

(2017) 01 MAD CK 0236

In the Madras High Court

Case No : 218 of 1994 and C M P (MD) No 5803 of 2016

RM.Chockalingam Ambalam

APPELLANT

Vs

S.M.M.PR.Ramaswamy Ambalam (Died), & Ors.

RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 11](#) - Res Judicata
[Code of Criminal Procedure, 1973](#), [Section 144](#) - Power to issue order in urgent cases of nuisance or apprehended

Citation : (2017) 01 MAD CK 0236

Hon'ble Judges : Rmt.Teekaa Raman

Bench : SINGLE BENCH

Advocate : Rmt.Teekaa Raman

Final Decision : Allowed

Judgement

1. The unsuccessful plaintiff is the appellant herein.
2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.
3. The plaintiff filed the suit, in O.S.No.106 of 1988, before the learned District Munsif, Devakottai, for the relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property to an extent of 28 Cents in Survey No.68 in Kalanivasal Pudur Village.
4. After contest, the learned District Munsif, Devakottai, by Judgment and Decree, dated 30.09.1991, decreed the suit.
5. Aggrieved by the Judgment and Decree passed by the learned District Munsif, Devakottai, the first defendant preferred an appeal, in A.S.No.69 of 1991, before the learned Subordinate Judge, Devakottai.

6. After contest, the learned Subordinate Judge, Devakottai, by Judgment and Decree, dated 29.01.1993, allowed the appeal and set aside the Judgment and Decree passed by the learned District Munsif, Devakottai.

7. Challenging the correctness of the Judgment and Decree passed by the learned Subordinate Judge, Devakottai, the plaintiff has preferred the present second appeal.

8. The brief averments of the plaint that are necessary to decide this appeal are as follows: Initially, the suit property and other properties were in possession of one Subbiah Ambalam. Those properties were purchased by Muthukaruppan Ambalam and Vairavan Ambalam, who are paternal grandfather of the defendants and adopted grandfather of the plaintiff respectively, jointly under a Sale Deed, dated 06.11.1929 and they were in joint possession and enjoyment of those properties. The father of the plaintiff and the father of the defendants are blood related brothers. The father of the plaintiff was adopted by Vairavan Ambalam on 14.05.1935. From the date of adoption, both the plaintiff's father and the defendants' father are entitled to half share in the suit property. Under a family settlement, the father of the plaintiff was allotted eastern half of the suit property and the father of the defendants was allotted western half of the suit property. The father of the plaintiff filed a suit in O.S.No.264 of 1959, before the learned District Munsif, Devakottai, for declaration against the defendants and their father. After contest, on 23.06.1962, the said suit was decreed in favour of the father of the plaintiff in respect of Item No.2 of the suit property and the suit was dismissed in respect of Item No.1 of the suit property. The respective parties preferred appeals against the Judgment and Decree, dated 23.06.1962 and the appeal filed by the plaintiff's father was allowed and the suit was decreed in entirety, while the appeal preferred by the first defendant herein was dismissed. After passing the Judgment and Decree in the said suit, the parties were in possession of their respective properties. In the year 1968, the father of the plaintiff died. Since the plaintiff was minor at the time of death of his father, his mother was in possession of the property belongs to the plaintiff. The plaintiff filed the suit as he is the Manager of the family. The father of the defendants' died fifteen years prior to filing of the suit. On 06.03.1988, the defendants and their men cut the trees standing in the suit property and aggrieved by the same, the plaintiff lodged a complaint before the Police. He has paid the Kist in respect of the suit property.

Hence, the suit.

9. The brief averments of the written statement filed by the first defendant and adopted by the defendants 2 and 3 that are necessary to decide this appeal are as follows: The land comprised in Survey No.68 is only to an extent of 31 Cents. To the best knowledge of the first defendant, Vairavan Ambalam sold the said property to the paternal grandfather of the defendants, namely, Muthukaruppan Ambalam. Thereafter, the said property came to the possession of the defendants' father and thereafter, their possession and they have put up a

fencing around the said property. There are two pathways one is on the eastern side and the another one is on the southeast corner of the suit property. Through the said two pathways, the defendants have access to the said property. Sheds, Trees, Water Tanks and some stones are situated in the suit property belongs to the defendants. The defendants are in possession of the suit property for a long time. Either the plaintiff or his predecessor have no title or interest over the suit property. The plaintiff had never in possession of the suit property. The suit property was never allotted to the plaintiff's father in the Family Settlement as stated by the plaintiff. There is no cause of action. Hence, the suit is liable to be dismissed.

