
(2001) 07 MAD CK 0055
In the Madras High Court
Case No : S.A. No. 61 of 1990

Murugaiyan and 2 others

APPELLANT

Vs

Subbaiyan

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

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

Citation : (2001) 07 MAD CK 0055

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : Mr. S. Sundaresan, for the Appellant; Mr. T.R. Rajaraman, for the Respondent

Final Decision : Allowed

Judgement

1. Plaintiffs 2 to 4 in O.S.No.63 of 1985, on the file of the District Munsif, Pattukottai are the appellants in the second appeal.

2. One Duraimanickam filed the suit for a permanent injunction restraining the respondent/defendant from interfering with his possession and

enjoyment of the suit property of an extent of 0.39 acre with a thatched shed, 30 palmyah trees, 1 tamarind tree and neem tree in S.No.114-9 in

Ambalapattu North Village, Orthanadu Taluk, Thanjavur District, on the following averments:

The suit property belonged to him ancestrally and in an oral family arrangement between him and his brothers about 20 years prior to the suit, the

suit property among other properties fell to his share and since then he had been in exclusive possession and enjoyment in his own right as absolute

owner. Patta had been granted for the suit land under Patta No.67 and he had also been paying kist etc. to the Government. There were 30

palmyrah trees on the western side in the suit land which were reared, even during the life time of his father and after partition, they were in his

exclusive possession and a small shed in the middle of the suit land with a trident installed as an incarnation of Lord Muruga was also there and he

had been cultivating generally crops and vegetables in the rest of the land. The defendant, who was the adjacent owner on the west and had

nothing to do with the suit property, had been picking up quarrel with Murugaiyan with a view to purchase the suit land and annex it to his property

and as Murugaiyan refused to part with the land, the defendant was attempting to trespass into the suit land and remove the shed and cut and carry

away the standing trees. On 18.2.1985 the defendant came along with his men and threatened to demolish the shed. Murugaiyan somehow

managed to prevent the high-handed action of the defendant. However, as he apprehended that the threat would materialise at any time, the suit

came to be filed.

3. Pending suit, Duraimanickam died, his sons came on record as plaintiffs 2 to 4 and continued the suit.

4. The defendant resisted the suit contending inter alia as follows:

The line/ridge on the eastern side of his property belonged to him. He planted palmyrah trees about 45 years prior to the suit and they had grown

into big trees. There were about 44 trees as on date of the suit. The defendant was entitled to 55 kuzhies on the northern side in 55 cents in old

S.No.114/4 and New Survey No. 114/8. The share immediate south of 55 kuzhies belonged to his brother Adaikalam Mathurar and the southern

most share belonged to his other brother Rengasamy as per an oral partition among the brothers. The brothers got the palmyrah trees on the

eastern side corresponding to their share and they were in possession of the land allotted to them and the palmyrah trees. Adaikalam Mathurar sold

his share in the middle to the defendant's wife Saradha on 6.8.1963 along with the palmyrah trees. Rengasamy Mathurar also sold his share on

27.5.1969 to the defendant's wife Saradha. The trees were not mentioned in the sale deed. The trees which were in the enjoyment of Rengasamy

were still in his enjoyment. In 55 cents paddy and ground nut had been raised continuously. The palmyrah trees on the eastern ridge had become

the absolute property of the defendant by reason of the continuous possession of

the defendant, his brothers and his wife Saradha. The defendant did not know the boundaries or the survey numbers. The suit had been filed for the palmyrah trees. The plaintiffs had to prove their case. It was not true to say that even during the life time of Duraimanickam there were 30 palmyrah trees. Neither Murugaiyan nor his predecessors-in-title were in enjoyment of the palmyrah trees at any time. About 7 years prior to the suit, Murugaiyan claimed that the palmyrah trees were in his land. There was a panchayat in the presence of Kayavarnakattiyar and Marimuthu Mathurar. In the panchayat, it was decided that Murugaiyan should pay Rs.500 to the defendant as the price for the palmyrah trees. The plaintiff did not honour the panchayatdars" decision. About four months prior to the suit, Murugaiyan again began to claim right over the palmyrah trees. There was another panchayat in the presence of Kasinathan, Anna Mahalingam, Natesan, Arumaikkannu and some others, and it was decided in the pancliayat that the land had to be measured and in case palmyrah trees were found in Margin"s land, as the defendant had planted the palmyrah trees he had to cut and remove them and in case the palmyrah trees were found to be in the defendant"s land, Murugaiyan should not create any problem. Both parties also paid Rs.100 each to Mr. Kasi toward expenses for measuring the land. The plaintiff with an ulterior motive filed the present suit.

4. On the above pleadings, the trial court framed the following issues:

1. Whether the suit property belong to the plaintiffs?
2. Whether on the date of suit it was in plaintiffs" possession and enjoyment?
3. Whether the suit has been properly valued?
5. There were 12 documents, marked as Exs.A.1 to A.12, on the side of the plaintiffs. Including the third plaintiff, as P.W.I, there were three witnesses examined, one of whom was the Advocate Commissioner examined as P.W.3 and the third was one Rengasamy examined as P.W.2.

