



S.A.Nos.1304 and 1305 of 2004

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.1304 and 1305 of 2004

S.A.No.1304 of 2004:

S.Sreedharan

... Appellant/Appellant/
Defendant

Vs

1.Perinbam (Died)

2.Swarnam

3.Chandra

4.Ponnappan

5.Muthammal

6.Arulbai

7.Kala

... Respondents/Respondents/
Plaintiffs 2 to 8

***[RR2 to 7 – recorded as LRs of the deceased R1.
Memo recorded in USR No.315 dated 29.01.2010
and verified Petition No.18214 dated 21.04.2010]***

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.09.2003 made in A.S.No.23 of 1997 on



S.A.Nos.1304 and 1305 of 2004

the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree dated 29.11.1996 made in O.S.No.141 of 1996 on the file of the District Munsif cum Judicial Magistrate's Court, Eraniel.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman
For RR2, 3 and 5 to 7 : Mr.K.Muraleedharan
For 4th Respondent : No appearance

S.A.No.1305 of 2004:

S.Sreedharan

... Appellant/Appellant/
Plaintiff

Vs

1.The State of Tamil Nadu,
Rep., by District Collector,
Nagercoil.

2.Perinbam (Died)

3.Y.Ponnappan

4.Y.Swarnam

5.Y.Chandra

6.Y.Muthammal

7.Y.Arul Bai

8.Y.Kala

... Respondents/Respondents/
Defendants

***/RR3 to 8 – recorded as LRs of the deceased R2.
Memo recorded in USR No.316 dated 29.01.2010
and verified Petition No.18215 dated 21.04.2010/***



S.A.Nos.1304 and 1305 of 2004

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 20.09.2003 made in A.S.No.69 of 1997 on the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree dated 29.11.1996 made in O.S.No.134 of 1996 on the file of the District Munsif cum Judicial Magistrate's Court, Eraniel.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For R1 : Mr.C.Baskaran
Government Advocate

For R3 & 5 to 7 : Mr.K.Muraleedharan

For R4 : No appearance

COMMON JUDGMENT

1.1. S.A.No.1305 of 2004 is arising out of the appellant's suit for declaration and injunction. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Hence, the appellant is before this Court.

1.2. S.A.No.1304 of 2004 is arising out of a suit for bare injunction filed by the 2nd to 7th respondents' predecessor in interest viz., Yesuvadiyan.



S.A.Nos.1304 and 1305 of 2004

The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Hence, the appellant is before this Court.

2. The appellant's suit for declaration and injunction was originally filed in O.S.No.72 of 1988 on the file of the Sub Court, Padmanabhapuram and the same was later on transferred to the District Munsif cum Judicial Magistrate's Court, Eraniel, and re-numbered as O.S.No.134 of 1996. According to the appellant, the suit was filed in respect of 1 hectare and 39.5 ares in R.S.No.650/2. According to him, the suit property was originally a poramboke land and it was purchased by one Azhagan in an auction conducted by the Government. It was further contended that wife of Azahgan viz., Ramayee purchased the suit property from Azhagan and after her death, her son Velandi succeeded to the property. It was also contended that the said Velandi sold the suit property to the appellant on 14.09.1987 under Ex.A.1. It was also contended that in the title document of the appellant, the survey number of the suit property was wrongly mentioned as 3247/B instead of Old Survey No.3113/8. The respondents herein tried to



S.A.Nos.1304 and 1305 of 2004

interfere with the possession of the appellant based on the B-memo allegedly paid by them and consequently, the appellant was constrained to file the suit for declaration and injunction.

3.1. The first respondent/ State filed a written statement denying the alleged auction by the Government and purchase of the suit property by Azhagan in auction sale. It was also averred in the written statement that the deceased second defendant in the suit Yesuvadiyan trespassed into portion of the suit property and appropriate proceedings were initiated for removing the said encroachment.

3.2. The deceased second defendant in the suit, predecessor of respondents 2 to 8 filed a written statement stating that he had been in possession and enjoyment of the suit property by paying B-Memo to the Government. He also claimed that he was the owner of the adjacent property on three sides of the suit property, viz., north, east and south and he had been enjoying the suit property as part and parcel of his adjacent properties.



