



S.A.Nos.503 & 504 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

S.A.Nos.503 & 504 of 2012
and M.P.Nos.1 & 1 of 2012

1.Mr.Parasuraman ... Appellant in S.A.No.503/2012

2.Mrs.Megala ... Appellant in both Appeals
Vs.

1.Mr.Pachaiappan (died)

2.Mrs.P.Mariammal

3.Mr.Munusamy

4.Mr.Elumalai

5.Mr.Venkatesan

6.Mrs.Malar ... Respondents in both appeals

(R2 to R6 brought on record as LR's of the deceased 1st respondent viz. Mr.Pachaiappan vide Court Order dated 09.08.2021 made in C.M.P.Nos.5700, 5701, 5702, 5703, 5704 & 5705 of 2018 in S.A.Nos.503 & 504 of 2012)



WEB COPY



S.A.Nos.503 & 504 of 2012



WEB COPY

Prayer in S.A.No.503/2012 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.10.2011 made in A.S.No.13 of 2011 on the file of the Sub-Court, Kancheepuram reversing the judgment and decree in O.S.No.73 of 2002 dated 28.10.2009 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

Prayer in S.A.No.504/2012 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 21.10.2011 made in A.S.No.30 of 2011 on the file of the Sub-Court, Kancheepuram reversing the judgment and decree in O.S.No.91 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Uthiramerur.

For Appellants
in both appeals : Mr.N.Kumar Rajan
for M/s.Kumar and Baskar

For Respondents
in both appeals : R1 – Died
Mr.Y.Jyothish Chander for R2 to R6

COMMON JUDGMENT

The defendant in the suit in O.S.No.73 of 2002 is the appellant in the present appeal. Another suit filed by the appellant in O.S.No.91 of 2004 was



filed for bare injunction.

WEB COPY

2.Since the issue involved in both these appeals are arising out of a common judgment, the above Second Appeals are disposed of by a common judgment.

3.For the sake of convenience, the parties are referred to as per the ranking before the Trial Court and the plaintiff as well as the defendant will be referred to as per ranking in the comprehensive suit in O.S.No.73 of 2002.

4.According to the plaintiff in O.S.No.73 of 2002, the suit properties were classified as grama natham and the property originally belonged to Subbaraya Gounder and he was in absolute possession and enjoyment of the property during his lifetime. The said Subbaraya Gounder had two sons viz., Kanniappa Gounder and the plaintiff and they inherited the property after the demise of their father and they were in absolute possession and enjoyment of the suit property. According to the plaintiff, the plaintiff and his brother had partitioned the family properties on 29.01.1979 in Ex.A1 and as per Partition Deed 'A' Schedule was allotted to Kanniappa Gounder



and in the 'B' Schedule, two bits of land were allotted to the plaintiff.

According to the plaintiff, after the partition, the plaintiff had put up a hut in one bit of land out of two portion allotted in the partition as 'B' Schedule which is A' Schedule of the suit properties and living there. In the other bit mentioned in the 'B' Schedule to the suit property, the plaintiff was using to store the wastages. The Government recognised the plaintiff and had also issued patta in favour of the plaintiff. Since the defendant who was the neighbour of the property, who has no rights started to interfere in the 'B' Schedule of the suit property on 14.09.2002, the plaintiff prevented the unlawful action and lodged a complaint before the Police Station which was registered in Crime No.567 of 2002. Once again on 27.11.2002, the defendant unlawfully attempted to encroach the 'B' Schedule suit property. Therefore, the plaintiff had come with a suit for declaration and injunction.

