



S.A.No.995 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.11.2023
Pronounced on	31.01.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.995 of 2015

Azhagappan

... Appellant/Plaintiff

Versus

K.Babu

... Respondents/Defendant

Prayer : The Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 03.09.2014 made in A.S.No.25 of 2013 on the file of the Subordinate Court, Chidambaram, confirming the judgment and decree dated 23.08.2013 made in O.S.No.266 of 2011 on the file of the District Munsif Court, Chidambaram.

For Appellant : Mr.R.Bharath Kumar

For Respondent : Mr.A.Muthukumar



S.A.No.995 of 2015

JUDGMENT

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This Second appeal is preferred as against the judgment and decree passed in A.S.No.25 of 2013 dated 03.09.2014 on the file of the learned Subordinate Judge at Chidambaram confirming the judgement and decree dated 23.08.2013 made in O.S.No.266 of 2011 on the file of the learned District Munsif Judge, Chidambaram.

2.The appellant/plaintiff has filed a suit before the learned Additional District Munsif, Chidambaram, seeking the relief of permanent injunction restraining the defendant, her men, agent or persons claiming right under them in any manner not to trespass or disturb the peaceful enjoyment of the suit property by the plaintiff. The learned Additional District Munsif, Chidambaram by judgement and decree dated 23.08.2013 dismissed the suit.

3.Being dissatisfied with the findings arrived at by the Additional District Munsif, Chidambaram, the defendant preferred an appeal in A.S.No.25 of 2013 on the file of the learned Sub Judge, Chidambaram, praying to set aside the judgement and decree dated 23.08.2013 passed by the learned Additional District Munsif, Chidambaram.



S.A.No.995 of 2015

4. By judgment and decree dated 03.09.2014, the learned Sub Judge, Chidambaram, dismissed the appeal suit and confirmed the decree passed by the trial Court. Feeling aggrieved over the same, the plaintiff is before this Court with the present second appeal.

5. For the sake of convenience herein after, the parties are referred to, as described before the trial Court.

6. The averments made in the plaint, in brief are as follows:

The suit property absolutely belong to the plaintiff by way of a registered sale deed dated 11.02.1985, executed by one A.K.Thillainayagam Pillai, the original owner of the suit property. The plaintiff thereafter, is in possession and enjoyment of the suit property by putting up a house with thatched shed and living with his family members. The plaintiff left the front portion as a vacant site. From 1985 onwards, the plaintiff is in possession and enjoyment of the suit property by paying house tax. The house tax receipts and the original sale deed would establish the plaintiff's possession and enjoyment in the suit property.



S.A.No.995 of 2015

WEB COPY

7. The defendant's father namely Kaliyaperumal was working as Thalaiyari in the suit village. While so, the defendant approached the plaintiff for purchasing the suit property which was refused by the plaintiff. The defendant using his influence in the Revenue Office is trying to add his name as a joint pattathar and also trying to change the Revenue records in his favour. Furthermore, the defendant is trying to put up a thatched shed in the vacant portion of the suit property. On 11.11.2021 when the defendant with his men attempted to put up a thatched shed in the suit property, the same was prevented by the plaintiff. If the defendant succeed in his attempt, the plaintiff will be deprived of entering into or exiting from the suit property. The plaintiff had also given a complaint before Orathur Police Station, where the defendant was warned by the police officials. However, the defendant is continuously disturbing the plaintiff's peaceful possession and enjoyment in the suit property. Hence, the plaintiff filed the above suit for permanent injunction.



