



S.A.No.869 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.869 of 2017
and C.M.P.No.21876 of 2017

1.R.Ganesh
2.R.Suresh

...Appellants

Vs.

1.Sathyamurthy Thevar
2.Bangaruammal
3.Mohanraj
4.Saravanaraj

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Tambaram in A.S.No.82 of 2009 dated 31.08.2017 setting aside the judgment and decree of the learned District Munsif, Tambaram in O.S.No.283 of 2004 dated 12.08.2005.

For Appellants : Mr.V.Chandrakanthan

For Respondent 1 : Died

For Respondents 2 & 4 : M/s.R.T.Shyamala

For Respondent 3 : No appearance



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J U D G M E N T

The unsuccessful defendants are the appellants. The 1st respondent herein and his brother Balarama Thevar filed a suit for bare injunction against the appellants. The suit was dismissed by the Trial Court. Aggrieved by the same, the 1st respondent and his brother Balarama Thevar filed an appeal in A.S.No.82 of 2009 on the file of Subordinate Court, Tambaram. When the first appeal was pending, the 1st plaintiff Balarama Thevar died and the respondents 2 to 4 were brought on record as his legal representatives and impleaded as appellants 3 to 5. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal. Aggrieved by the same, the defendants are before this Court.

2. According to the respondents/plaintiffs, the suit properties originally belong to the plaintiffs' father Natesa Thevar. The entire village in which the suit properties were situated was given as inam by Arcot Nawab to one Veerapandaram, 250 years back and the same was classified as Minor Inam Estate. After coming into force of Minor Inam Abolition Act, the entire Kaspapuram Village was declared as Ryotwari land as per G.O.No.781 dated 15.03.1965. Under the Settlement Scheme, in the S.L.R. Book, the plaintiffs'



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father name was entered as original owner of the suit properties. Later on erroneously a wrong entry was made in S.L.R. Book as if the suit properties are "Anantheenam" properties. After acquiring knowledge about the same, the plaintiffs filed an objection before the Settlement Officer. The respondents/plaintiffs claimed exclusive possession and enjoyment over the suit properties and it was further pleaded by them that the appellants/defendants without having any manner of right attempted to interfere with their possession and hence, the respondents were constrained to file the suit for bare injunction.

3. The appellants herein filed the written statement denying the title as well as possession of the respondents over the suit properties. The appellants claimed that the portion of suit properties in S.No.11/7, 11/8 and 11/9 originally belong to one Kanthammal and she sold the same to one G.Jeyaraman under a sale letter dated 27.01.1982. The appellants purchased the suit properties from Power of Attorney of G.Jeyaraman on 25.05.1998. It was also claimed by the appellants that they had been in possession and enjoyment of the suit properties by paying 'B' memo to the Government and on these grounds, they sought for dismissal of the suit.



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4. Before the Trial Court, the deceased 1st plaintiff was examined as P.W.1 and 8 documents were marked on behalf of the respondents as Ex.A1 to Ex.A8. The 2nd appellant was examined as D.W.1. 12 documents were marked on behalf of the appellants as Ex.B1 to Ex.B12.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the respondents/plaintiffs failed to prove their possession on the date of filing of the suit and hence, dismissed the suit. Aggrieved by the same, the respondents preferred an appeal and the First Appellate Court on re-appreciation of evidence available on record and also additional documents produced by the respondents in appeal, came to the conclusion that the respondents proved their possession and consequently held that they were entitled to decree of permanent injunction. Challenging the allowing of appeal by the First Appellate Court, the unsuccessful defendants have come before this Court.

6. The learned counsel appearing for the appellants submitted that the Trial Court rightly came to the conclusion that the respondents failed to prove



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their possession on the date of filing of suit and dismissed the suit for injunction and the First Appellate Court, without properly considering the lack of evidence on the side of respondents to prove their possession on the date of suit, committed an error in granting a decree for permanent injunction. The learned counsel also submitted that the First Appellate Court ought not to have taken into consideration the additional evidence produced by the respondents before the First Appellate Court without affording opportunity to cross examine the respondents with regard to the additional documents.