5.The defendant who has filed a separate suit in O.S.No.91 of 2004 claiming for injunction in respect of the 'B' Schedule of the suit properties have resisted the suit by filing the Written Statement stating that he had purchased the property on 13.03.1992 in Ex.B2 and the Parent Deed has also been filed as Ex.B1 dated 26.07.1989. According to the defendant, the



WEB COPY

second defendant is the absolute owner of the property bearing grama natham in S.No.450/32 and the Government had issued patta in their favour and they were in possession and enjoyment of the 'B' Schedule suit property. Therefore, the suit filed by the plaintiff in O.S.No.73 of 2002 ought to have been dismissed and since the defendant was in possession of the property, the suit in O.S.No.91 of 2004 ought to have been decreed.

6.Both the suits were taken up for joint trial and the plaintiff examined himself as P.W.1 and examined another witness as P.W.2 and marked documents as Exs.A1 to A7. The first defendant examined himself as D.W.1 and examined another witness as D.W.2 and marked documents as Exs.B1 to B17.

7.An Advocate Commissioner was appointed and the Advocate Commissioner Report and Survey Report were all marked as Ex.C1 to C5.

8.The Trial Court after analysing the evidence and documents dismissed the suit in O.S.No.73 of 2002 and decreed the suit in O.S.No.91 of 2004. The Trial Court mainly held that the 'B' Schedule of the suit



property does not form part of the Partition Deed in Ex.A1 held that since this property was not mentioned in the Partition Deed, the suit filed by the plaintiff could not be sustained and dismissed the suit.

9. Being aggrieved by the Judgment and Decree of the Trial Court, the plaintiff filed appeal in A.S.No.13 of 2011 and A.S.No.30 of 2011 on the file of the Subordinate Judge, Kancheepuram. The Lower Appellate Court after placing reliance on the evidence by Judgment and Decree dated 21.10.2011 allowed both the appeals. Aggrieved by the same, the defendant in O.S.No.73 of 2002 is before this Court with two separate Second Appeals.

10. When these appeals came up for admission, the Second Appeals were not admitted and this Court by order dated 20.04.2012 has ordered only notice regarding admission.

11. The learned counsel for the appellants submitted that the Lower Appellate Court erred in placing reliance on Ex.A1 Partition Deed and allowed the appeal, when the Partition Deed executed by the plaintiff and his brother are self serving documents and the same will not bind the



defendant/appellant.

WEB COPY



S.A.Nos.503 & 504 of 2012



12.The learned counsel further contended that the vendor of the defendant had purchased a property in Ex.B1 and thereafter, the same was conveyed in favour of the defendant through the Sale Deed dated 13.03.1992 in Ex.B2. After the purchase, even though the 'B' Schedule suit property has not been mentioned in the sale deed, the defendant was in possession and enjoyment of the 2 ½ cents which is the 'B' Schedule property. By taking into account of the possession, the patta bearing No.230 dated 18.05.1994 in Ex.B3 was granted in favour of the defendant which established the fact that the defendant was in possession and enjoyment of the property.

13.The learned counsel for the appellants contended that when the defendant was found to be in possession, naturally the suit filed by the plaintiff for declaration and injunction ought to have been dismissed. The learned counsel contended that since the Lower Appellate Court has only relied on the Partition Deed in Ex.A1, the Judgment and Decree are perverse and sought for allowing the Second Appeals.

14.In support of the contentions, the learned counsel for the appellants



relied on the decisions in *Nachammal & anr. vs. S.Murugesan* reported in **2010 CIJ 560 Mad (2)** and another judgment in *A.Chandran & Another vs. Periyammal* reported in **CDJ 2010 MHC 7505**.

15.The learned counsel for the respondents contended that when admittedly the 'B' Schedule suit property is a grama natham land, the plaintiff has been in possession and enjoyment of the property. The plaintiff's father had all along been in possession and enjoyment of the 'B' Schedule grama natham land and after his demise, the plaintiff and his brother inherited the properties and they had partitioned the properties through a Registered Partition Deed dated 29.01.1979 in Ex.A1. In the Partition Deed, the 'B' Schedule suit property has been allotted in favour of the plaintiff and has been in possession of the property.

