



S.A.No.945 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 05.06.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

S.A.No.945 of 2021

1.S.Krishnamoorthy
2.K.Ranjith Kumar

.. Appellants

Vs

G.Ramakrishnan

.. Respondent

Prayer: This Appeal is filed under Section 100 CPC against the judgment and decree passed in A.S.No.19 of 2015 dated 29.03.2021 by the Subordinate Judge, Nagapattinam, reversing the judgment and decree passed in O.S.No.183 of 2012, dated 11.03.2015, by the District Munsif, Nagapattinam.

For Appellants : Mr.A.S.Balaji

For Respondent : No Appearance



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JUDGMENT

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1. Whether the Lower Appellate Court is right in holding that a suit for bare injunction would not suffice and the plaintiff ought to have filed a suit for declaration and injunction, when the defendant himself could not prove any claim over the suit property?

2. Whether the Lower Appellate Court is right in disregarding the revenue records, which are documents to prove possession?

2. In the suit, the appellants herein are the plaintiffs and the respondent herein is the defendant. The appellants and the respondent are referred to in the forthcoming paragraphs as per their litigative status in the suit.



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3. The suit was filed for bare injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule properties.

4. The suit schedule properties comprised of two survey numbers, namely, Survey No.41/12 and Survey No.41/19. The defendant, in his written statement, had pleaded that the suit schedule properties do not belong to the plaintiffs and therefore, the plaintiffs are not entitled for the injunction reliefs as prayed for in the suit before the Trial Court.

5. The plaintiffs had filed 8 documents, which were marked as Exs.A1 to A8; and the defendant had filed 10 documents, which were marked as Exs.B1 to B10; and the third party documents were marked as Exs.X1 and X2. On the side of the plaintiffs, two witnesses were examined, namely, the first plaintiff as PW1 and one Mr.Syed Bikin Sahib, Village Administrative Officer (VAO) as PW2. On the side of the defendant, four witnesses were examined, namely, D.W.1 to D.W.4. Mr.Syed Bikin Sahib, Village Administrative Officer, who was examined as PW2 on the side of the plaintiff, was once again examined by the defendant as DW3.



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6. The Trial Court, after giving due consideration to the pleadings and evidence available on record, has given a categorical finding that the plaintiffs have proved their possession over the suit schedule properties, as they have filed revenue records in the form of Patta (Ex.A1) and Kist receipts (Ex.A3) to prove that the first plaintiff's father is the owner of the suit schedule properties. The plaintiffs had also filed a registered Will dated 01.08.2011 (Ex.A4) executed by the first plaintiff's father (Subramanian) in favour of the second plaintiff, who is the son of the first plaintiff, to substantiate their contention that they are the owners of the suit schedule properties. The parent revenue records standing in the name of the first plaintiff's father Subramanian was also marked as exhibits, namely, Exs.A6 to A8.

7. However, the defendant pleaded that he was a lessee under Damodhara Narayana Perumal Thirukovil and he had also filed lease deeds and other documents. But, the survey numbers disclosed in the documents relied upon by the defendant are Survey Nos.41/1 and 41/2. The defendant has not produced any document disclosing that Survey Nos.41/12 and 41/19, which are the suit schedule properties, belong to



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them. No correlation certificate has been produced by the defendant to prove that Survey Nos.41/1 and 41/2 have been sub-divided as Survey Nos.41/12 and 41/19, which are the suit schedule properties. Mr.Syed Bikin Sahib, VAO, who was examined as PW2 on the side of the plaintiff, has also not disputed the authenticity of the documents filed by the plaintiffs. However, he was once again examined as a witness by the defendant as DW3. But, contrary to his earlier evidence, he has deposed that the plaintiffs are not in possession of the suit schedule properties.

