



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1015 OF 2000

R.Chinnathambi

:Plaintiff/Respondent/Appellant

.VS.

1.V.Nagan(died)

V.Chidambaram

3.V.Ramalingam(died)

4.V.Rangasamy

5.V.Karuppan(died)

6.Maragatham

7.Kasthuri

8.Balaji

9.Chinnaponnu

10.Sanmugam

11.Chandira Bose

12.Thirumani

13.Chellammal

14.Susila

15.Padmini

16.Podumponnu



17.Manimekalai

18.Manimoli

19.Manorani

20.Indirani

21.Chitra

22.Kousalya

23.Parameswaran

(Respondents 6 to 8 are brought on record as legal representatives of the deceased first respondent and respondents 9 to 16 are brought on record as legal representatives of the deceased fifth respondent as per order of this Court made in C.M.P(MD)Nos.6730 to 6735 of 2017 in S.A.No.1015 of 2000, dated 14.11.2017)

(Respondents 17 to 23 are brought on record as legal representatives of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos.5542 to 5544 of 2019 in S.A.No. 1015/2000, dated 1.4.2022)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.8 of 1998, dated 18.1.1999, on the file of Additional District Judge-cum-Chief Judicial Magistrate, Pudukkottai, reversing the judgment and decree made in O.S.No.1305 of 1993, dated 29.2.1996, on the file of Additional District Munsif Court, Pudukkottai.

For Appellant :Mr.T.PonRamkumar

For Respondents :Died
1,3 and 5

For Respondents :Mr.A.Muthukumar
2 and 4



For Respondents 6 to 16	:Mr.R.Balakrishnan for Mr.S.Poornachandran
For Respondents 17 to 20, 22 and 23	:No appearance
For Respondent-21	:Dismissed vide order of this Court, dated 22.1.2024

JUDGMENT

The plaintiffs in the suit for bare injunction are the appellants. The suit was decreed by the trial Court and the findings of the trial Court were reversed by the First Appellate Court. Aggrieved by the same, the plaintiffs are before this Court.

2.According to the appellants/plaintiffs, the total extent of land available in old S.No.230 was 5 acres and 65 cents. The suit property originally belong to Veerappa Pallavarayar and his brother Ramasamy.They sold 1 acre and 33 cents in favour of one Chellan by sale deed, dated 22.05.1916. The said Chellan sold the property to Ramasamy and he in-turn sold the property to the plaintiffs father Raman by sale deed, dated 6.7.1946. Thus claiming right and possession over 1 acre and 33 cents in suit S.No.230, the present suit was filed by the plaintiffs. It was the case of the plaintiffs that the defendants predecessor-in-interest had allotted three cents in the suit survey number for pathway and the remaining 4 acre and 49 cents had been in the possession and



enjoyment of the defendants. It was also claimed that old S.No.230 was subsequently sub-divided in re-settlement as New S.NO. 230/1 and S.No.230/2. The entire extent in S.No.230/2 namely, 2 acre and 25 cents belongs to the plaintiffs. The remaining extent of 8 cents that was available to the plaintiffs in old survey number lies in S.No.230/1. Taking advantage of the fact that the entire extent in S.No.230/1 was registered in the name of the defendants in revenue records, they attempted to interfere with the plaintiffs possession and hence, the plaintiffs were constrained to file the suit for bare injunction

3. The defendants filed a written statement and resisted the suit by claiming that they have been in possession and enjoyment of 4 acre and 40 cents in S.No.230/1. It is the case of the defendants that patta for S.No.230/1 with an extent of 4 acre and 40 cents was given to the defendants after taking into consideration the possession of the defendants, on ground. It is the specific case of the defendants that they purchased only 4 acre and 32 cents and they have been in possession and enjoyment of 4 acres and 40 cents with a ridge dividing their property from the property of the plaintiffs. Thus denying the possession of the plaintiffs over 8 cents in S.No.230/1, in respect of which, the present suit was filed, the defendants sought for dismissal of the suit.



4.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs proved their possession over 8 cents of the suit property and decreed the suit. Aggrieved by the same, the defendants preferred an appeal in A.S.NO.8 of 1998, on the file of Additional District Court-cum-Chief Judicial Magistrate, Pudukkottai. The First Appellate Court came to the conclusion that the plaintiffs failed to prove their possession over the suit property and consequently, reversed the finding of the trial Court. Aggrieved by the same, the present Second Appeal is filed by the plaintiffs.

5.At the time of admission, this Court formulated the following substantial questions of law by order, dated 13.07.2000:

1.Whether the Lower Appellate Court is correct in holding that the respondents/defendants have perfected title by adverse possession, in a suit for injunction filed by the plaintiff?

2.Whether the Lower Appellate Court erred in Law in not applying the principles that in a suit for bare injunction, the question of title is only incidental and the same alone cannot be the criteria for deciding the question of possession of the suit property?

6.The learned counsel for the appellants submitted that the



title of the appellants/plainiffs over 1 acre and 33 cents was admitted by the defendants and in such circumstances, the First Appellate Court ought not to have negated the prayer for injunction in respect of 8 cents in S.No.230/1 merely because revenue records stands in the name of the defendants. The learned counsel for the appellants further submitted that the First Appellate Court should not have entered a finding that the defendants have perfected title over 8 cents in new S.No.230/1 in a suit for bare injunction. The learned counsel further submitted that the question of title was incidental in a suit for bare injunction and the same cannot be the sole criteria for deciding the possession over the suit property.

