



S.A.No.5 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.5 of 2019
and
C.M.P.No.29 of 2019

1.Arokiasamy

J.Thomas (Deceased)

2.Devasagayam

3.Pounal

4.Gunasekaran

5.Gnanasekaran

6.Sulochanadevi

7.Rajendran

8.Rajathi

9.Arulselvi

10.Kanigai Mary

11.Suresh Kumar

.. Appellants

Vs.



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T.Thamilarasan

.. Respondent

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Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree, dated 31.07.2013, in A.S.No.5 of 2013 passed by the learned Subordinate Judge at Perundurai, Erode District in confirming the judgment and decree, dated 09.01.2004, in O.S.No.64 of 2003 passed by the learned District Munsif – cum – Judicial Magistrate at Perundurai, Erode District.

For Appellants : Mr.S.Annakkodi

For Respondent : Ms.G.Lavanya
for Mr.T.Sai Krishnan

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the learned Subordinate Judge at Perundurai in A.S.No.5 of 2013, dated 31.07.2013, in confirming the judgment and decree of the Court of the learned District Munsif – cum – Judicial Magistrate at Perundurai in O.S.No.64 of 2003 dated 09.01.2004.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. The suit in O.S.No.64 of 2003 is one for permanent injunction



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restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property situated at Pallapalayam Village in S.F.No.1044/3 to an extent of 459 Sq.mts.

4. The claim of the plaintiff is neat and simple. According to him, the property was a Government property for which he had been benefited with a Patta on 31.05.1993. Since the defendants were residing elsewhere, they have no right, title and interest over the property. They wanted to purchase the property which had been allotted to the plaintiff and since he refused, they became enraged, and attempted to demolish the plaintiff's property on 18.04.2003. With great difficulty, the plaintiff prevented them from indulging in any illegal acts, and left with no other alternative, he had presented a suit for injunction based on the Patta granted to him on the aforesaid date.

5. The defendants were served with the summons, and they filed a common written statement.

6. They would plead that the suit schedule mentioned property had



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been originally occupied by their father one Jeevanandam. According to them, Jeevanandam had five sons, namely (1) Themothan, (2) Joseph, (3) Thomas, (4) Devasagayam and (5) Jayaraj. They would accept that the plaintiff is the 1st son of Themothan, and Themothan had another son, namely Anbalagan.

7. Further, Joseph had passed away leaving behind his son Arokiasamy, who is the 1st defendant. Similarly, Thomas and Devasagayam, who are the junior paternal uncles of the plaintiff, are the 2nd and 3rd defendants. They would plead that the property, which was under the occupation of Jeevanandam, was divided into five equal parts, and separate Pattas had been issued for each of the sons of Jeevanandam as per their enjoyment. The property in S.F.No.1044/3-A was allotted to Jayaraj, the property in Survey No.1044/3-B was allotted to the 1st defendant's father/Joseph, the property in Survey No.1044/3-C was allotted to the 2nd defendant/Thomas, and the property in Survey No.1044/3-D was allotted to the 3rd defendant/Devasagayam.

8. They would plead that the suit property is a vacant land, and the



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plaintiff is actually residing in the thatched house belonging to the 1st defendant. As the plaintiff had defaulted in payment of rents, the 1st defendant demanded him to pay the same. Hence, the plaintiff had come forward with the present suit.

9. On the basis of these pleadings, the learned trial Judge framed the following issues :

“1. Whether the plaintiff is residing in the thatched shed put up in the suit property for 30 years?

2. Whether the suit property is a vacant site as contended by the defendants?

3. Whether the plaintiff is entitled to the Permanent Injunction prayed for?

4. To what other relief, the plaintiff is entitled to? ”

10. On the side of the plaintiff, he examined himself as P.W.1, and one other witness as P.W.2. He filed three exhibits on his end, namely Ex.A1 which is the Patta dated 31.05.1993, Ex.A2 and Ex.A3 which are the notices that were issued by the Special Tahsildar at Perundurai for



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conducting an enquiry for grant of Patta on 21.05.1993 and 24.05.1993.

Originally, on the side of the defendants, no documents were filed. However, the 1st defendant examined himself as D.W.1, and the brother of the plaintiff/Anbalagan was examined as D.W.2. In his deposition, D.W.2 stated as follows :

“ 1044/3 என்பது வாதிக்கு பாத்தியப்பட்ட இடம் தான். அந்த இடத்தில் வாதி தமிழரசன் தான் அனுபவித்து வருகிறார். ”

11. The learned Judge came to the conclusion that as the defendants had admitted the possession of the plaintiff, the plaintiff is entitled for a decree of an injunction. Aggrieved by the decree, the defendants took the matter on appeal.

12. The learned Subordinate Judge at Perundurai allowed the appeal after receiving Ex.B1 to Ex.B9. He allowed the appeal, and dismissed the suit on 29.11.2005.

