
(2016) 08 MAD CK 0111

In the Madras High Court

Case No : Second Appeal (MD) No. 313 of 2005

D. Rengaraj Reddiar

APPELLANT

Vs

T. Sankarappa Reddiar

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 37, Section 38

Citation : (2016) 168 AIC 637 : (2016) 3 MadWN(Civil) 80

Hon'ble Judges : Ms. R. Mala, J.

Bench : Single Bench

Advocate : Mr. V. Meenakshi Sundaram for Mr. D. Nallathambi, Advocates, for the Appellant; Mr. V. Perumal, Advocate, for the Respondents Nos. 1 and 2; No Appearance, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Ms. R. Mala, J. - The plaintiffs, who lost the legal battle before the first appellate Court, have come forward with this second appeal against the judgment and decree passed in A.S.No.8 of 2004 dated 10.11.2004 on the file of the Sub Court, Sankarankovil reversing the judgment and decree passed in O.S.No.216 of 2002 dated 05.12.2003 on the file of the Principal District Munsif Court, Sankarankovil.

2. The appellants, as plaintiffs, filed a suit for injunction in respect of third schedule property, directing the respondents not to interfere their peaceful enjoyment stating that the suit properties are Grama Natham, in which, they are residing for the past 30 years. Third schedule property is situated in the northern side of the first schedule property, where, they put up one shed and running tea shop and obtained a license from the Panchayat Union of Melaneelithanallur and they are using the same as cattle shed and storing wastage and fire woods. On 27.09.1990, recognising their possession, patta has been issued in respect of the house property alone. For Door No.5/36, house tax has been paid and it was

assessed to property tax and property tax has also been paid and they obtained electricity connection 20 years back and they are enjoying the property.

3. For the second schedule property, Patta has been issued in the name of the second plaintiff. Since third schedule property is grama natham, tax has not been assessed. The defendants have no right over the third schedule property. Because of the Panchayat election, there was a dispute between both the parties and hence, the defendants are attempted to interfere with the peaceful possession and enjoyment of third schedule property and hence, the plaintiffs have constrained to file the suit for injunction.

4. Resisting the same, the first defendant filed a detailed written statement and contesting the same stating that in the plaint plan, the portions mentioned as "ABCD", "C C2 C3 D2", "C2 C3 D3 D4" and "D1 D2 D3 E2" and "E E1 E2 E3" are originally belonging to the paternal grand father of the first plaintiff viz., Kondureddiyar and his brother, viz., Periya Annamalai Reddiyar, who is none other than the grand father of the second defendant and his brother in law viz., Subba Reddiyar and one Narayana Reddiyar, who is the father of the first defendant. The portion mentioned in "ABCD" is allotted to Narayana Reddiyar, "C C2 C3 D2" and "C2 C3 D3 D4" are allotted to Kondu Reddiyar, "D1 D2 D3 E2" is allotted Periya Annamalai Reddiyar and "E E1 E2 E3" is allotted to Subba Reddiyar and they are enjoying the same after partition. After the death of the father of the first defendant Narayana Reddiyar, the first defendant entitled the property. After the death of Dhanuskodi, his son viz., the first plaintiff is enjoying the property independently. The portion marked in "D2 C3 C4 C5". The first plaintiff obtained permission and raised roof six months back and enjoying same and it is only permissive possession. The first defendant refused to sell the property and they demanded for vacant possession. Therefore, they have filed the suit. The revenue records are created for the purpose of case. They wanted to grab the property of the first defendant, which was marked as "A B2 C C2". There is no cause of auction for the suit and hence, he prayed for the dismissal of the suit.

5. The Trial Court, after considering the plaint and written statement, framed necessary issues and considering the oral and documentary evidence, partly decreed the suit, stating that the plaintiffs are entitled to enjoy the property in respect of S. Nos. 599/3 and 599/6 and they are entitled to use the portion situated on the northern side of the third schedule property, against which, the defendants 2 and 3 have preferred an appeal. The appeal has been allowed and the cross appeal filed by the plaintiffs has been dismissed and accordingly, the entire suit has been dismissed, against which, the present second appeal has been preferred.