S.A.No.995 of 2015

8. The case of the defendant as averred in the written statement in brief, is as follows:

The property in R.S.No.210/4 measuring to an extent of 5 cents east west of the street and its length and breadth is 17 and 1/2 feet and 120 feet respectively. The said 2 3/4 cents originally belong to Thaiyalnayagi and the remaining southern portion of the property measuring 2 1/4 cents belong to Thillainayagam Pillai who is the vendor of the plaintiff. The father of the defendant purchased 2 3/4 cents from Thaiyalnayagi by way of a sale deed dated 02.03.1985 for a sale consideration of Rs.170/-. After the purchase, the father of the defendant put up a thatched house for the defendant and the house tax was paid in the name of his father Kaliyaperumal and after that it was also paid in the name of the defendant. To the south of the property sold by the Thiyanayagi lies the property of the Thillainayagam Pillai measuring to an extent of 2 and 1/4 cents (17 and 1/2 feet at the top and 50 to 52 ft at the bottom). The boundaries are mentioned wrongly in the sale deed of the defendant as west of Thaiyalnayagi property instead of, south of Thaiyalnayagi and west of Subrmaniya Pillai property. The plaintiff taking advantage of the wrong description of the property in the sale deed trying to



S.A.No.995 of 2015

grab the property of the defendant. When the plaintiff interfered in the peaceful possession and enjoyment of the defendant in his property, a panchayat was held before the village elders. In the said panchayat, the plaintiff and the defendant agreed that the front portion of the property in R.S.No.210/4 measuring to an extent of 17 and ½ ft into 31 ft in which the defendant had put up a thatched house has to be enjoyed by the defendant and the top portion in the south of the thatched house has to be enjoyed by the plaintiff and the remaining bottom portion has to be enjoyed by the defendant. The plaintiff also paid a sum of Rs.500/- to the defendant since the defendant allowed the plaintiff to enjoy some fts in the top portion of the property. The said agreement was reduced into writing in the presence of panchayathars and signed before the witnesses. As such, the plaintiff put up the thatched shed in the southern portion of the property and the remaining portion lying further south is left vacant. The defendant is in possession and enjoyment of the front portion of the property from the year 1986 when the father of the defendant put up a thatched house. The plaintiff has put up the thatched shed only in the year 1996 after the said agreement was entered in the presence of panchayatars. Moreover, the plaintiff is residing only in the



S.A.No.995 of 2015

south of the house of the defendant. The defendant is also in possession of 1 and ½ cents which lies south of the plaintiff's house. The above two portions are shown as a single property in Natham New S.No.310/ 2009 and patta also stands in the names of the plaintiff and the defendant. When the defendant tried to put up a new thatched roof, the plaintiff insisted the defendant to sell the property to him for which the defendant refused to do so. The plaintiff was never in possession of the front portion of the suit property and therefore, the relief of permanent injunction against the defendant in respect of the suit property claimed by the plaintiff is unsustainable and the suit is liable to be dismissed.

9. Based on the above averments, the trial Court framed the necessary issues and tried the suit. On the side of the plaintiff, 3 witnesses were examined as P.W.1 to P.W.3 and 3 documents were exhibited as Exs.A.1 to A.3. Similarly, on the side of the defendant, 3 witnesses were examined as D.W.1 to D.W.3 and 8 documents were exhibited as Exs.B.1 to B.8.



S.A.No.995 of 2015

10. Having considered the materials placed before him, the learned Additional District Munsif, Chidambaram, vide judgment and decree dated 23.08.2013 concluded the suit that the plaintiff is not entitled to the relief of permanent injunction. In the appeal filed by the plaintiff, the findings arrived at by the trial Court was confirmed.

11. Aggrieved over the said findings, of the first appellate Court and the trial Court, the plaintiff is before this Court with this present second appeal. When the second appeal is taken up for admission, this Court formulated the following substantial questions of law.

"1. Whether the Courts below were right in relying only on the joint patta issued by the Government to come to the conclusion that the defendant is also in possession of the suit property?"

2. When the defendant has claimed that he is in possession of a portion of a suit property, whether the Courts below were right in dismissing the suit in entirety as though the plaintiff is not in possession of any portion of the suit property ?"