7. The Trial Court, on consideration of Ex.A1 to Ex.A3 Adangal extracts dated 10.10.1990, 20.12.1990 and Kist receipts marked as Ex.A4 came to the conclusion that the respondents proved their possession over the suit properties during the relevant period. The suit was dismissed by the Trial Court on the ground that the respondents/plaintiffs failed to prove their subsequent possession, namely particularly their possession on the date of filing of the suit. When the respondents proved their initial possession from the year 1988 to 1994 by producing revenue documents Ex.A1 to Ex.A4, their continuous possession till the date of suit can be easily presumed unless their subsequent dispossession is proved. In the case on hand, there is no evidence



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available on record to show that subsequent to 1994, the respondents were dispossessed from the suit properties. When initial possession of the respondents during the period 1988 to 1994 is proved, there is nothing wrong in presuming continuous possession.

8. Further, the respondents claimed even in the plaint pleading that the suit properties were classified as Minor Inam Estate. In the settlement register, the name of respondents'/plaintiffs' father was originally entered and subsequently, a wrong entry was made by the officials as if the suit properties were "Anantheenam" properties. It was also claimed by them that after acquiring knowledge about wrong entry, the respondents filed an objection to the Settlement Officer. It is seen from the additional evidence produced by the respondents before the First Appellate Court under Ex.A9 and Ex.A10 order passed by the Assistant Settlement Officer dated 20.04.2012. Originally the name of plaintiffs' father Natesa Thevar was entered in the settlement land register as seen from Ex.A9. The other document filed by the respondents Ex.A10 is the order passed by the Assistant Settlement Officer, pending the first appeal, wherein after considering the objection raised by the respondents with regard to wrong entry made in the settlement register, the objection of



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the respondents was accepted and their names had been restored in the settlement register. It is contended by the learned counsel for the appellants that challenging the order passed by the Assistant Section Officer under Ex.A10, the appellants preferred an appeal in Inam Abolition Tribunal Appeal No.9 of 2015 on the file of Inam Abolition Appellate Tribunal (Principal Subordinate Court, Chengalpattu).

9. The learned counsel for the respondents submitted that the appeal filed by the appellants in Inam Abolition Tribunal Appeal No.9 of 2015 on the file of Inam Abolition Appellate Tribunal (Principal Subordinate Court, Chengalpattu) was dismissed on 29.03.2023. The learned counsel for the appellants produced web copy of the said judgment. Therefore, it is clear that originally the name of plaintiffs' father was entered in the settlement register and the same was erroneously classified as "Anantheenam" properties. Subsequently, after objection filed by the respondents, the erroneous entry was removed, the respondents name had been restored in the settlement register Ex.A9 and Ex.A10. Hence, Ex.A9 and Ex.A10 prove the semblance right of respondents over the suit properties. Ex.A9 is the settlement land register extract, it is an official document and genuineness of the same is free



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from doubt. Further, Ex.A9 has been referred to in the order passed by the Settlement Officer under Ex.A10. Ex.A10 came into existence only pending the first appeal. Therefore, there was no occasion for the respondents to produce the same before the Trial Court. In other words, Ex.A10 passed by the Assistant Settlement Officer was not available with the respondents, when the trial of suit went on. In such circumstances, the First Appellate Court is justified in receiving additional evidences Ex.A9 and Ex.A10. Since those documents are very much useful to the First Appellate Court to dispose of the appeal in a most satisfactory manner.

10. In view of the discussions made earlier, it is clear that the respondents/plaintiffs proved their right as well as possession over the suit properties. Though the respondents failed to file any revenue document to show that continuous possession subsequent to 1994, in the absence of any evidence to prove their dispossession, it can be safely presumed that they have been in continuous possession of suit properties. Further, Ex.A10, the order passed by the Assistant Settlement Officer also mentioned about the possession of respondents. In such circumstances, the conclusion reached by the First Appellate Court that the respondents proved their possession and



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entitlement to injunction is based on sufficient evidence available on record and the same requires no interference by this Court. Hence, I do not find any substantial questions of law arising for consideration in this second appeal calling for interference while exercising the jurisdiction under Section 100 of Civil Procedure Code.

11. Accordingly, the second appeal stands dismissed

a) by affirming the judgment and decree dated 31.08.2017 made in A.S.No.82 of 2009 on the file of the Subordinate Court, Tambaram, reversing the judgment and decree dated 12.08.2005 made in O.S.No.283 of 2004 on the file of the District Munsif, Tambaram; and

b) In the above facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.11.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Subordinate Court, Tambaram.
2. The District Munsif, Tambaram.



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S.SOUNTHAR, J.

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