IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04. 2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 497 of 2010

1 RAJENDRAN

... Appellant

Vs.

1 SUBRAMANIAM-died

2 S.MALLIKA
W/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

3 S.SRININ SENTHIL
S/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

4 M.SELVI
D/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

5 S.SENTHIL SINGAENATHAN
S/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

6 M.DEVI
D/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

7 SENTHILBABU
S/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50

8 G.PONNI
D/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

9 S.SUKUMAR
S/O.SUBRAMANIAM KALAIVANAR NAGAR
VINAYAGAR STREET PADI CHENNAI 50.

...Respondents

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 26.02.2010 and made in A.S No. 41 of 2009 on the file of Sub Court Poonamallee, dismissing the appeal and confirming the judgment and decree dated 06.04.2009 and made in O.S No. 1954 of 1988 on the file of Additional DMC Poonamallee and allow the second appeal.

For Appellants : Mr.Kowser Nissar

For Respondent : Mr. V.Ravi

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 26.02.2010 and made in A.S No. 41 of 2009 on the file of Sub Court Poonamallee, dismissing the appeal and confirming the judgment and decree dated 06.04.2009 and made in O.S No. 1954 of 1988 on the file of Additional DMC Poonamallee and allow the second appeal. For the sake of convenience the parties are referred as per suit.

2. The appellant herein filed the suit in O.S No. 276 of 1997 for the relief of permanent injunction restraining the defendant or his men or agents or workmen or persons claiming through the defendant from disturbing or obstruct acting or interfering in any manner with the plaintiff's peaceful possession and enjoyment of the suit property and to direct the defendant to vacate and hand over the possession of the suit property to the defendant after removing the super structure. The case of the plaintiff is that he is in possession and enjoyment of the suit property in survey No. 253, in vinayagar Street, kalaivanar Nagar Padi, Saidapet Taluk, Chengalpet

District with four boundaries with an extent of 3600 square feet. The plaintiff contend that he is in possession and enjoyment of the property for several years and the Government was issued B-memo in respect of the suit property and penal charge thereof was collected from the plaintiff and he put up super structure and enjoyed the same and which was assessed to property tax as he was in absolute owner and in possession and enjoyment of the suit property. While so, the defendant has no manner right or interest in the property attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and cause interference and tried to evict him by force. Hence, the suit. After filing the suit the defendant trespassed into the suit property and put up a thatched hut in the suit property. Hence, the plaintiff had to seek recovery of vacant possession of the suit property and the same was permitted by the Court by order dated 16.08.2007 in I.A No. 1134 of 2007 and to prove his enjoyment the plaintiff produced the certain documents.

3. The claim of the defendant is that the plaintiff is never in possession of the suit property and denied the plaintiff entire contention and stated that he is in possession and enjoyment of the suit property. Further he has paying the property tax for the suit property and he denied the

plaintiff's allegation that his peaceful possession was disturbed by the defendant. Further, he stated that the plaintiff did not put up super structure in the suit property but the defendant put up super structure in the suit property at his cost and is living in the suit property for several years and the municipality authorities, Ambattur also given D. No. 26 and recognized the defendant's possession and the property tax also levied. Further, he stated that the plaintiff had fraudulently obtained some receipt from the revenue authorities and subsequently upon verification by the revenue authorities those receipts were duly cancelled. He, prays to dismiss the suit.

4. After considering the submissions on either side, the Trial Court held that the plaintiff was not in possession and enjoyment of the property to the extent claimed by him and also failed to prove that the defendant trespassed and put up a hut in the suit property during the pendency of the suit. As such the plaintiff failed to establish his exclusive and indefeasible right over the property. Accordingly, dismissed the suit.

5. Challenging the judgment passed by the Trial Court, the plaintiff filed the appeal in A.S No. 41 of 2009, before the first appellate Court, which framed three issues and independently analysed the oral and documentary evidence finally held that B memo receipt is meant only for

three cents there is no proof on the side of the plaintiff that he is enjoying 3600 square feet and also concluded that plaintiff was in possession of the property at the time of filing the suit. Further it observed that through Ex.B2, Ex.B10, Ex. B16 the defendant proved their possession in the suit property. Thereby confirmed the findings of the Trial Court.

6. Aggrieved over the concurrent findings the plaintiff filed this second appeal. This Court admitted the appeal with the following substantial questions of law:

1. Whether the Courts below are right in dismissing the suit for possession without considering that the appellant is the owner of the suit property having title over the suit property ?

2. Whether the Courts below are right in holding that the suit for possession was barred by limitation inspite of the order of amendment ordered by this Court?

7. The learned counsel for the appellant/plaintiff submitted that on the date of filing the suit, the plaintiff produced the sufficient document to show that he is in possession and enjoyment of the suit property to that effect he produced the B-Memo receipt, property tax receipt related to the super Structure in the property put up by him but without considering the same both the Court below erroneously dismissed the suit which is unjust and liable to be set aside. Further, he submitted that though the amendment was

filed in the year 2017 when such application was allowed and that amendment relate back to the date of institution of the suit therefore the findings of the first appellate Court is set aside to that effect the appellant relied the judgement of the Supreme Court reported in 2013 (9) SCC 576 in the case of Prithi Pal Singh and another Vs. Amrik Singha and another:

11. From the ratio of the aforesaid judgments, following emerge:

(c) The amendment once allowed and incorporated relates back to the date of the initial institution of the suit:

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.

8. It is true that the said proposition of amendment would relates back to the institution of the suit is acceptable one but the point to be decided is whether the said proposition applied to the facts of the present case.

9. The contention of the plaintiff is that he is in possession and enjoyment of the suit property by putting up the superstructure and B memo was issued to him and also paid the penal charges to that effect he marked the documents Ex.A1 to Ex.A6 all these documents are from the year 1983 onwards but the claim of the defendant is that he is in possession of the suit property with an extent of 3600 square feet but as per the B memo produced by the plaintiff the extent of the property is mentioned as 3 cents(1076 square feet). Therefore, the plaintiff not established that he is in possession enjoyment of the suit property with an extent of 3600 square feet of the property in survey No. 253. Admittedly, the survey No. 253 classified as Natham land even certificate issued by the Tahsildar Ex.A7 and Ex.A8, which reveals that in survey No. 253 0.033 hectare was encroached by the plaintiff's. So, as per the notice issued by the Village Administrative officer plaintiff encroached around 3 cents in survey No. 253/2 in the year 1989 and the same was rightly appreciated by the both Courts. Moreover, though there is no prayer for declaration in the entire pleadings, the plaintiff attempted to claim title and exclusive possession of the property, admittedly their survey No. 253 was classified as Natham land the Government is necessary party but the plaintiff has not taken steps to implead the Government District Collector as necessary party to the proceedings. That apart, the documents relied by the defendant, through Ex.B1 he is able to establish that he is in possession of the property from 1984 onwards to that effect ration card was relied by him and he also put up thatched shed in the suit property and paid tax to the Government to that effect he relied the tax receipts as EX.B16, Ex. B17. Therefore, from the above documents, the defendant proved that he is in possession of the suit property from the year 1982 onwards and the same was rightly observed by the Court below needs no interference. Further, the plaintiff failed to establish that he is in possession and enjoyment of the suit property and praying recovery of possession by way of amendment as such is barred by limitation need not be discussed. Accordingly, questions of laws are answered. As discussed above and for the reasons stated above, this appeal is dismissed. No Costs. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To
1. The Sub Court Poonamallee,
2. The Additional DMC Poonamallee
3.The Section Officer,
V.R Section.

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