S.A.Nos.1304 and 1305 of 2004

WEB COPY

4. The predecessor of respondents 2 to 8 in S.A.No.1304 of 2004 viz., Yesuvadiyan filed a suit for bare injunction in respect of larger extent of properties viz., the suit property in S.A.No.1305 of 2004 and its adjacent properties. The suit for injunction was filed in respect of the property with an extent of 2 acres and 25 cents in S.Nos.650/2, 650/3, 650/4 and 650/5. The suit was filed by the predecessor of respondents 2 to 8 on the ground that he had been in possession and enjoyment of the suit property. He further pleaded that in respect of S.No.650/2, he had been paying B-Memo to the Government and in respect of other survey numbers, he had been paying tax to the Government in his capacity as owner.

5. The said suit was resisted by the appellant herein by filing a written statement, wherein he denied the title as well as possession of the respondents over the suit property.

6. Both the suits were tried together and evidence was recorded in the suit filed by the appellant in O.S.No.134 of 1996.



S.A.Nos.1304 and 1305 of 2004

WEB COPY

7. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the appellant failed to prove his title and possession over the suit property in S.No.650/2 and consequently, dismissed his suit for declaration and injunction in O.S.No.134 of 1996. The trial Court also found that the predecessor of the respondents established his possession over the suit property in O.S.No.141 of 1996 and hence, decreed his suit for bare injunction.

8. Aggrieved by the said judgment and decree passed by the trial Court, the appellant filed two first appeals in A.S.Nos.23 and 69 of 1997. The first appellate Court concurred with the findings of the trial Court and dismissed the appeals. Aggrieved by the same, the appellant is before this Court.

9. This Court while admitting the second appeals, formulated the following substantial questions of law:

S.A.No.1304 of 2004:

“(i) Whether the lower Courts have failed to consider



S.A.Nos.1304 and 1305 of 2004

material evidence let in by the appellant which resulted in miscarriage of justice?

(ii) Whether the lower Courts erred in law by holding that the respondents have perfected title over the suit property by adverse possession and prescription?

(iii) Whether the lower Courts have failed to hold in law that the appellant has perfected title by adverse possession and prescription for over the statutory period.

(iv) Whether the lower Courts have wrongly relied upon the inadmissible evidence, namely, Exs.B-6 to B-8, which are after the date of filing of the plaint in the year 1988 in the court of the District Munsif, Padmanabhapuram?

(v) Whether the lower Courts erred in law by accepting the oral agreement dated 1.1.72 under which, according to the respondents, they have got title and possession over a portion of the suit property?"

S.A.No.1305 of 2004:

“(i) Whether the lower courts have failed to consider material evidence of the appellant which resulted in miscarriage of justice?

(ii) Whether the lower courts erred in law by accepting oral agreement dated 1.1.1972 by which the respondents claimed title and possession over the portion of the suit property.



WEB COPY



S.A.Nos.1304 and 1305 of 2004

(iii) Whether the lower courts erred in law by accepting the B.Memos, Exs.B6 to B8 filed by the respondents in support of their title to the suit property, when the B.Memos are dated 17.8.1996, 17.8.96 and 12.6.96 respectively, which are all after the filing of the suit in the year 1968 in the Court of the Subordinate Judge, Padmanabhapuram? and

(iv) Whether the lower courts erred in law by holding that the respondents have perfected title by adverse possession and prescription when their title was not proved in respect of the entire suit property?"

10.1. The learned counsel for the appellant submitted that the appellant proved his right over S.No.650/2 subject matter of S.A.No.1305 of 2004 by producing his title document Ex.A.1, dated 14.09.1987 and its parent document Ex.A.6-sale deed in favour of Ramayee. Therefore, the Courts below ought to have upheld the title of the appellant and decreed the suit filed by him for declaration of title and injunction. The learned counsel further submitted that though the predecessor of respondents 2 to 8 claimed to have paid penalty to the Government on B-Memo issued in his name, he failed to produce any B-Memo in his name prior to the filing of the suit.



S.A.Nos.1304 and 1305 of 2004

Therefore, the Courts below ought not to have assumed that the possession of the respondents' predecessor was proved in respect of S.No.650/2.