10. Based upon the above pleadings, the Trial Court had framed as many as many as five issues for consideration.

11. The plaintiff, in order to substantiate his plea, had let in evidence as P.W.1 and also examined other independent witnesses as P.W.2 and P.W.3 and marked Exs.A1 to A14 and on behalf of the defendants, the first defendant had examined himself as D.W.1 and marked Exs.B1 to B18.

12. As the matter involved possession and to find out the physical features of the suit property, an Advocate Commissioner was appointed and his report and sketch were marked as Exs.C1 and C2 respectively. Both the plaintiff and the defendants had not filed any objection to the Advocate Commissioner's report.

13. Based upon the pleadings of the parties and the evidence in both oral and documentary, the Trial Court came to the conclusion that new fences have been put up; the ridges segregating the plaintiff's suit property have been obliterated; initials and signatures drawn on the stone pillars have been erased; new initials have been drawn and the plaintiff's pathway to the suit property has been obstructed and the Trial Court has also found that cutting of trees alleged by the plaintiff is true and the plaintiff has paid kists in respect of the suit property and the plea of dispute in adoption of the plaintiff's father had already been settled in O.S.No.264 of 1959 and it had been confirmed in A.S.No.44 of 1962 and further held that since Ex.B7 is having been discussed and findings are having been rendered in the earlier suit in O.S.No.264 of 1959, it does not advance the case of the defendants and accordingly, held that the plaintiff has proved his title and possession of the suit property and decreed the suit as prayed for.

14. As stated supra, the defeated first defendant preferred first appeal in A.S.No.69 of 1991, before the learned Subordinate Judge, Devakottai.

15. On re-appreciation of evidences, the Lower Appellate Court has held that the Patta produced by the plaintiff is showing excess extent; kists have been paid prior to the filing of the suit only; in the description of the suit property certain features have been omitted to be mentioned and the oral evidence of D.W.1 is believable and accordingly, the Judgment and Decree of the Trial Court was set aside and the appeal was allowed and consequently, the plaintiff was non-suited.

16. Aggrieved against the reversal Judgment made in A.S.No.69 of 1991, the plaintiff has knocked at the doors of this Court by way of this second appeal.

17. At the time of admission, the following substantial questions of law were framed for consideration: "(1) Whether the title of the plaintiff to the suit property is not conclusive in view of the declaratory decree in O.S.No.264 of 1959, on the file of the learned District Munsif, Devakottai and also confirmed in A.S.Nos.44 and 48 of 1962, on the file of the learned Subordinate Judge, Devakottai?

(2) Whether Patta Ex.A8 and the Kist receipts Exs.A9 to A12 do not prove possession of the suit property by the plaintiff on the date of the suit?

(3) Whether the plea of adverse possession by the defendant has been proved by documentary evidence?"

18. The admitted facts of the case are as follows: The plaintiff's father and the defendants' father are blood related brothers. The suit property was jointly purchased by Vairavan Ambalam and Muthukaruppan. The plaintiff's adopted paternal grandfather Vairavan Ambalam along with his brother Muthukaruppa Ambalam jointly purchased the suit property along with other properties in the year 1929 under Ex.A1 and the survey number is T.S.No.68 and it has been shown as 10th Item in the said Sale Deed. The plaintiff's father was adopted son of the said Vairava Ambalam by way of a registered Adoption Deed, dated 14.05.1935, which is marked as Ex.A7. In Sivagangai Taluk, one Karukkan is equivalent to 56 Cents. As there was a dispute with regard to the property, the said Ramasamy Ambalam / adopted son of the said Vairava Ambalam (father of the plaintiff herein) filed a suit against his blood brother Periasamy Ambalam and his sons, namely, Ramasami, Muthukaruppan and Sethuraman in respect of the very same suit property in O.S.No.264 of 1959. In the said suit, Ramamay Ambalam was arrayed as second defendant and his father Periasamy Ambalam was arrayed as first defendant, wherein in O.S.No.264 of 1955 for declaration of title and for permanent injunction, the present suit property is shown as Item No.2. In that suit, the first defendant herein is the second defendant therein and he filed a written statement disputing the alleged adoption of Ramasamy by Vairavan Ambalam, besides entitlement of relief of injunction.

