that the 1st defendant had earlier filed a suit in O.S.No.179 of 1997 on the file of District Munsif Court, Ariyalur, as against plaintiff's husband for removal of encroachment in respect of portion shown as 'REGB' in the plan. It is pointed out by the defendants that the said suit in O.S.No.179 of 1997 was decreed and that the appeal preferred by plaintiff's husband in A.S.No.3 of 2002 before the Sub-Court, Ariyalur, was also dismissed, by holding that the 1st defendant is the absolute owner in respect of the portion shown as 'ABCD' in the plan filed by defendants. Since the



S.A.No.547 of 2017

defendants admitted that the plaintiff has encroached a portion marked as 'EFGD' in the plan appended to the written statement, the defendants also preferred a counter claim seeking declaration of their right over the suit property and for recovery of possession as a consequential relief. It is also contended by the defendants that the suit for bare injunction without seeking a declaratory relief is not maintainable.

5.To the written statement filed by the defendants, a reply statement was filed by the plaintiff. In the reply statement, it is reiterated that the suit property falls in Survey No.464/18 and that the property belonging to defendants lie in Survey No.463/34. It is surprising that the plaintiff has not met the specific contention of the defendants regarding the previous suit filed by the 1st defendant as against the husband of plaintiff in O.S.No.179 of 1997.

6.The trial Court, based on the Patta issued by Tahsildar (Natham Settlement), held that the plaintiff has obtained Patta by showing his possession over a period of time and that therefore, the plaintiff is entitled to the relief of injunction. Since the defendants claimed title to the suit property on the basis of sale deed under Ex.B1 dated 08.07.1966, the trial



S.A.No.547 of 2017

Court considered the document, but held that the defendants have not proved how the suit property was in the holding of 1st defendant's father who purchased the property in 1966. The trial Court further observed that the suit in O.S.No.179 of 1997 is not related to the suit property and that therefore, the plaintiff is entitled to the relief of injunction. It is also to be noted that the trial Court, despite a specific objection being raised by the defendants regarding the maintainability of the suit, held that the suit for bare injunction without a prayer for declaration of title is maintainable, by relying upon few precedents, wherein it is held that suit for bare injunction is maintainable when plaint does not refer to serious title dispute between plaintiff and defendant, and on the ground that a person who is in possession is entitled to get relief by way of injunction against anyone except the lawful owner.

7. Aggrieved by the judgment and decree of the trial Court, the respondents preferred an appeal which was taken on file by the Principal District Judge, Ariyalur in A.S.No.38 of 2014.

8. On appreciation of pleadings and evidence, the Appellate Court came to the conclusion that the plaintiff is not entitled to any relief, in view of the judgment and decree passed in the previous suit in O.S.No.197 of



S.A.No.547 of 2017

1997, which was confirmed in the appeal preferred by the plaintiff's husband.

Considering the oral and documentary evidence of all the three witnesses on the side of plaintiff, the Appellate Court found that no cogent evidence is marked on the side of plaintiff to prove that the plaintiff was running a Tea Stall for more than 30 years in the suit property. The Appellate Court also held that the suit for bare injunction is not maintainable, as it is necessary for the plaintiff to file a suit for declaration of title.

9. Aggrieved by the judgment and decree of the Appellate Court in A.S.No.38 of 2014, reversing the judgment and decree of the trial Court in O.S.No.155 of 2005, the above Second Appeal is filed by the plaintiff.

10. The appellant has raised the following substantial questions of law in the above Second Appeal :

“(a) Whether the First Appellate Court is correct in reversing the well considered findings of the Trial Court without giving proper reasonings ?

(b) Whether the First Appellate Court is correct in not considering the DW-2 witness who had admitted that the Appellant's father-in-law was in the suit property well before his sale made in the year 1966 ?



S.A.No.547 of 2017

WEB COPY

(c) Whether the First Appellate Court is correct in not considering the fact that the counter claim for a declaration by the respondents are barred by limitation ?

(d) Whether the First Appellate Court is correct in not considering the fact that the suit property is a Natham land and, therefore, the person who is in possession and enjoyment, is having absolute right over the property and also have a right to get patta as a owner of the land from the Revenue Authorities?

(e) Whether the First Appellate Court has considered the fact that the Patta has been issued in favour of the Appellant for the Natham land and, therefore, the same can be taken as a valid proof for the ownership of the property. Further the appeal filed by the respondent challenging the Natham Patta was also rejected by the Appellate Authority and, therefore, the Appellant is having a prima facie case in her favour?

(f) Whether the First Appellate Court is correct in decreeing the suit based on the decree of another suit which is for removing the encroachment of 3 feet wide land, when the suit property is admittedly a Natham land?

(g) Whether the First Appellate Court is correct in decreeing the suit without considering the classification of suit property



S.A.No.547 of 2017

WEB COPY

which is a Natham land when the Appellant produced various documents and evidences to show that she is in possession and enjoyment of the suit Natham land before the alleged purchase made by the 1st respondent?”

