



S.A.No.247 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.247 of 2021
and
C.M.P.No.4811 of 2021

Ambala Muthusamy

... Appellant

Vs.

1. Sakkaravarthi Srirangan
2. Ambala Annadurai
3. Aalathi Muthusamy
4. Karuvada Moorthy

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 11.07.2019 in A.S.No.51 of 2017 passed by the learned Principal Subordinate Judge, Namakkal, Namakkal District confirming the judgment and decree of O.S.No.316 of 2012 dated 31.01.2017 passed by the learned Additional District Munsif, Namakkal, Namakkal District.

For appellant : Mr.S.Senthilnathan

For respondents : Mr.R.Rajesh



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JUDGMENT

The plaintiff in the suit for permanent injunction is the appellant before this Court.

2. The facts of the case in a nutshell are set out hereinbelow with the parties being referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.316 of 2012 on the file of the Additional District Munsif, Namakkal, Namakkal District, for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. The suit schedule property is an extent of 3 acres comprised in Survey No.146/2, Valapurnaadu Village, Kolli Hills, Namakkal within specified boundaries.

2.2. It is the case of the plaintiff that the property in question



belongs to the Forest Department. It is his case that he and his predecessors have been in possession and enjoyment of this property for over 60 years where the plaintiff is carrying on agricultural activities. The suit property is a part of larger extent of land. Like the plaintiff, 20 other members belonging to the hill tribes are in possession and enjoyment of these lands. The Forest Department has not interfered with their enjoyment and possession of the property. The plaintiff had made an application for grant of patta in the year 2009 and has been sending several representations. To this, Tahsildar had sent a reply dated 22.01.1993 and on 12.06.1991, the Surveyor has also sent a letter to the plaintiff.

2.3. It is the case of the plaintiff that the defendants who have no right of enjoyment over the suit properties had started interfering with the plaintiff's possession and enjoyment of the property. The plaintiff has been successfully preventing the defendants from trespassing into the suit property. On 10.06.2012, the defendants,



along with their henchmen, tried to forcefully evict the plaintiff and hence, the plaintiff had come forward with the suit for permanent injunction.

2.4. The first defendant had filed a written statement *inter alia* denying the allegations contained in the plaint which was adopted by the defendants 2 to 4. It is the contention of the defendants that over 40 families have trespassed into the Forest Department lands comprised in Survey No.146/2 and have been undertaking agricultural activities. The first defendant's father had trespassed into the suit lands nearly 35 years prior to the institution of the suit and had been in enjoyment of the same. The defendants have been now put in the possession of the same. The Forest Department has not objected to this occupation of the land by the defendants. The defendants would submit that in the description of the properties, it is stated that the properties belonging to Dhanapal and Elayaan are patta lands. This fact has been suppressed by the plaintiff. It is the other 2 owners *viz.*,



Mani and Pittaram whose lands belong to the Forest Department.

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2.5. The first defendant's lands are situate in the south near the lands of Mani which have been described as one of the boundaries in the suit schedule property. The lands of the defendants 2, 3 and 4 are also similarly placed. Further, the first defendant and other defendants are in enjoyment of one acre of land each. In all, they are in enjoyment of 4 acres of land and the first defendant would further submit that each household can only enjoy one acre of land and not more than that and therefore, he sought for the dismissal of the suit in question.

TRIAL COURT:

3. The Trial Court, on considering the oral and documentary evidences, came to the conclusion that the plaintiff has not proved his possession of 3 acres of land, as claimed by him. The Trial Court has also taken note of the fact that the plaintiff, who claims to be cultivating the lands and that prior to him his predecessors-in-title had



been enjoying the property by cultivating it, has not produced any single document in the form of revenue records to show the enjoyment of property by him and his predecessors-in-title. Therefore, the Trial Judge had dismissed the suit.

LOWER APPELLATE COURT:

4. Challenging the same, the plaintiff has filed an appeal in A.S.No.51 of 2017 on the file of the Principal Subordinate Court, Namakkal, Namakkal District. The learned Judge has concurred with judgment and decree of the Trial Court and dismissed the appeal.

5. Aggrieved by the same, the plaintiff is before this Court. This Court had ordered notice to the respondents.

6. Heard the learned counsel appearing on either side and perused the materials available on record.



SUBMISSIONS:

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7. The learned counsel of the appellant would rely upon the fact Ex.A2 - letter dated 22.01.1993 which he would submit, go to show that the plaintiff is in possession and enjoyment of the suit schedule property. He would further submit that the defendants have not let in any evidence whatsoever to prove their possession of the property and in the absence of the same, the Courts below ought to have decreed the suit.

8. Per contra, Mr.Rajesh, learned counsel appearing for the respondents would submit that the plaintiff, who claims to be cultivating the lands for several decades, has not produced any shred of evidence in the form of adangal or kists, *etc.*, to show that he and his predecessors are cultivating crops in the said lands. Therefore, in the absence of proof, the Courts below are right in dismissing the appeal and dismissing the suit.



DISCUSSION:

9. The learned counsel appearing for the appellant has heavily relied on the letter dated 22.01.1993 which is issued by the Tahsildar, Namakkal and marked as Ex.A2. A mere perusal of this document would show that this is nothing but a letter from the Tahsildar, Namakkal addressed to the plaintiff with a copy marked to the District Collector stating that the plaintiff had filed an application for grant of patta in respect of lands situate in Survey No.146/2. This letter also states that information has given to the Police Department about the plaintiff's complaint about third party interference in the property. The letter advises the plaintiff to approach the Police Department and Forest Department for redressing his grievance. Further, this letter, by no stretch of imagination, would prove that the plaintiff is in possession of the property. That apart, this document is of the year 1993, whereas, the suit is filed in the year 2012. The plaintiff has also produced the certificate of the Village Officer which states that the plaintiff is cultivating the lands but no support adangal



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extracts/chitta, etc., have been produced by the plaintiff.

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10. Both the Courts below, *in extenso*, considered the oral and documentary evidences and came to the conclusion that the plaintiff is not entitled to the relief claimed by him in the absence of any evidence. I see no reason to differ with the judgment and decree of the Courts below.

Accordingly, this second appeal stands dismissed. Consequently, connected C.M.P. stands closed. No costs.

29.01.2024

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Additional District Munsif, Namakkal.

2. The Principal Sub Judge, Namakkal.

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3.The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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