



S.A.(MD).No.135 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 23.07.2024

DELIVERED ON : 25.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.135 of 2024

N.P.Palaniyappan ... Appellant/Appellant/Plaintiff

Vs.

V.Palaniyappan ... Respondent/Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed by the learned Additional Sub Court, Pudukkottai, dated 17.11.2021 made in A.S.No.18 of 2018, by which, confirming the judgment and decree made in O.S.No.68 of 2010, dated 16.12.2016, on the file of the learned District Munsif Court, Thirumayam.

For Appellant : Mr.R.Paranjothi

For Respondent : Mr.Mahaboob Athiff Rameez



S.A.(MD).No.135 of 2024

JUDGMENT

WEB COPY

This appeal has been filed against the Judgment and Decree passed by the learned Additional Sub Court, Pudukkottai, dated 17.11.2021 made in A.S.No.18 of 2018, by which, confirming the judgment and decree made in O.S.No.68 of 2010, dated 16.12.2016, on the file of the learned District Munsif Court, Thirumayam.

2.The averments of the plaint in brief:

A suit in O.S.No.68 of 2010 was filed by the appellant herein against the respondent seeking a decree of permanent injunction and for costs.

2.1. It is the plaint averment that the suit property originally belongs to plaintiff's mother Chittal @ Valliammai. She put up thatched houses in the property and living by paying the taxes, etc., for about several years. She died leaving behind the plaintiff as her sole legal heir. He inherited the property and continued in possession. Patta was also issued in his favour. Around 2003, the house became dilapidated. So he shifted his residence to his maternal grandfather's house. The defendant is having property adjacently and has no right or possession over the



S.A.(MD).No.135 of 2024

plaintiff's property. He tried to put up toilet in the property on 29.03.2010. That was prevented. Hence, the suit.

3.Statement was filed by the defendants with the following averments:

It is denied that the suit property belongs to the plaintiff by inheritance through his mother. The plaintiff's mother's name is Parvathi. Actually, the property was enjoyed by the defendant's family for several years. During natham settlement, patta was issued in the name of the defendant's wife namely Valliammai in patta No.786 measuring about 0.07.5 ares in natham survey No.836/4, old survey No.608. Against the same, the plaintiff, without knowledge of the defendant and his wife, changed patta in his name on 25.07.2006. The Tahsildar, who changed the patta has no jurisdiction or power. Only the Revenue Divisional Officer is the competent authority. He put up toilet and bath room in the property and enjoying the same. The name of the plaintiff's father is also disputed. He wantonly stated that his mother's name is chittal @ Valliammai.



S.A.(MD).No.135 of 2024

WEB COPY

4. On the basis of the pleadings of the parties, the trial Court formulated two issues.

1. Whether the plaintiff is in lawful possession of the suit property?
2. Whether the plaintiff is entitled for the relief of permanent possession?

5. On the side of the plaintiff he himself was examined as PW1. 9 documents were marked. On the side of the defendant 2 witnesses were examined and 7 documents were marked.

6. At the conclusion of the trial process, the trial Court has recorded finding that the plaintiff has not established the possession and right over the property and consequently dismissed the suit with costs. Against which, appeal was preferred by the appellant before the appellate authority namely Additional Sub Judge, Pudukottai in A.S.No.18 of 2019. The appellate authority also concurred with the judgment and decree of the trial Court and accordingly, dismissed the appeal, of course recording a finding that the plaintiff has not taken any steps to amend the



S.A.(MD).No.135 of 2024

plaint seeking declaratory relief. No cost was imposed.

WEB COPY

7.Against which, this second appeal is preferred by the plaintiff/appellant. At the time of the admission, the following substantial question of law were framed.

- 1. Whether the plaintiff is bound to prove the right of him predecessor in title to get a decree of declaration within the meaning of Section 34 of the Specific Relief Act, 1963?*
- 2. Whether the judgment of the Appellate Court is sustainable when DW1 admitted about the anterior title of plaintiff predecessor in title within the meaning of Section 19 of the Indian Evidence Act, 1872?*

8.Suit is based upon the inheritance and possession. Per contra, it is the rival claim of the title and possession over the property by the defendant herein. We will straight away go to the finding recorded by the appellate Court with regard to the issue of the title. In paragraphs 24 & 25, it was held that when the title is under dispute, the appellant ought to have filed proper amendment petition, seeking declaratory relief. In spite of that specific denial made by the defendant in the written statement, no attempt was made. So the suit itself is not maintainable.



S.A.(MD).No.135 of 2024

WEB COPY

9.It is admitted on the side of the appellant that the old house become dilapidated. So he shifted his residence to his Maternal uncle's Village. So it appears that he says that on the date of his leaving the property it became vacant.