6. At the time of admission, the following substantial questions of law have been framed for consideration of the second appeal:

1. Whether the appellant has got easementary right over the 3rd schedule

property?

2. Whether the appellant has got right over the 3rd schedule property through adverse possession?

3. Whether the respondents are stranger to the suit property?

4. Whether the evidence of the unnecessary party as pleaded is to be accepted and admissible?

Substantial Questions of Law 1 to 4:

7. The learned counsel for the appellants would submit that the dispute is only in respect of third schedule property. Even though the plaintiffs filed the suit for injunction directing the defendants not to interfere their peaceful enjoyment, they restricted the claim that they are claiming the exclusive right in S.No.599/3 and 599/6 to reach the road on the eastern side and except the said way, no other way is available for reaching the east west road on the northern side. He would further submit that as per Document Nos.B3 and B4, it was specifically mentioned that the suit property is Government natham and hence, the defendants have no right over the property, since it is a vacant site and hence, he prayed for setting aside the first appellate Court judgment and prayed for a decree, a right to use 599/6 and a portion in 599/3 for reaching the east west road to the northern side of the property.

8. The learned counsel appearing for the appellants has relied on the decision reported in 2012(2) CTC 315 State of Tamil Nadu v. Madasami and submitted that the Gramanatham lands were classified and allotted for village people to use them as house sites or for any other purposes for storing their hay and manure or as a smithy or as a brick-kiln or as a place for weaving, etc. He relied on relevant portion in para 14 and also para 15 of the said decision and prayed for allowing of the appeal.

9. Resisting the same, the learned counsel appearing for the respondents would submit that the respondents are having road on western side and southern side of the suit property. The second schedule property is a vacant side and the appellants may very well reach the road through second schedule property. With a view to cause trouble to the defendants, the plaintiffs filed the suit. Further, he has submitted that even though the property is a Government Natham, it was enjoyed by their ancestors and they have divided the properties and the properties in 599/4 and 599/5 have been allotted to the share of the plaintiffs' grand father Konduraddiyar. Now, with a view to grab the third schedule property, they filed the suit and the plaintiffs have not filed the suit for easement of necessity and hence, the first appellate Court has considered the aspects in a proper perspective and dismissed the suit and hence, he prayed for the dismissal of the appeal.

10. I have considered the submissions made on either side and perused the materials available on record.

11. The only dispute is in respect of third schedule property. In the plaint, it was mentioned that the 1st schedule property viz., house in D.No.5/36 is situated in Gama Natham situated in Old S.No.202 and New S.No.599/4. The second schedule property is vacant site. The third schedule property is a vacant land situated in Old S.No.202 and New S.No.599/3 and 599/6 and the stated boundaries have been included later point of time in handwritten.

12. Admittedly, suit properties are Grama Natham. The plaintiffs/appellants have to prove their case. They cannot take the lacunas and weakness in the defence case and sought for remedy. It is appropriate to incorporate the decision relied on by the counsel for the appellants reported in 2012(2) CTC 315 - State of Tamil Nadu v. Madasami, particularly the relevant portion in para 14 and para 15, which read as follows:

"14. There is no dispute that wherever the lands classified as Natham or Natham Poramboke or Gramanatham are only meant a Gramanatham. The Gramanatham lands were classified and allotted for village people to use them as house sites or for any other purposes for storing his hay and manure or as a smithy or as a brick-kiln or as a place for weaving, etc.

15. It is very much understood that once, the properties have been classified as Gramanatham, the Government cannot claim right over the said property. The said concept has been elaborately discussed in a judgment of this Court reported in between S. Rengaraja Iyengar v. Achikannu Ammal and another, 1959 (2) MLJR 513. The relevant passage would be thus:

"In order that a land may properly be described as house-site within the meaning of that expression in Section 2 of Madras Act 3 of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the Gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites are, in my opinion, house-sites within the meaning of that expression in Section 2 of the Madras Act 3 of 1905. Madras Act 3 of 1905 is made applicable to an estate when it is notified under Madras Act 3 of 1905 is made applicable to an estate when it is notified under Madras Act 26 of 1948. The provision as to vesting under Section 3(b) of Madras Act 26 of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