10.2. The learned counsel further submitted that the appellant has no claim in respect of S.No.650/3. The learned counsel also submitted that in respect of S.Nos.650/4 and 650/5, the appellant produced sale deed in his favour dated 30.03.1988 and the same was marked as Ex.A.7. When the appellant proved his right over S.Nos.650/4 and 650/5 by producing title document in his favour, the Courts below ought not to have entertained the suit for bare injunction when the respondents' predecessor failed to produce any document to prove his title over S.Nos.650/4 and 650/5. Therefore, the learned counsel for the appellant requested this Court to set aside the judgment and decree for bare injunction passed in favour of the respondents' predecessor in respect of S.Nos.650/2, 650/4 and 650/5.

11. Per contra, the learned counsel for the contesting respondents submitted that the appellant in his plaint claimed right under one Azhagan. However, he failed to prove the title of said Azhagan and consequently, the



S.A.Nos.1304 and 1305 of 2004

WEB COPY

appellant is not entitled to declaration of the title. It is the submission of the learned counsel that in a suit for declaration of title, the plaintiff has to win on his own strength and in the case on hand, due to the failure of the appellant to prove title of Azhagan under whom he claimed title, the Courts below rightly rejected the appellant's suit for declaration and injunction in respect of S.No.650/2. The learned counsel further submitted that the respondents' predecessor proved his title over S.No.650/4 by producing sale deed in his favour in respect of the said survey number by Balakrishnan Kurup as Ex.B.29. The learned counsel further submitted that his vendor Balakrishnan Kurup got the property in S.No.650/4 under an award passed by the District Court, Quilon, which was marked as Ex.B.47. Therefore, it is the submission of the learned counsel for the respondents that the predecessor of the respondents proved his title over S.No.650/4 and there is no cloud over his title and consequently, the suit for bare injunction filed by the respondents' predecessor is very much maintainable. In respect of S.No.650/2, the learned counsel submitted that the respondents' predecessor produced tax receipts in his name as Ex.B.6 and Ex.B.7. Therefore, the Courts below rightly came to the conclusion that their lawful possession



S.A.Nos.1304 and 1305 of 2004

over S.No.650/2 was proved. The learned counsel further submitted that in respect of other survey numbers viz., S.Nos.650/5 and 650/3 also, the respondents produced revenue documents to prove their possession. Based on the revenue documents, both the Courts below came to the conclusion that they are in lawful possession over the suit property and hence, the said finding requires no interference by this Court.

12. Heard the learned counsel on both sides and perused the typed set of papers and other records.

13. The appellant herein filed a suit for declaration and injunction in respect of S.No.650/2. As per his plaint averment, the property was originally purchased by one Azahgan in an auction sale conducted by the Government. He also admitted that originally the property was a poramboke land. After purchase of the property by Azahgan, he sold it to his wife Ramayee and from Ramayee's son Velandi, the appellant purchased it under Ex.A.1. However, the appellant failed to prove that originally the property was purchased by Azhagan in an auction conducted by the



S.A.Nos.1304 and 1305 of 2004

Government and in the absence of proof for title of Azahgan, the appellant is not entitled to get a declaration of his title by merely producing sale deed in his favour by Velandi and the sale deed executed by Azhagan in favour of Ramayee. He also failed to produce any revenue documents like patta in respect of S.No.650/2 either in his name or in the name of Azhagan. Therefore, both the Courts below rightly came to the conclusion that the appellant failed to prove his title over the suit property in O.S.No.134 of 1996 viz., S.No.650/2. Therefore, the questions of law framed at the time of admission in S.A.No.1305 of 2004 are answered against the appellant and the said second appeal is dismissed by confirming the judgment and decree passed by the first appellate Court.

14. As far as S.A.No.1304 of 2004 which is arising out of the suit for bare injunction filed by the respondents' predecessor is concerned, the suit property in S.A.No.1304 of 2004 consists of 4 items. The appellant has no claim over the property in S.No.650/3. The respondents claimed that the property in S.No.650/2 had been enjoyed by them by paying B-Memo charges to the Government. The Courts below based on tax receipts Ex.B.6



S.A.Nos.1304 and 1305 of 2004

WEB COPY

and Ex.B.7, filed by the respondents came to the conclusion that the respondents proved their possession over the property in S.No.650/2. Ex.B.6 and Ex.B.7 dated 17.08.1996 are well after the filing of the suit. In the absence of any evidence to show that the respondents paid B-Memo to the property in S.No.650/2 prior to the filing of the suit, possession of respondents on the date of filing of the suit cannot be assumed. Therefore, the finding rendered by the Courts below as if the respondents proved their possession over the property in S.No.650/2 is based on no evidence and hence, liable to be set aside.