13. Aggrieved by the said judgment and decree of the lower appellate



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Court, a Second Appeal was preferred to this Court in S.A.No.821 of 2006.

This Court taking note of the fact that the appeal had been allowed without following the due procedure under Order XLI Rule 27 and Order XLI Rule 28 of the Code of Civil Procedure, set aside the decree of the lower appellate Court, and remitted the matter for a fresh disposal in accordance with law.

14. On remand, the lower appellate Court exercising the power under Order XLI Rule 27 of the Code of Civil Procedure remitted the matter for recording of evidence before the learned District Munsif – cum – Judicial Magistrate at Perundurai. He called upon the learned District Munsif to record the evidence with regard to Ex.B1 to Ex.B9, and gave an opportunity to the plaintiff for cross examination, and directed the District Munsif to send the material records back to the Court on or before 24.07.2012. The matter was yet again taken up on 02.04.2013, and on that day, it was recorded that the report of the learned District Munsif – cum – Judicial Magistrate, Perundurai had been received by the appellate Court. At that stage, an objection seems to have been taken by the learned counsel for the appellant that the Courts in Erode have lost jurisdiction on account of the fact that new Sub Court had been created at Perundurai.



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15. On a joint memo being filed by the appellant and the respondent on 12.04.2013, the case stood transferred from the file of the learned Subordinate Judge at Erode to the file of the learned Subordinate Judge at Perundurai.

16. After hearing both sides, the learned Subordinate Judge at Perundurai came to the conclusion that the judgment and decree of the Court below deserved to be confirmed, and accordingly, dismissed the appeal on 31.07.2013. Against this judgment and decree, the present Second Appeal has been presented before me.

17. This Second Appeal was admitted on 04.01.2019 on the following substantial questions of law :

“ 1. Whether the Courts below are correct in decreeing the suit on the basis of Ex.A.1 which has been subsequently cancelled and new Pattas have been issued in Ex.B.1 to Ex.B.2?

2. Whether injunction can be granted on the basis of admission of



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D.W.1 without any documents filed by the plaintiff to prove possession except Ex.A.1?

3. Is it not Ex.A.1 invalid in view of subsequent sub-division and granting of patta including Plaintiff in Ex.B.1 to Ex.B.9? ”

18. On service of summons, the respondent/plaintiff had engaged the services of Mr.T.Sai Krishnan.

19. When the matter came up before me on 19.06.2024, the learned counsel on either side submitted that the original records have not been received. They had pleaded that the original records are necessary because the lower appellate Court had given a finding that Ex.B1 to Ex.B9 are all subsequent to the suit, namely it had been issued after 23.04.2003. Since this objection was taken, I have called for the records which had been marked before the lower appellate Court.

20. On receipt of the records, today, I heard Mr.S.Annakkodi, appearing on behalf of the appellants and Ms.G.Lavanya, for Mr.T.Sai



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Krishnan, appearing on behalf of the respondent.

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21. Mr.S.Annakkodi would submit that the lower appellate Court had failed to appreciate that Ex.B1 to Ex.B4 are all prior to the suit, and they would show that the defendants are in possession of their respective shares to an extent of 123 Sq.mts corresponding to 3 cents each. He would state that since the defendants have proved that they are in possession of the property on the date of presentation of the plaint, the plaintiff is not entitled for a decree for the entire extent as sought by him. He would explain the admission made by D.W.2 that it is not as if the admission meant the plaintiff is in possession of the entire extent of property in Survey No.1044/3, but that the defendants do not have any objection for the plaintiff being in possession of the area allotted to him.

22. Ms.G.Lavanya would submit that before the trial Court, the plaintiff had produced Ex.A1 to Ex.A3 to substantiate his possession. On the contrary, apart from the oral evidence that had been let in by the defendants, they have not filed even a shred of record to substantiate their case. She would draw my attention to the evidence of D.W.1 and D.W.2 to state that



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the defendants themselves had admitted to the possession of the plaintiff and therefore, nothing further need to be proved by her client. She would state that the lower appellate Court had rightly appreciated the evidence under Ex.B1 to Ex.B9, and therefore, the judgment of the Courts below do not require any interference by this Court.

23. I have carefully analyzed the records and considered the submissions on either side.

24. The suit is one for permanent injunction. The burden of proof is on the plaintiff to show that he was in lawful possession of the property on the date of presentation of the plaint. The records filed by the plaintiff only points out that on 31.05.1993, after an enquiry that had been conducted under Ex.A2 and Ex.A3, the plaintiff had been benefited with a Patta. A careful perusal of Ex.A2 and Ex.A3 would show that the defendants had not been put on notice to the said enquiry. Therefore, while the revenue records point out to the possession of the plaintiff with respect to the extent of S.F.No.1044/3 in the year 1993, there is no evidence that had been presented by the plaintiff that he was in possession of the property on



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23.04.2003/the date of presentation of the plaint. If the plaintiff continued to be in possession of the vacant land, there would have been some records like Chitta or Adangal in order to substantiate his case.