It is contended that, in relation to buildings, specific provision is made under Section 18 of Act 26, of 1948 and that, consequently, unless a house-site can be brought within the ambit of Section 18, such house-site should be held to be

property as to which title gets transferred to the Government under Section 3(b). Section 18 deals, in my opinion, with building wherever they may be situate, whether in the Gramanathams, or in Ryoti lands or Pannai lands or waste lands. Section 18 has no particular Application to buildings or house-sites in a Gramanatham. A building in a Gramanatham (or village habitation) is protected from transfer of title to the Government both under Section 18(1) of Madras Act 26 of 1948 and under the Madras Land Encroachment Act (3 of 1905). The title to a house site in a Gramanatham is protected from transfer to Government by the operation of Madras Act 3 of 1905."

Perusal of the said decision would show that a person, who posses the Gramanatham is entitled to claim title. Therefore, it is the duty of the appellants to prove that they are in possession and enjoyment of the third schedule property.

13. Admittedly, third schedule property in S.No.599/3 is concerned, there is no evidence to show that they are in possession of the property and that has been denied by the trial Court and it was confirmed by the first appellate Court on the basis of the oral evidence of P.W.1 and D.W.1. It is pertinent to note that in S.No. 599/6 is concerned, the defendants' house is situated there and they are having way at eastern side. If he wants to maintain the western wall, he ought to have came to S.No.599/6 to reach the place. Therefore, there was a pathway, which was used both by the plaintiffs and defendants and that has been considered by both the Court below. However, even though the appellants herein has submitted that they are having his tea shop in S.No.599/6, the commissioner's report would show that there is no tea shop. The Document in Ex.A5 series viz., the receipts for the license fee paid by the appellants are in the year 1986 and 1988, which are not related at the time of filing of the suit. Furthermore, S.No.599/4 and 5 are belonging to the plaintiffs/appellants. In 599/4, there is a house. In S.No.599/5 is concerned, it is vacant site. If they want to reach the road on western side, they may very well go by S.No. 599/5. But, they cannot claim that they have to use S.No.599/6 and 599/3. The argument emphasised by the learned counsel for the appellants is that the suit property is Gramanatham and no one is entitled to use the same. There is no quarrel over the proposition. But, once, they claim exclusive title over the property, they ought to have proved that they are in possession of the third schedule property and then only, they are entitled.

14. Admittedly, on the basis of the evidence of P.W.1 and D.W.1, Commissioner report and plan, I am of the considered opinion that the appellants are not in possession of S.No.599/6 and 599/3. But, the learned counsel would submit that they want only right to use the same as pathway to reach the road on northern side. But, here, on perusal of commissioner report would show that the properties in S.No.599 is abutting by four road. One road is on western side, another road is on norther side and one road is on southern side. The plaintiffs are very well use the western side and southern side road to reach the road on

northern side. On the west of the schedule 1 and 2, there was a road leading to northern side. Further more, S.No.599/4 is one of the boundary on the western side. In such circumstances, I am of the view that the argument of the learned counsel for the appellants that the appellants had right to be declared for use S.Nos.599/6 and 599/3 as pathway to reach the northern road is unacceptable. Because, they have not filed the suit for easement right. They have filed the suit as if they are in possession and enjoyment of the properties and they have sought for the relief of injunction. Now, they cannot turn down and sought for remedy of easement. He has not claimed easement right either for grant or for prescription or for necessity, since, the appellants are having access from the property to the road both on western side and southern side and hence, he has not entitled for easement of necessity.

15. In such circumstances, I am of the view that the appellants are not entitled any relief as sought for either in the plaint or at the time of argument, to have right to reach the road on northern side. Hence, the appellants are not entitled entire right over the third schedule property, since they have not pleaded He has not filed any document to claim for adverse possession and hence has not prescriptive title by adverse possession. The substantial questions of law 1 to 4 are answered accordingly.

16. In view of the answers given above, the first appellate Court has rightly dismissed the suit and it does not warrant any interference and the second appeal deserves to be dismissed and the is hereby dismissed. No costs.