



S.A.No.178 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.178 of 2017 and
C.M.P.No.3760 of 2017

M.Subramani
Appellant

...

Vs.

1. Pushpaveniammal
2. Girija
Respondents

...

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.12.2016 passed in A.S.No.57/2015, on the file of the Sub Court, Arakkonam upholding the decree and judgment dated 15.09.2015 passed in O.S.No.207/2007, on the file of the District Munsif, Arakkonam.

For Appellants : Mr.G.Jeremiah

For Respondents : Ms.R.Arthi

JUDGMENT

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

Page 1 of 13



S.A.No.178 of 2017

WEB COPY

2. The plaintiff filed the suit in O.S.No.207/2007 before the District Munsif, Arakkonam, for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property, morefully described in the plaint as a dry land measuring an extent of 0.88.0 hects (2.18 Acres) in Survey number 339/3 of Kilandur village, Arakkonam Taluk, Vellore District.

3. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The suit property which is a self acquired property of the plaintiff's father Munusamy Maistry, was settled in favour of the plaintiff through a registered settlement deed, dated 24.12.2001 (Ex.A1) and eversince the date of settlement, the plaintiff has been in continuous possession and enjoyment of the same. The plaintiff's father filed a suit



S.A.No.178 of 2017

in O.S.No.163/1991 against the relatives of the first defendant in respect of the same property before the District Munsif Court, Arakkonam and the said suit was decreed in his favour. However, the defendants have been interfering with the plaintiff's possession over the suit property. The plaintiff's father has been issued Patta in respect of the suit property and thereafter the plaintiff was also issued a separate Patta. Thus the plaintiff has been in continuous possession and enjoyment of the suit property. Hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. Originally the suit property was a Government land. On 06.04.1977, the Special Tahsildar, Ranipet Division issued a patta bearing number 1042 in favour of the first defendant vide his proceedings in D.K.126/86 (Ex.B1).
- ii. The first defendant has been in possession and enjoyment of the suit property.
- iii. The first defendant had also dealt with the property by mortgaging



S.A.No.178 of 2017

the same with Primary Cooperative Agricultural & Rural Development Bank, Arakkonam.

iv. Since the first defendant is the absolute owner of the suit property, the suit filed by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings, the Trial Court framed the following issues:

- i. *Whether the suit property is the self acquired property of the plaintiff's father?*
- ii. *Whether the contention of the defendants that the suit property was assigned in his favour, is correct?*
- iii. *Whether the plaintiff is entitled for a permanent injunction based on the Settlement deed, dated 24.12.2001 (Ex.A1)?*
- iv. *To what relief the plaintiff is entitled?*

7. In the Trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A8. The defendants examined themselves and one another witness and marked Ex.B1 to Ex.B11.



S.A.No.178 of 2017

WEB COPY

8. After full contest, the learned Trial Court Judge, vide his decree and judgment dated 15.09.2015, dismissed the suit filed by the plaintiff on the following grounds:

- i. In the settlement deed, dated 24.12.2001 (Ex.A1), it is stated that the suit property is the self acquired property of the plaintiff's father Munusamy Maistry.
- ii. However, the parent documents have not been filed by the plaintiff.
- iii. The defendants have filed a copy of the sale deed, dated 19.05.1980 executed in favour of the plaintiff's father by one Kannammal and others (Ex.B10).
- iv. The parent document of Ex.B10 was marked as Ex.B9.
- v. In both Ex.B9 and Ex.B10, the suit property has not been indicated.
- vi. The plaintiff's father has not been issued any separate Patta in respect of the suit property.



S.A.No.178 of 2017

WEB COPY

- vii.A perusal of Ex.B1 clearly shows that the Special Tahsildar, Ranipet division has assigned Patta in favour of the first defendant.
- viii.The plaintiff has not also proved his possession over the suit property by adducing acceptable evidence.

9. Aggrieved over the decree and judgment passed by the Trial Court Judge, the plaintiff filed an appeal in A.S.No.57/2015 before the Sub Court, Arakkonam. The learned Sub Judge, Arakkonam, on considering the oral and documentary evidence adduced on both sides, upheld the findings recorded by the Trial Court, vide her decree and judgment dated 09.12.2016, as against which the present second appeal is filed.

10. The second appeal was admitted by this Court on 02.03.2017 on the following substantial questions of law:

- i. *Whether the Judgments of the Courts below are vitiated, that they have failed to take in to account the admission of D.W.1 that the suit property is a patta land distinct from*



S.A.No.178 of 2017

WEB COPY

the poramboke land in her possession?

ii. When the defendants have resisted the suit that the property in their possession is a poramboke property, whether they have discharged the burden by placing reliance to show such classification is on record?