16.Since the plaintiff has put up a hut in the 'A' Schedule suit property and the 'B' Schedule suit property is an empty land, no separate patta was issued in his favour. When the plaintiff approached for patta, he was informed that patta will be issued only after the construction was made on the 'B' Schedule suit property.



WEB COPY

17.Learned counsel for the respondents contended that if at all the defendants vendor had been in possession and enjoyment of the 'B' Schedule suit property, then the 'B' Schedule would have been included in the Sale Deed even in Ex.B1 and also the Sale Deed in favour of the defendant dated 13.03.1992 in Ex.B2. Since the defendant vendor was in possession of the 'B' Schedule suit property, the 'B' Schedule suit item was not included in the Sale Deed and only 4 ½ cents of land was conveyed in which the defendant is in possession and enjoyment of the property.

18.Learned counsel for the respondents contended that when the plaintiff filed a Registered Partition Deed in Ex.A1, which is the oldest document and the plaintiff established their title and possession, as could be seen from the contents of the Partition Deed. Further, the learned counsel for the respondents contended that even the Report of the Advocate Commissioner filed in Ex.C1 shows that the plaintiff was in possession and enjoyment of the property by stocking the materials there. According to him, when the plaintiff has established a better title, naturally the plaintiff is



S.A.Nos.503 & 504 of 2012

entitled to succeed and the Lower Appellate Court rightly appraised the documents and evidence and have allowed the appeal and there is no

WEB COPY



substantial question of law arising in these Second Appeals for the intervention of this Court and sought for dismissal of the Second Appeals.

19.Heard learned counsel appearing on both sides and perused the materials available on record.

20.Admittedly, the plaintiff's father had been in possession and enjoyment of the properties and after the death of the plaintiff's father, the plaintiff and his brother had executed a Registered Partition Deed dated 29.01.1979 in Ex.A1. In the Registered Partition Deed, the plaintiff was allotted two items of the property which are Schedule 'A' and Schedule 'B' of the suit properties. The plaintiff has put up a hut in the 'A' Schedule of the property and has been using the Schedule 'B' property in stocking of the materials. Thereafter, the patta was issued in favour of the plaintiff on 18.05.1994 in Ex.A2 for the 'A' Schedule suit property. Admittedly, 2 ½ cents of lands in the 'B' Schedule suit property is a grama natham land which was situated originally in S.No.247/23.

21.The defendant had purchased 4 ½ cents of land in S.No.247/24



through a Sale Deed dated 13.03.1992 in Ex.B2. Admittedly, 2 ½ cents of grama natham land in S.No.247/23 was not included even in the Sale Deed dated 26.07.1989 in Ex.B1 which is the Parent Deed of the defendant and that 2 ½ cents of grama natham land in S.No.247/23 was not included in the Sale Deed of the defendant in Ex.B.2. When admittedly, the defendant had purchased land only to an extent of 4 ½ cents in S.No.247/24 through a Sale Deed in Ex.B2 dated 13.03.1992, it is not made clear as to how he claim right over the 2 ½ cents of grama natham land in S.No.247/23. Neither the defendants vendor had claimed right or title through any documents to show that they were in possession of S.No.247/23 nor the defendant had filed any documents to show that they are in possession of the 'B' Schedule grama natham land.

22. When the Resurvey Proceedings were done, the old S.No.247/23 and old S.No.247/24 were merged together and new resurvey was made in the New S.No.450/32. Since both the lands of 4 ½ cents purchased by the defendant in S.No.247/24 and other 2 ½ cents in S.No.247/23 were clubbed together, the patta bearing No.230 on 18.05.1994 has been issued in Ex.B3 in favour of the defendant. Neither the vendor of the defendant nor the



WEB COPY

defendant was in possession of properties and they have not filed any documents in support of the same. Admittedly when the Sale Deed in favour of the defendant in Ex.B2 does not contain the grama natham land in S.No.247/23, merely because the patta in Ex.B3 dated 18.05.1994 was issued in the name of the defendant including that portion, it cannot be taken that they were in possession of the 'B' Schedule of the suit property. It could be seen that earlier neither the name of the vendor nor the name of the defendant was entered in grama natham land in S.No.247/23 but only when same was clubbed along with S.No.247/24 and new resurvey No.450/32 was formed, the name of the defendant had been entered in the records.