S.A.No.995 of 2015

12.Heard, Mr.R.BaharthKumar, the learned counsel appearing on behalf of the appellant/plaintiff, Mr.A.Muthukumar, learned counsel appearing on behalf of the respondent/defendant and perused the materials available on record.

Substantial question of law Nos.1 & 2

13.The learned counsel appearing for the appellant/plaintiff would contend that the Courts below failed to take note of the settled principles of law that patta will not confer title to the party and patta is not the conclusive evidence for possession and therefore, placing reliance upon Ex.B.6 and B.7 and coming to the conclusion that the defendant is in possession of the property in dispute, is highly erroneous and unsustainable in law. The Courts below failed to consider Ex.A.2, a registered sale deed in favour of the plaintiff in respect of the suit property, which is an ancient document and ought to have decreed the suit for injunction. The trial Court erred in relying upon Exs.B.2 and B.5 Tax receipts and erroneously came to the conclusion that the defendant is in possession of the disputed property.



S.A.No.995 of 2015

14. Per contra, the learned counsel appearing for the respondent/defendant would contend that the plaintiff was never in possession of the disputed portion of land and he would further submit that for the relief of injunction, the plaintiff has to make out his case that he is having right over the disputed land and also the plaintiff has to prove that he alone is in possession of the disputed land. Moreover, the Courts below have rightly concluded that the defendant is alone in possession of the disputed portion based on the joint patta issued in the name of the plaintiff and the defendant. Therefore, the second appeal filed by the plaintiff is liable to be dismissed.

15.I have considered the submissions made on either side.

16.It is not in dispute, the plaintiff is the owner of property in S.No.210/4 measuring to an extent of 2 and $\frac{1}{4}$ cents (17 and $\frac{1}{2}$ ft at the top and 50 to 52 ft at the bottom) . The specific case of the defendant is that the said portion lies to the south of the property purchased by the father of the defendant in the same Survey number (R.S.No.210/4) measuring to an



S.A.No.995 of 2015

extent of 2 $\frac{3}{4}$ cents (17 and $\frac{1}{2}$ ft top X 68 ft at the bottom). However, in the sale deed of the defendant the boundaries were wrongly mentioned as if the plaintiff's property lies on the 'west of Thaiyalnayagi property (vendor of the defendant) instead of south of Thaiyalnayagi property and west of Subramaniya pillai property. Taking advantage of this the plaintiff is trying to grab the property of the defendant.

17. Admittedly, the plaintiff has purchased the property in R.S.No.210/4 dated 11.02.1985 under Ex.A.1 sale deed. According to the defendant, the defendants' father namely Kaliyaperumal purchased the top front portion of the property in R.S.No.210/4 to an extent of 2 $\frac{3}{4}$ cents under Ex.B.2- sale deed in which a thatched house was put up in the year 1985 itself. The sale deed of the plaintiffs' vendor namely Thillainayagam Pillai which is a parent document is marked as Ex.A.2 and the house tax receipts of the said Thillainayagam Pillai is marked as Ex.A.3. On the other hand, the defendant has relied upon Exs.B1 to B.8 to establish his possession in the disputed portion.



S.A.No.995 of 2015

18. On perusal of records, it is seen that though the plaintiff under Ex.A.1 sale deed has purchased the property to the extent of 9 ft East West and 117 ft North South, in Ex.A.2, the sale deed of his vendor, it is found that only an extent of 4 and ½ ft East West was purchased by his vendor. Therefore, the above discrepancy in the extent of the property purchased by the plaintiff from his vendor Thillainayagam Pillai would indicate that the vendor of the plaintiff had sold the property beyond the extent purchased by him under Ex.A.2-sale deed. Moreover, the contention of the plaintiff is that he had left the front portion as vacant site. Where as, the Revenue records marked as Exs.B.3, B.5, B.6, B.7 & B.8 would reveal the existence of a house in the front portion of the plaintiffs' house. Above all, a joint patta (Ex.B.7) is also issued in the name of the plaintiff and the defendant. Therefore, the contention of the plaintiff that he is in possession and enjoyment of the entire suit property cannot be accepted. Moreover, the alleged compromise agreement (Ex.B.4) entered between the plaintiff and the defendant was spoken by P.W.3, who stood as witness to the said agreement. Though, the same is inadmissible in evidence since it is an unregistered document, it can be relied upon for collateral purpose to