15. As far as the property in S.No.650/4 is concerned, the respondents claimed right over the same by producing the sale deed in favour of the first respondent Perinbam dated 27.08.1992, which was marked as Ex.B.29. The respondents also produced the parent document viz., Ex.B.40 and Ex.B.47 to show that the property covered under Ex.B.29 was allotted to the share of Balakrishnan Kurup. On the side of the appellant, he produced Ex.A.7 to prove that he purchased the property in S.No.650/4 from one Velandi. Ex.A.7 is dated 30.03.1988 just prior to the filing of the suit. However, the



S.A.Nos.1304 and 1305 of 2004

documents produced by the respondents to prove their vendor's title viz., Ex.B.40 and Ex.B.47 were of the year 1942.

16. In view of the fact that the parent document produced by the respondents is anterior in time, the same will prevail over the document produced by the appellant. Hence, cloud, if any, created by Ex.A.7 is removed by the production of the parent document Ex.B.47 by the respondents. The respondents also produced chitta for suit S.No.650/4, which stands in the name of Perinbam, the first respondent. Therefore, the finding arrived at by the Courts below that the respondents proved their lawful possession over the property in S.No.650/4 need not be interfered with and the same is affirmed. As far as the property in S.No.650/5 is concerned, the respondents claimed that they got the property under a sale agreement executed by Sukumari Kurup and Balakrishnan Kurup. Further, they failed to produce the alleged sale agreement in their favour. However, the Courts below based on the revenue documents produced by the respondents had given a finding that the respondents proved their lawful possession over the property in S.No.650/5. On the other hand, the



S.A.Nos.1304 and 1305 of 2004

appellant produced registered sale deed in his favour in respect of S.No.650/5 under Ex.A.7. When the appellant produced a registered document in his favour in respect of the property in S.No.650/5 and claimed title over the same, in the absence of any title document by the respondents, there is a serious dispute with regard to their alleged title over the said property. In such circumstances, the respondents are not entitled to maintain a suit for injunction simpliciter without seeking a prayer for declaration of their title. In fact, the respondents in their pleadings claimed title by adverse possession. In such circumstances, a simple suit for bare injunction is not maintainable. However, the Courts below based on the revenue documents produced by the respondents, which are mostly subsequent to the suit, came to the conclusion that the respondents proved their possession over S.No.650/5 and granted a degree for bare injunction.

17. In view of the discussions made earlier, the judgment and decree for bare injunction granted by the Courts below in respect of the property in S.No.650/5 is liable to be set aside. Accordingly, the substantial questions



S.A.Nos.1304 and 1305 of 2004

of law framed at the time of admission in S.A.No.1304 of 2004 are answered partly in favour of the appellant. Hence, S.A.No.1304 of 2004 is partly allowed by setting aside the judgment and decree for injunction in respect of the property in S.No.650/2 and S.No.650/5. The judgment and decree for injunction in respect of the property in S.Nos.650/3 and 650/4 are confirmed.

18. In the result, (i) S.A.No.1305 of 2004 is dismissed by confirming the judgments and decrees passed by the Courts below; (ii) S.A.No.1304 of 2004 is partly allowed by setting aside the judgment and decree passed by the Courts below in respect of suit Items-1 and 4 viz., S.Nos.650/2 and 650/5. The decree for injunction granted by the Courts below in respect of suit items 2 and 3 viz., S.Nos.650/3 and 650/4 are confirmed; and (iii) In the facts and circumstances of the case, there would be no order as to costs.

01.03.2023

NCC: Yes/No
Index: Yes/No
Internet: Yes
abr



WEB COPY



S.A.Nos.1304 and 1305 of 2004

S.SOUNTHAR, J.

abr

To

- 1.The Sub Judge,
Padmanabhapuram.
- 2.The District Munsif cum Judicial Magistrate,
Eraniel.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.Nos.1304 and 1305 of 2004

01.03.2023