23.It could be seen that the plaintiff immediately after coming to know about the patta issued in Ex.B3, when the defendant sought to interfere in the possession, they had lodged a Police complaint and it has been registered in Crime No.567 of 2002 and the FIR has been filed in Ex.A5. Further, in respect of patta wrongly issued in favour of the defendant, the plaintiff had raised proceedings before the Revenue Authorities by filing necessary complaints dated 24.10.2000 and 04.10.2000 in Exs.A6 & A7. Since the civil proceedings are pending, no further proceedings in respect of the



complaints have been taken.

WEB COPY

24.As the plaintiff's father was in enjoyment of grama natham lands, after his demise, the plaintiff and his brother had partitioned the grama natham land in Ex.A1 as early as on 29.01.1979 which establishes the title of the plaintiff and the possession of the suit properties. Admittedly, none of the documents filed by the defendant in Exs.B1 and B2 or any other document marked on behalf of the defendant shows that the 'B' Schedule property was included or at any point of time and the defendant or his vendor was in possession and enjoyment of the 'B' schedule suit properties. A perusal of the Advocate Commissioner Report also established the fact that the defendant had constructed a compound wall around the property purchased by him in Ex.B.2 and the 'B' Schedule suit property is a vacant land and the plaintiff is using the same to store his materials and also to dump the wastage.

25.From the documents filed on either side, it could be seen that the plaintiff had filed a registered document dated 29.01.1979 in Ex.A1 to show that they have been enjoyment of grama natham land and the plaintiff has a



WEB COPY

better title to the 'B' Schedule property. The defendant had not filed any documents to prove their possession but they are only claiming possession in respect of the 'B' Schedule property. Since the plaintiff has a better title to the 'B' Schedule suit property, they are entitled to succeed. Even in the decision cited by the learned counsel for the appellant in Nachammal case, in paragraph 24 of the judgment, it is held that “once it is found that the plaintiff has no title, the question of granting the relief on the basis of possessory title may not arise since the appellant herein is having better title. As against the true owner or as against the person having better title, a person claiming possessory title cannot get an injunction”.

26.The other judgment relied upon by the learned counsel for the appellants is not relevant to the facts of the present case.

27.The Lower Appellate Court after analysing the documents in Ex.A1 Registered Partition Deed, Sale Deeds in Exs.B1 and B2, Commissioner Report and the Survey Report found that the 'B' Schedule suit property forms part of the Registered Partition Deed dated 29.01.1979 in Ex.A1 and held that the plaintiff has established the title. Once the plaintiff



S.A.Nos.503 & 504 of 2012

has established his title and the defendant is only claiming possessory title, the plaintiff who is having a better title in the 'B' Schedule is entitled to succeed. The Lower Appellate Court by appraising the documents and evidence has arrived at a finding of fact which is based on materials available on record and are not perverse for this Court to interfere in the Second Appeals.

28.No substantial question of law arises in these Second Appeals for the consideration of this Court.

29.In view of the same, the Second Appeals are dismissed. However, there shall be no order as to costs.

30.01.2024

Index : Yes / No
Speaking Order: Yes / No
Neutral Citation Case : Yes/No
pam

To

- 1.The Sub-Court, Kancheepuram.
- 2.The District Munsif cum Judicial Magistrate Court,
Uthiramerur.

18/20



WEB COPY



S.A.Nos.503 & 504 of 2012

G.ARUL MURUGAN, J.

pam/drl

S.A.Nos.503 & 504 of 2012



WEB COPY



S.A.Nos.503 & 504 of 2012

30.01.2024