11. Heard Mr.G.Jeremiah, learned counsel for the appellant and Ms.R.Arthi, learned counsel for the Respondents.

12. Mr.G.Jeremiah, learned counsel for the appellant contended that the plaintiff has not pleaded in the plaint that his father purchased the suit property from Kannammal and others and therefore both the Courts below were wrong in relying on the sale deeds Ex.B9 and Ex.B10. It is his further contention that the first defendant has not proved her title and possession over the suit property and the assignment Patta (Ex.B1) is also not a genuine document. He relied on the decision in ***Shivshankara & Anr vs. H.P.Vedavyasa Char*** reported in ***2023 LiveLaw (SC) 261*** and contended that when the facts disclose no title in either party, at the



S.A.No.178 of 2017

relevant time, prior possession alone would decide the right of possession of land. His specific contention is that since the plaintiff has proved his continuous possession over the suit property, possession follows title. He therefore prayed for allowing the second appeal.

13. Per contra, Ms.R.Arthi, learned counsel appearing for the Respondents contended that both the Courts below by well reasoned judgments had dismissed the suit filed by the plaintiff and therefore, there is no reason for this Court to interfere with the concurrent findings recorded by both the Courts below.

14. The plaintiff has filed the present suit in O.S.No.207/2007 seeking permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. In order to prove his possession over the suit property, the plaintiff relies on the Settlement deed, dated 24.12.2001 (Ex.A1) executed by his father Munusamy Maistry. In the settlement deed, it is stated that Munusamy



S.A.No.178 of 2017

Maistry purchased the property from one Kannammal, wife of Pattabiraman, Kalavathi wife of V.R.Ramani and her minor son Rajesh through a registered Sale deed bearing document number 946/1958. However, the plaintiff has not filed this document either before the Trial Court or before the first appellate Court. However, the defendants have filed a copy of this sale deed as Ex.B10.

15. A perusal of Ex.B10 shows that Kannammal and Kalavathi and her minor son, Rajesh have sold the property in Survey numbers 339/2 measuring an extent of 3.54 cents in favour of Munusamy Maistry. The parent document of Ex.B10 was marked as Ex.B9. A careful perusal of these two documents would clearly show that the suit property was not conveyed to the plaintiff's father by Kannammal and others as mentioned in the Settlement deed (Ex.A1). The plaintiff also relied on the Patta pass book (Ex.A2) issued in his favour and Patta pass book (Ex.A3) issued in favour of his father by the Special Tahsildar, Arakkonam to show his possession over the suit property. A perusal of Ex.A3 shows that a joint patta was issued in respect of the land in survey number 339/3. A



S.A.No.178 of 2017

separate patta has not been issued in favour of the father of the plaintiff in respect of the suit property. In the circumstances, it is not known as to how the patta (Ex.A2) was issued in favour of the plaintiff in respect of the suit property. In any event, Patta is not a document of title. Though it is contended by the plaintiff that the suit property is an agricultural land, he has not filed the adangal extract to show that he has been cultivating the suit property. Thus, he has not proved his possession over the suit property.

16. A perusal of Ex.B1 shows that the suit property was assigned in favour of the first defendant by the Special Tahsildar, Ranipet Division vide his proceedings in D.K.126/86, dated 06.04.1977. However, according to the counsel for the appellant, Ex.B1 is not a genuine document since the Tahsildar who was examined as D.W2 had deposed that D.K.126/86 denotes fasli year. However, it is seen from the records that based on the assignment patta (Ex.B1), the defendants have mortgaged the suit property with the Primary Cooperative Agricultural & Rural Development Bank, Arakkonam. The first defendant was also



S.A.No.178 of 2017

WEB COPY

assigned separate Patta number 1042 in respect of the suit property (Ex.B3). Adangal extract (Ex.B4) shows that the first defendant has been cultivating groundnut in the suit property from the year 2007. Thus the defendants have been in continuous possession over the suit property. When the defendants have denied the title of the plaintiff by adducing acceptable evidence, the plaintiff did not take any steps to amend the plaint seeking for the relief of declaration of his title over the suit property. Both the Courts below have analysed the evidence on record in the right perspective and by no stretch of imagination, the observations made by both the Courts below can be termed as perverse. Therefore, the substantial questions of law are answered against the appellant.

17. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. The decree and judgment dated 09.12.2016 passed in A.S.No. 57/2015, on the file of the Sub Court, Arakkonam and the decree and judgment dated 15.09.2015 passed in O.S.No.207/2007, on



S.A.No.178 of 2017

WEB COPY

the file of the District Munsif, Arakkonam, are upheld.

iii. The suit in O.S.No. 207/2007, on the file of the District Munsif, Arakkonam is dismissed with costs.

09.12.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vum

To

1. The Sub Court, Arakkonam.
2. The District Munsif, Arakkonam District.
3. The Section Officer, VR Section,
Madras High Court, Chennai.

R. HEMALATHA, J.



WEB COPY



S.A.No.178 of 2017

vum

SS.A.No.178 of 2017 and
C.M.P.No.3760 of 2017

09.12.2024