25. Now, let me test the case of the defendants.

26. The defendants though did not file any documents pending the trial. With the permission of the lower appellate Court, they took out the applications in I.A.Nos.86 and 303 of 2005 in terms of Order XLI Rule 27 of the Code of Civil Procedure. These documents had been received by the appellate Court when it originally allowed the appeal on 29.11.2005. As the procedure had not been followed in terms of Order XLI Rule 28 of the Code of Civil Procedure, the judgment and decree based on these additional documents were set aside by this Court, and the matter was remitted to the lower appellate Court for the purpose of giving opportunity to the plaintiff to cross examine the defendants on the same.

27. A perusal of the proceedings as found in the Appellate Court's grounds of appeal would show that in obedience to the order of this Court,



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an opportunity was, infact, granted to the plaintiff to cross examine the defendants on Ex.B1 to Ex.B9. The plaintiff availed this opportunity by cross examining the 1st defendant before the District Munsif - cum - Judicial Magistrate at Perundurai. Therefore, the submission of Ms.G.Lavanya that the lower appellate Court had straightaway received the documents is erroneous. In fact, as pointed out by me, her client succeeded on this point before this Court, and it was at her instance, the matter was remitted on 22.03.2007 for a fresh disposal. Having availed an opportunity for cross examining the defendants on these documents, it is now not open to the plaintiff to turn around and say that the lower appellate Court ought not to have received the documents.

28. Now turning to the merits of Ex.B1 to Ex.B9. The learned first appellate Judge came to the conclusion that those documents had come into effect after the presentation of the plaint. When I went through the originals, I find that the Revenue Tahsildar at Perundurai had issued a “மானாவாரி பட்டா” in Form No.IV on 03.09.2001. Ex.B1 shows that the Patta for subdivided property in Survey No.1044/3-B to an extent of 123 Sq.mts had been issued in favour of Joseph. On the same day, Devasagayam had been



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benefited with a Patta for Survey No.1044/3-D, and Thomas had been benefited with a Patta for Survey No.1044/3-C. The corresponding Chitta had been issued under Ex.B4, Ex.B6 and Ex.B8. The Adangal for the property had been marked under Ex.B5, Ex.B7 and Ex.B9. The lower appellate Court had seen the date on which the Village Administrative Officer had issued the certified copies of the Chitta, and took it as the date of the document. The certified copies had been issued on several dates in August 2004. However, if the documents are perused, it would become clear that the changes had been carried out as per TK.8A/45/1411, dated 29.09.2001. Therefore, the conclusion of the lower appellate Court that the documents that had been produced are all after suit documents is a perverse finding.

29. The certified copies of the documents had been produced from the proper custody of the Village Administrative Officer, and the certified copies had been issued in the year 2004, whereas, the document itself had come into force in the year 2001. While marking the exhibits as against the documents that had been produced by the plaintiff in the year 1993, the defendants were in a position to produce the documents of the year 2001.



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Therefore, the conclusion of the lower appellate Court that since the plaintiff has produced Patta for the entire extent, the defendants' documents are of no use, is a conclusion that requires interference. I am of the view that the defendants have convincingly produced evidence before the Court that they are in possession of the property situated in Survey Nos.1044/3-B, 1044/3-C and 1044/3-D. By these documents, the Patta that was granted in favour of the plaintiff under Ex.A1 has stood modified. I am able to visualize that the plaintiff is in occupation of the portion other than the portions covered under the aforesaid documents. Therefore, his plea that he is entitled for an injunction for the entire extent of Survey No.1044/3 as accepted by the Courts below have to be interfered with and accordingly, it is being interfered.

30. In fine, the substantial questions of law are answered in favour of the appellants and as against the respondent. The judgment and decree of the Courts below in A.S.No.5 of 2013, dated 31.07.2013, in confirming the judgment and the decree of the Court of the learned District Munsif – cum – Judicial Magistrate at Perundurai in O.S.No.64 of 2003, dated 09.01.2004, are set aside.



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31. The suit in O.S.No.64 of 2003 though seeks for entire relief of 12 cents will stand dismissed except to the extent of 3 cents under the occupation of the plaintiff. The defendants shall not interfere with the possession of the plaintiff to an extent under his occupation in the aforesaid survey number.

32. Accordingly, the Second Appeal stands partly allowed. As the parties come from socially and economically weaker section, I am not inclined to impose any costs. The connected Civil Miscellaneous Petition is closed.

03.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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To

- 1.The learned Subordinate Judge at Perundurai,
Erode District
- 2.The learned District Munsif – cum – Judicial Magistrate,
Perundurai, Erode District

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and
C.M.P.No.29 of 2019

03.07.2024