19. After contest, by Judgment and Decree, dated 23.06.1962, the learned District Munsif, Devakottai, decreed the suit in part in respect of Item No.2 of the suit property alone and rejected the claim in respect of Item No.1 of the suit property. However, on appeal, in A.S.Nos.44 and 48 of 1962, the learned Subordinate Judge, Devakottai, allowed the appeals filed by the plaintiff, whereby the suit was decreed in its entirety. The Judgments and Decrees of both the suit and appeals were marked as Exs.A2 to A5 in the present suit. The sum and substance of the above said Decrees is to the effect that Ramasamy Ambalam, who is the father of the plaintiff, is the adopted son of Vairava Ambalam and he is entitled to the suit property. These facts have also been

narrated in the plaint and as the defendants tried to interfere with the peaceful possession of the suit property again by cutting the standing trees and the declaratory decree of title has already been granted and it has attained finality, the plaintiff sought for permanent injunction alone in the present suit.

20. On perusal of Ex.A1 Sale Deed, dated 06.11.1929, it is seen that the defendants' paternal grandfather Muthukaruppan Ambalam and his blood brother Vairavan Ambalam have jointly purchased the suit property and divided it into two equal shares and each entitled to 28 Cents. In the written statement filed by the defendants, they have challenged the alleged adoption of Ramasamy Ambalam by Vairavan Ambalam. It is to be stated that the very same first defendant herein is the second defendant in O.S.No.264 of 1959, wherein after a full-fledged trial, a decree was passed on 23.06.1962 and whereby the adoption by the Vairava Ambalam has been upheld and the same was confirmed in A.S.No.44 of 1962, on 28.01.1963. Since the facts and issues have already been decided and attained finality, the Trial Court has adopted the principle of estoppel and also held that since in the earlier suit itself, the disputed issue of adoption has been decided, it cannot be re-agitated and accordingly, held that the adoption by Vairava Ambalam is true and valid. Since the title of the plaintiff's grandfather has been duly confirmed in the previous suit, in O.S.No.264 of 1959 and as it has been confirmed in A.S.No. 44 of 1962, the Trial Court has held that the plaintiff has proved his title to the suit property based upon the decision in the earlier proceedings.

21. At this juncture, it would be more relevant to refer the principle of res judicata, which is based on the need of giving a finality to the judicial decisions. What it says that once a res judicata is judicata, it shall not be adjudged again. The said principle is embodied in relation to suits under Section 11 of the Code of Civil Procedure. It debars the Court from exercising its jurisdiction to determine the lis, if it has attained finality between the parties. It is an issue of estoppel by accord. The issue estoppel means that party against whom issue is decided is estopped from raising the same in latter proceeding. The doctrine of res judicata is conceived in the larger public interest, which requires that all the litigation must sooner than later, come to an end. The principle is also founded on equity, justice and good conscience, which requires that a party who has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving the determination of the same issue.

22. The Trial Court has rightly adopted the above said principle and come to a categorical finding that the declaratory title to the suit property in favour of the plaintiff's grandfather and the factum of adoption of Ramasamy Ambalam by Vairava Ambalam have already been attained finality and gave findings in favour of the plaintiff. To the dismay, the Lower Appellate Court has not even considered the above factual position and the legal position as well and in fact, it has not even discussed about the same and therefore, in view of the discussions and the oral evidence of P.W.1 along with Exs.A1 to A7, this Court holds that the the

findings of the Trial Court that the findings in the previous proceedings between the paternal grandfather of the plaintiff with the defendants is binding and the conclusive proof of the declaratory title of the plaintiff over the suit property is a well considered one and hence the first substantial question of law is answered in favour of the plaintiff and answered against the defendants.

23. As stated supra, the plaintiff is seeking relief of permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property and also injunction restraining the defendants from cutting the standing trees in the suit property.

24. In order to substantiate the said plea, the plaintiff marked Ex.A8 Patta and also marked Exs.A9 to A12 Land Tax Receipts. It is seen from the records that before the Trial Court as well as here, the learned counsel for the defendants had drawn the attention of the Court to Ex.B7, dated 04.10.1958, a Complaint given by the appellant's predecessor-in-title against the first defendant's father Ramasamy before the Revenue Divisional Officer, under Section 144 Cr.P.C., wherein there is a reference that the defendants' father Periasamy encroached upon the suit property. Exs.B8 and B9 are referring to Taluk Magistrate proceedings and thereafter only the suit, in O.S.No.264 of 1959 came into existence and with regard to the possession of the suit property is concerned, it has been decided finally in the said suit and the same is confirmed in the appeal also and the first defendant, who is examined as D.W.1, in the second round of litigation, in his cross-examination has categorically admitted that he has not preferred any second appeal to the High Court and he has also admitted that O.S.No.264 of 1959 "VERNACULAR MATTER OMITTED". Thus, this Court finds that with regard to the contention of the learned counsel for the defendants that Ex.B7 advances the case of the defendants that they are in possession of the suit property cannot be entertained for more than one reason that as Exs.B7 to B9 are admittedly prior to the institution of the suit in respect of the very same suit property, which has resulted in filing of the suit, in O.S.No.264 of 1959, by the paternal grandfather of the plaintiff herein and it is also admitted that the suit was decreed against the defendants as admitted by him in the cross-examination and further the appeal filed by him is also dismissed and accordingly, the contentions of the learned counsel for the defendants cannot be accepted in view of the earlier findings rendered in the earlier round of litigation as stated supra.