7.The learned counsel appearing for the respondents by taking this Court to the judgment of the Ist Appellate Court submitted that based on the physical features noted down by the Advocate Commissioner, the Ist Appellate Court came to a factual conclusion that the plaintiffs failed to prove their possession over the suit property and the same requires no interference by this Court.

**8. Answer to Substantial Question No.1:**

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It is the specific case of the defendants in the written statement that though they purchased 4 acres and 32 cents in suit survey number, they have been in possession and enjoyment of 4 acres and 40 cents for quite a long time. The suit is for bare injunction filed by the plaintiffs in respect of 8 cents out of 1 acre and 33 cents purchased by them. In the description of the plaint schedule, the suit property was mentioned as 8 cents out of 5 acres and 65 cents in old S.No.230/2. Therefore, the suit for bare injunction is only concerned with the possession of the plaintiffs. Instead of deciding the suit based on possession of the respective parties, the First Appellate Court proceeded to consider the question of adverse title pleaded by the defendants and rendered a positive finding as if the defendants were entitled to title by adverse possession in respect of 8 cents in their possession in excess of 4 acres and 32 cents purchased by them. The defendants have not filed any counter claim seeking declaration of title by adverse possession. In such circumstances, in a suit for bare injunction filed by the plaintiffs based on their possession, the First Appellate Court ought not to have rendered a positive finding as if the defendants have perfected title by adverse possession in respect of 8 cents. Therefore the Substantial Question of law No.1 is answered



in favour of the appellants and the finding rendered by the First Appellate Court as if the defendants have perfected title by adverse possession in respect of 8 cents alone is set aside.

9. Answer to Substantial Question of Law NO.2:

It is the specific case of the plaintiffs that they are entitled to 1 acre and 33 cents in S.No.230, out of a total extent of 5 acres and 65 cents. It is also admitted by the plaintiffs that the defendants' predecessor-in-interest was entitled to the remaining 4 acres and 33 cents and out of which, 3 cents was allotted to pathway and defendants have been in possession and enjoyment of 4 acres and 29 cents. During re-settlement, old survey number was sub-divided into two parts as S.No.230/1 and S.No.230/2. S.No.230/1 was registered in the name of the defendants with an extent of 4 acres and 40 cents. S.No.230/2 was registered in the name of the plaintiffs with an extent of 1 acre and 25 cents. Therefore, it is the case of the plaintiffs that though they purchased 1 acre and 33 cents as per their title documents, a wrong entry was made in the revenue records as if the plaintiffs are in possession of 1 acre and 25 cents only. It is their case that the plaintiffs are in possession of the remaining extent of 8 cents and the same lies in S.No.230/1, which is registered in the name of the defendants. The trial Court



appointed an Advocate Commissioner to note down the physical features and he filed a report and plan marked as Ex.C1 and Ex.C2.

The First Appellate Court, on perusal of Ex.C1 and Ex.C2, came to the conclusion that there was a ridge on ground dividing S.No. 230/1 with an extent of 4 acres and 40 cents and S.No.230/2 with an extent of 1 acre and 25 cents. The Advocate Commissioner also noted down that there were trees in the ridge with age of 3 to 20 years. If 8 cents in S.No.230/1 is in possession of the plaintiffs, there is no possibility for creation of a ridge dividing S.No.230/1 and S.No.230/2. The First Appellate Court also relied on the admission of P.W.1 that Settlement Patta was issued as per the actual possession on ground. Though P.W.1 in his evidence deposed as if there was no ridge so as to divide S.No.230/1 and S.No. 230/2, the Advocate Commissioner's report and plan reveal the existence of such ridge dividing S.No.230/1 and S.No.230/2. It is seen from the documents filed by the plaintiffs namely, Ex.A6, dated 26.5.1991 and Ex.A17, dated 17.6.1976, the sub-division had taken place long back and the existence of a ridge with trees fortifies the said fact. The defendants have been in possession of 4 acres and 40 cents in S.No.230/1 and the plaintiffs are in possession of 1 acre and 25 cents. Therefore, based on proper appreciation of evidence available on record, the First Appellate Court came to a factual conclusion that the plaintiffs failed to



prove their possession over the suit property. The said conclusion arrived at by the First Appellate Court is not vitiated by any perversity and therefore, it requires no interference from this Court, while exercising the power under Section 100 of Civil Procedure Code. The Substantial Question of Law No.2 is answered accordingly against the appellants.

10. In view of answer to Substantial Question of Law No.2, the Second Appeal is dismissed, confirming the judgment and decree of the First Appellate Court and in view of answer to Substantial Question of Law NO.1, the finding rendered by the First Appellate Court as if the defendants have perfected title over 8 cents of land in suit survey number is set aside. No costs.

23.04.2024

Index:Yes/No
Internet:Yes/No
NCC:Yes/No

vsn

To

- 1.The Additional District Judge-cum-Chief Judicial Magistrate,
Pudukkottai.
- 2.The Additional District Munsif,
Pudukkottai.



3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1015 OF 2000

23.04.2024