8. The Trial Court, after giving due consideration to the documentary evidence produced by the plaintiffs in the form of revenue records, namely, Exs.A1, A3, A6 to A8, has correctly come to the conclusion that the plaintiffs are in possession of the suit schedule properties and they are entitled for the injunction reliefs as prayed for in the suit and has rightly decreed the suit in favour of the plaintiffs. The defendant, aggrieved by the findings of the Trial Court, had preferred the First Appeal before the Sub-Court, Nagapattinam in A.S.No.19 of 2015. However, the Lower Appellate Court has erroneously reversed the findings of the Trial Court, despite the fact that the plaintiffs have proved their claim through oral and documentary evidence that they are in



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possession of the suit schedule properties. The Lower Appellate Court has thereby rejected the injunction reliefs sought for by the plaintiff in the suit.

9. As seen from the findings of the Lower Appellate Court, the Lower Appellate Court has come to the conclusion that the plaintiffs are not entitled for the injunction reliefs as sought for in the suit, since, according to it, there is a cloud over the title. The said finding, on the face of materials and evidence available on record, is erroneous. When the plaintiffs have produced revenue records standing in their name and those revenue records are in force and not cancelled by any of the authorities, necessarily, the plaintiffs are treated to be in lawful possession of the suit schedule properties. The defendant has also not produced any documentary evidence to prove that Survey Nos.41/12 and 41/19, which are the suit schedule properties, are one and the same to Survey Nos.41/1 and 41/2. The Trial Court has rightly taken note of the said fact and has rightly granted injunction reliefs in favour of the plaintiffs as prayed for in the suit, as there is no iota of evidence produced by the defendant to prove that Survey Nos.41/12 and 41/19, which are the suit schedule properties, are one and the same to Survey Nos.41/1 and



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41/2. When there is no cloud over the possession of the suit schedule properties by the plaintiffs, which are supported by documentary evidence in the form of revenue records, the Lower Appellate Court, by total non-application of mind to the documentary evidence available on record, has given an erroneous and perverse finding by holding that there is a cloud over the possession of the suit schedule properties by the plaintiffs.

10. The Lower Appellate Court has erroneously relied upon a decision of the Hon'ble Supreme Court in Anathula Sudhakar Vs. Buchi Reddy and others [AIR 2008 SC 2033]. The said decision has no applicability to the facts of the instant case. Here is a case, where the suit is filed for bare injunction to restrain the defendant from interfering with the peaceful possession and enjoyment of the suit schedule properties of the plaintiffs. The question involved in this suit pertains to possession alone and does not relate to a dispute involving title. When the plaintiffs have produced documentary evidence to prove their legal possession, the defendant, if at all he has any right over the subject properties, can claim possession from the plaintiffs only by following the due procedure established under law.



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11. The Lower Appellate Court, while giving its erroneous finding, has also put the burden of proof on the plaintiffs to establish that it is the bounden duty of the plaintiffs to prove that Survey Nos.41/1 and 41/2 are different from Survey Nos.41/12 and 41/19. When the revenue records have been produced by the plaintiffs to prove that the plaintiffs are in possession of Survey Nos.41/12 and 41/19, the plaintiffs have discharged their burden of proving that they are in possession of the suit schedule properties and there is no necessity for them to file any document to prove that Survey Nos.41/12 and 41/19 are different from Survey Nos.41/1 and 41/2. By total non-application of mind to the evidence available on record, the Lower Appellate Court has reversed the findings of the Trial Court. Therefore, the substantial questions of law formulated by this Court at the time of admission of the Second Appeal has to be answered in favour of the appellants by holding that the Lower Appellate Court has given an erroneous and perverse finding that the plaintiffs are not entitled for bare injunction. This Court, therefore, holds that the plaintiffs are entitled for the injunction reliefs as prayed for in the suit and the Second Appeal will have to be allowed as prayed for.



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12. For the foregoing reasons, the impugned judgment and decree passed by the Lower Appellate Court in A.S.No.19 of 2015, dated 29.03.2021, is set aside and the judgment and decree passed by the Trial Court in O.S.No.183 of 2012, dated 11.03.2015, is hereby confirmed. In the result, the Second Appeal is allowed. No Costs.

05.06.2024

Index: yes/no
Neutral citation: yes/no
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ABDUL QUDDHOSE,J.

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To

1.District Munsif Court,
Nagapattinam.

2.Sub-Court,



Nagapattinam.

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