25. The Trial Court, based upon Exs.A9 to A12, has held that the plaintiff is in possession and enjoyment of the suit property and accordingly, held that he is entitled to the relief of injunction. However, on a slender ground, the Lower Appellate Court has set aside the said finding by observing that in Ex.A8 patta, the extent is mentioned as 0.271.00 Hectares, in other words, the total extent mentioned in the Patta is excess other than the suit claim. Admittedly, both the parties are deriving title from the very same document marked as Ex.8 and in the earlier round of litigation, the rights of the parties have been clearly demarcated with clear boundaries and also the fact that when the boundaries are

clear and the earlier round of litigation has been completely concluded, the reason assigned by the Lower Appellate Court is not sustainable and liable to be vacated and accordingly, the finding of the Lower Appellate Court to the extent that Ex.A8 would not advance the case of the plaintiff is legally not sustainable and it is liable to be vacated and accordingly, the said finding stands vacated.

26. The Trial Court, relying upon the Advocate Commissioner's Report and Sketch marked as Exs.C1 and C2, has observed that the description of the suit property in the plaint duly corroborates with the physical features noted by the Advocate Commissioner in Exs.C1 and C2 and since the initials and the earlier inscriptions mentioned in the stone pillars erased and new initials of the defendants has been drawn, the Trial Court accepted the case of the plaintiff. However, the Lower Appellate Court, without even discussion about Exs.C1 and C2, has simply set aside the said finding. The observation made by the Lower Appellate Court that the plaint contains only a detailed description, but it does not contain any in-depth particulars of the suit property is not legally sustainable, since the plaint contains the details of the suit property that is enough to identify the property including measurement. Description and nature of trees are not necessary and hence the finding of the Lower Appellate Court is unwarranted and the same is liable to be set aside and accordingly, the finding of the Lower Appellate Court that the plaint does not describe the suit property in a proper manner is incorrect and the same stands vacated and the finding of the Trial Court is restored.

27. The Lower Appellate Court in Paragraph No.12 of its Judgment has held that the kist receipts are not sufficient to establish the possession of the plaintiff. On perusal of the plaint, it is seen that the suit has been filed on 14.03.1988 and in order to prove the possession of the suit property, the plaintiff has filed Exs.A2 to A9 and based on these receipts, the Trial Court has rightly come to the conclusion that prior to the filing of the suit and at the time of institution of the suit, the plaintiff was in possession of the suit property is a well considered one and it does not warrant interference by this Court. However, on improper re-appreciation of evidence, the Lower Appellate Court has given its own finding, which is not supported by any legal reasoning and accordingly, the finding of the Lower Appellate Court on Exs.A9 to A12 is improper and liable to be vacated and accordingly, the same stands vacated and the finding of the Trial Court on those exhibits is restored.

28. In view of the above discussions, this Court is of the view that the findings of the Trial Court that the plaintiff is in possession of the suit property and he has established his possession, prior to the filing of the suit and also at the time of institution of the suit, is well founded and the same is restored and consequently, the plaintiff is entitled to the relief of injunction and the Judgment and Decree of the Lower Appellate Court are erroneous, inappropriate on the facts and circumstances of the case and non-application of law as discussed supra and they are not legally sustainable and hence, they are liable to be set aside. The

second substantial question of law is answered in favour of the plaintiff / appellant.

29. In the result, the second appeal is allowed and the Judgment and Decree, dated 29.01.1993, made in A.S.No.69 of 1991, on the file of the Subordinate Court, Devakottai, are set aside and the Judgment and Decree, dated 30.09.1991, made in O.S.No.106 of 1988, on the file of the District Munsif Court, Devakottai, are restored and the suit in O.S.No.106 of 1988 shall stand decreed as prayed for. In the facts and circumstances of the case, there shall be an order of costs of Rs.3,000/- (Rupees three thousand only) payable by the respondents to the appellant. Consequently, connected civil miscellaneous petition is closed.