S.A.No.995 of 2015

establish possession. Likewise, the sale deed marked as Ex.B.2 in favour of the father of the defendant, though not registered, can be looked into for collateral purpose to ascertain the possession of the defendant in the disputed land. Since it is a suit for the relief of bare injunction, it has to be seen only whether the plaintiff was in possession on the date of filing of the suit. Though, the plaintiff claims East West 9 ft and North South 117 ft, the sale deed in favour of his vendor shows only East West 4 and ½ cent and for the remaining portion there is no anterior title deed in favour of the plaintiff. On the other hand, the defendant has established his possession in the suit property not only relying upon the joint patta issued in the name of the plaintiff and the defendant in R.S.210/4, also produced the photographs, house tax receipts and kist receipts to establish his possession in the disputed portion. Apart from that, the Courts below have rightly held that Ex.B.2 sale deed and Ex.B.4 compromise agreement though not registered can be looked into for collateral purpose to ascertain the possession of the defendant in the disputed land. Moreover, Ex.B.7 joint patta to the suit property issued in the name of the plaintiff and the defendant in the year 1991 itself. However, the plaintiff has filed the above suit only in the year 2011. If really the plaintiff



S.A.No.995 of 2015

is in possession of the entire suit property, he would have raised his objection before the Revenue Officials for issuing a joint patta in the name of the plaintiff and the defendant in respect of the suit property. Though it is settled law that patta do not confer title on a party, when it is a suit for bare injunction, the same can be relied upon for proving the possession of a party. Moreover, the Courts below not only placed reliance on the joint patta issued by the Government, also relied upon other documents marked on the side of the defendant to conclude that the defendant is in possession of the disputed portion in the property. The legal position, therefore, is clear that the plaintiff in a suit for injunction could succeed only on the strength of adducing sufficient evidence to discharge his onus, irrespective of the question whether the defendants have proved their case or not. The plaintiff has to show that his predecessors had title and possession over the property in question and it is that property which the plaintiff has purchased. The only document that has been produced before the Court was the sale deed in favour of the plaintiff. Whereas, the vendors sale deed would go to show a lesser extent. This would cause doubt about the title and possession of the plaintiff over the suit land in question.



S.A.No.995 of 2015

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19. In such circumstances, I am of the view that the plaintiff has not succeeded in establishing his possession of the suit land in question. Furthermore, this Court is unable to find any definite finding as to the physical possession of plaintiff in respect of the entire suit property. Even though, the defendant admitted that the plaintiff is in enjoyment of 21/4 cents (17 and 1/2 ft at the top and 50 to 52 ft at the bottom) of land, the suit property is not described with reference to the above extent belong to the plaintiff. Since the relief of permanent injunction is sought for in respect of the whole property including the property of defendant, the plaintiff cannot be granted any relief. Therefore, having regard to the discussion above, this Court finds no merit in the appeal particularly having regard to the findings of the lower Appellate Court and the trial Court on the factual issues. This Court finds no substance in any of the substantial question of law raised, and the second appeal is liable to be dismissed.



S.A.No.995 of 2015

20. Accordingly, the second appeal is dismissed. Consequently,
connected miscellaneous petition is closed. No cost.

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vsn

Index: Yes/No

Speaking Order : Yes/No

To

1. The II Additional District and Sessions Judge, Salem.



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S.A.No.995 of 2015

K.GOVINDARAJAN THILAKAVADI,J.

vsn

PRE- DELIVERY JUDGEMENT MADE IN

S.A.No.995 of 2015

31.01.2024