11.However, at the time of admission, this Court has framed only the following question of law :

“Whether the lower appellate court was right in concluding that the patta granted to the plaintiff will not confer title on the plaintiff over looking the fact that the land in question being classified as Grama Natham ?”

12.The fact that the 1st defendant has earlier filed a suit in O.S.No.179 of 1997 on the file of District Munsif Court, Ariyalur, and the suit was decreed, is not in dispute. The fact that the suit property in O.S.No.179 of 1997 is a property measuring an extent of 2.15 Ares in S.No.463/34, is also not disputed. The suit property in the previous suit is the property encroached by the plaintiff's husband, by name Muniyappa Chettiyar, and another, in respect of a portion of the property measuring an extent of 2.15 Ares in Natham S.No.463/34. By reading the judgment in O.S.No.179 of 1997, this Court also agrees with the view expressed by the Appellate Court that the properties purchased by the 1st defendant under sale



S.A.No.547 of 2017

deed dated 08.07.1966 have been considered by the Civil Court in the previous suit and the 1st defendant is held to be the absolute owner of the property purchased under the sale deed dated 08.07.1966. Even though the dispute in the previous suit is in respect of a small portion of the property purchased by 1st defendant earlier in 1966, the person who suffered a decree cannot be permitted to encroach different parcels of land purchased by 1st defendant, when the plaintiff is held not entitled to any right over the property purchased by the 1st defendant in 1966. When the lower Appellate Court has considered the Commissioner's report, plan and the Rough Sketch to hold that the sale deed produced by 1st defendant is in respect of the property including the suit property and the suit property is declared in favour of 1st defendant in the year 2001 itself in O.S.No.179 of 1997, this Court is unable to interfere with the findings of the lower Appellate Court.

13.Patta is not a document of title unless there is no evidence contra. In the present case, the lower Appellate Court has rejected the case of plaintiff/appellant on the basis of specific findings. When a Revenue Patta or settlement proceedings is produced in a suit for bare injunction, the Court will have to go into the genuineness of the document, particularly the binding nature of proceedings when there is rival claim. When there is a



S.A.No.547 of 2017

serious dispute regarding title between the parties, the Revenue authorities cannot decide such issues unless the facts admitted will lead to an irresistible conclusion based on previous entries in Revenue records. In the present case, the plaintiff has filed the suit only for bare injunction despite a counter claim being made by the defendants. When there is a serious dispute with regard to title, a suit for bare injunction, though maintainable as against a person who has no better title, cannot be decreed normally against persons whose title or right from a known source is established. Having regard to the specific findings of the Appellate Court and the admitted fact that the suit is filed for bare injunction, this Court is unable to interfere with the finding of facts by the Appellate Court, especially when the lower Appellate Court has considered both pleadings and evidence in proper perspective and has given reasons for its conclusions. The Commissioner's plan and report filed in the previous suit are marked as Exs.B2 and B3. The subject matter of previous suit is the vacant land on the western side of plaintiff's house. The plaintiff admits that his tiled house in his patta land is on the eastern side of suit property. Therefore, the plaintiff has filed the present suit for the same property which is the subject matter of previous suit which was decreed in favour of 1st defendant.



S.A.No.547 of 2017

WEB COPY

14.The question of law framed by this Court is on the premise that the land in question is classified as Grama Natham. Normally, a property which is meant for the residence of villagers is classified as Grama Natham. Any part of Natham land in which any individual is residing there by putting up a construction can be presumed to be the land of the person in possession. No part of land which is in the physical enjoyment of a person with construction can be classified as Natham Poramboke. When there is rival claim between two individuals claiming possessionary right or title over the property classified as Grama Natham, the Civil Court is competent to decide the question of title and there is no law which prohibits the jurisdiction of the Civil Court to go into the question of title when the land is classified as Grama Natham or Natham Poramboke. The Civil Court is competent to decide not only the character of land, but also the dispute in respect of title. Therefore, the question of law framed by this Court at the time of admission has no significance, once this Court holds that the suit property is a portion of the property to which the 1st respondent is entitled to claim title on the basis of sale deed of the year 1966 marked as a document in the proceedings, which is accepted as a document of title in the previous suit. Though the learned counsel appearing for the respondents has produced before this Court



S.A.No.547 of 2017

several documents at the Second Appeal stage, this Court is unable to consider any of those documents as they were not produced before the Courts below or marked as Exhibits. This Court finds no substance in the question of law.

15.As a result, **this Second Appeal is dismissed.** However, no costs.

05.06.2023

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Internet : Yes

Index : Yes / No

To

1.The Principal District Judge,
Ariyalur.

2.The Principal District Munsif,
Ariyalur.



WEB COPY



S.A.No.547 of 2017

S.S. SUNDAR, J.

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Judgment in
S.A.No.547 of 2017

05.06.2023