On the side of the defendant Exs.B.1 to B.6 were marked. The report and the plan of the Advocate Commissioner were marked as C.W.I and

C.W.2 respectively and the plan of the Taluk Surveyor was marked as C.W.3,

6. On the basis of oral and documentary evidence, the trial court found that the claim of the plaintiffs was true, that the panchayat set up by the

defendant was not established, that as per the Commissioner's plan the portion marked as ABCD and J and the palmyrah trees therein were in the

possession and enjoyment of the plaintiffs, and that the plaintiffs were therefore entitled-to injunction prayed for. So holding by judgment and

decree dt.13.2.1989, the trial court decreed the suit.

7. However on appeal by the defendant, in A.S.No.15.9.1989, the learned Subordinate Judge, Pattukottai, reversed the decision of the trial court

allowed the appeal and dismissed the suit. Aggrieved, the present second appeal has been filed.

8. At the time of admission, the following substantial question of law was raised for decision:

Whether the lower appellate court was right in accepting the possessory title of the defendant in the absence of any specific plea for adverse

possession?

9. The learned counsel for the appellants submitted that the lower appellate court having held that the appellants were the absolute owners of 39

cents in S.No.114/9 and that the respondent claimed ownership for 55 cents in S.No.114/8 and having held that palmyrah trees were only in

S.No.1 14/9 belonging to the appellants, was in error in allowing the appeal. When there was no dispute with regard to extent and ownership, the

finding by the lower appellate court with regard to possession in favour of the respondent in the absence of any specific plea of adverse possession

was unwarranted. The lower appellate court had not given adequate weightage to the Commissioner's report and plan. According to the learned

counsel, the title of the plaintiffs to the entire survey No.114/9 having been found and Exs.A.1 to A.12 proving their possession, the lower appellate

court was in error in entering the finding of possession in favour of the respondent.

10. The learned counsel for the respondent contended that the lower appellate court had found that the documents in favour of the defendant,

namely, Exs.B.1 and B.2 clearly showed that the palmyrah trees belongs to the respondent and that Exs.B.3 to B.6 clearly showed his possession

and the lower appellate Court as final court of fact having found that the respondent was in possession and enjoyment, this court should not

interfere u/s 100.

11. The Commissioner's report and the plan are crucial for decision in this case. The Commissioner was examined as P.W.3. In the

Commissioner's plan the plaintiff's property is shown as ABCDJ. The palmyrah trees are to the east of AIE and well within the plaintiff's

property. The Commissioner has found that as per the documents the defendant's property is AIEFGH which is nine links to the west of line AID.

That would show that the defendant had encroached on the plaintiff's property to an extent of nine links. Even in the written statement the

defendant had stated that he was not aware of the survey number or boundaries of his property, From the documents and the Commissioner's

report and plan as also the Surveyor's plan, it is very clear that the line/ridge along which the palmyrah trees are there, does not at all belong to the

defendant. The Advocate Commissioner has reported that the palmyrah trees along the line/ridge AID are over 70 years old which clearly

probabilised the plaintiffs' case that the first plaintiff's father planted the trees about 70 years prior to the suit. The observation by the

Commissioner also falsifies the stand of the defendant that the trees were planted about 45 years prior to the suit. The title of the plaintiffs has been

clearly established.

12. The only question surviving for consideration is as regards possession. No doubt, the Commissioner has found that the defendant had raised

paddy in the area covered by AJDEI. The suit was filed in the year 1985. The Commissioner filed his report in 1988. This would not show that on

the date of the suit, the defendant was in possession of the area AJDEI or in any event in enjoyment of the palmyrah trees along the line/ridge AID.

In one of this documents it is stated that the property excluding the palmyrah trees has been sold, though the other document shows including

palmyrah trees. Those are documents among the family members of the defendant. His uncle or cousin had sold the middle and the southern

portions of the property claimed by the defendant, to his wife. As rightly pointed out by the trial court, the document which says that palmyrah

trees were also subject matter of sale, is a self serving document and that will not prove the title of the defendant to the palmyrah trees or his

possession and enjoyment of the same. The defendant set up two Panchayats with regard to palmyrah trees. None of the panchayatdars was

examined before the courts below. The panchayats set up by the defendant have not been established. Exs.A.2 to A.12 show plaintiffs' possession

for the period 1962 to 1976 and 1985. Even otherwise the established legal position when there is no adequate evidence with regard to

possession by either party, is possession should follow title. In the instant case, the title of the plaintiffs having been clearly found, the lower

appellate court was in error in finding that the defendant was in enjoyment of the palmyrah trees. There is some vague averment in the written

statement with regard to adverse possession by the defendant. However, there is no proof of the same. The claim of the defendant on the basis of

adverse possession cannot therefore be countenanced.

13. The plaintiffs have title. Possession follows title. The substantial question of law is answered in favour of the appellants. The second appeal is

allowed, The judgment and the decree of the lower appellate Court are set aside and those of the trial court restored. In as much as the lower

appellate court has committed a serious blunder with regard to the point arising for consideration, this Court is perforce obliged to interfere u/s 100

C.P.C.