10.Per contra it is the contention on the part of the respondent that he built up toilet and bath room in that property and enjoying the same. To prove that on the date of plaint itself the property was vacant, no steps has been taken by the plaintiff by examining any one. So that failed.

11.Now coming to the main issue even in a suit for permanent injunction, courts are at liberty incidentally to go into the question of title. Now we will take that aspect into account. As mentioned above, it is the specific case of the appellant that he inherited the property from his mother Chittal @ Valliammai. But against his own pleadings, during the course of evidence, he has stated that his mother's name is Parvathi. But natham patta was granted in favour of his father's first wife Valliammai. He ought to have mentioned the same in the plaint or atleast in the course



S.A.(MD).No.135 of 2024

of evidence. But, he failed. So it is the defect in addressing of title to the property. Whether any other legal heirs are available to first wife through his father is also not known. In a suit for permanent injunction, the party who seeks the same must come to the Courts with the clean hands and give the true facts. When the plaintiff himself has contradicted with his own plaint pleadings, then it will amount to approach the Court with uncleaned hands. It was rightly recorded so by the appellate Court.

12. Another problem was taken during the course of trial. The plaintiff relied upon Ex.A6 sale deed. But that also does not tally with that of the survey number of the suit property. This is observed by the appellate court that it is pertaining to survey Nos.607, 546, 628 and 115. But, the suit property lies in survey No.836/4. No co-relation document was produced by the appellant. The old survey number also does not tally. So when addressing of title itself he flawed, I find that no amount of pleading without any evidence is of no help and the plaintiff cannot sustain the suit for permanent injunction on the basis of the title.

13. Now it is the contention on the part of the plaintiff that by



S.A.(MD).No.135 of 2024

mistake the patta granted in the name of the defendant's wife. So subsequently cancelled under Ex.A4. As stated in the preamble portion of the judgment it is the contention on the part of the defendant that without notice, the patta order was passed by the Tahsildar, who is not competent. There is a clear finding by the appellate Court that Ex.A4 was not issued after issuing notice and conducting enquiry. So Ex.A4 is also not of any help to the appellant. So on the basis of Ex.B1, the settlement patta, the appellate Court recorded a finding that the respondent got better title than that of the appellant herein. On any ground the title of the appellant has not been established, even incidentally.

14.Now coming to the possession, absolutely, no documentary evidence is placed by the appellant except Ex.A4. So it would not show the possession. The tax receipts Ex.A1 and A2 also has no value, since the plaintiff has not established the inheritance of the title over the property.

15.It is admitted by the plaintiff himself that he is owning property on the east in between that portion and the present subject property four



S.A.(MD).No.135 of 2024

houses are situated. So probably the tax receipt produced by the plaintiff under Ex.A1 and Ex.A2 would have been related to that house. But, whereas, the subject property is situated in contiguous manner with the property of the defendant. The defendant is owning house on the north and the present subject property is on the south. Now he also put up toilet. During the pendency of the suit, the defendant constructed compound wall also. So when the subject suit property is situated in contiguously with that of the defendant's property, the contention on the part of the plaintiff that they were in possession of the property continuously and the defendant tried to encroach upon the same is not established. So I find absolutely no reason to differ from the Judgment of the trial court as confirmed by the appellate Court.

16.Now Coming back to the substantial question of law, those two substantial question of law do not arise at all. Here the appellant failed to prove the proper title over the properties. The defendant has not admitted that the plaintiff's ancestors were the owners of the property. Nowhere, in the pleadings the defendant has admitted the plaintiff's ancestor's right or the predecessor in title, right over the property. As mentioned above, not



S.A.(MD).No.135 of 2024

only the trial Court, but also, the appellate Court has recorded a finding that Ex.A6 is not related to the subject property.

17.Even the appellate Court has made an observation that in a suit for permanent injunction, question of title can be gone into coincidentally or collaterally. But, for the reasons stated above, even if Ex.A6 is taken into account, the case of the appellant is not improved. So both the substantial question of law which were framed do not arise and the appeal lacks merits.

18.Accordingly, this second appeal stands dismissed with costs. The decree and Judgment passed by the trial Court as well as the appellate Court are hereby confirmed.

25.10.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The Additional Sub Court, Pudukkottai.
- 2.The District Munsif cum Judicial Magistrate, Thirumayam.
- 3.The Section Officer,

10/12



S.A.(MD).No.135 of 2024

E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

WEB COPY



WEB COPY



S.A.(MD).No.135 of 2024

G.ILANGOVAN,J.

TM

S.A.(MD).No.135 of 2024

25.10.2024