

(2010) 08 MAD CK 0092

In the Madras High Court

Case No : S.A. No. 1207 of 2007 and M.P. No. 2 of 2007

Vadivel Gounder, K. Palanisamy and Karupusamy

APPELLANT

Vs

P. Saraswathi

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0092

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; T.D. Vasu, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This second appeal has been filed against the judgment and decree, dated 20.4.2005, made in A.S. No. 11 of 2004,

on the file of the Subordinate Court, Tirupur, confirming the judgment and decree, dated 31.12.2003, made in O.S. No. 516 of 1995, on the file

of the District Munsif Court, Tirupur.

2. The plaintiffs in the suit, in O.S. No. 516 of 1995, on the file of the District Munsif Court, Tirupur, are the appellants in the present second appeal. The defendant in the said suit is the respondent herein.

3. The plaintiffs had filed the suit, in O.S. No. 516 of 1995, praying for a decree declaring that the plaintiffs are the absolute owners of the suit

property, and for a direction, directing the defendant to deliver the possession of the suit property to the plaintiffs and for a mandatory injunction,

directing the defendant to remove the constructions therein and for the relief of permanent injunction restraining the defendant and her men and

assignees from trespassing into the suit property and from interfering, in any

manner, with the plaintiffs" peaceful possession and enjoyment of the same.

4. The plaintiffs had stated that their vendor had purchased the suit property, under a sale deed, dated 5.4.1994, and that they had repurchased the suit property, on 10.4.1995, under a registered sale deed. Since then, the plaintiffs have been in exclusive possession and enjoyment of the suit property. However, the respondent had trespassed into the suit property and had put up constructions therein. In such circumstances, the plaintiffs had filed the suit, in O.S. No. 516 of 1995, on the file of the District Munsif Court, Tirupur.

5. In the written statement filed on behalf of the defendant it had been stated that the averments and the allegations made in the plaint are false, frivolous, vexatious and unsustainable, both in law and on facts. It had been stated by the defendant that her predecessors-in-title were in absolute possession and enjoyment of their shares, in S.F. No. 622/1 of Veerapandi Village in Tirupur Taluk. From 16.12.1974, as per the Document No. 3796/1974, registered at the office of the Sub Registrar, Tirupur, the respondent has been in absolute possession and enjoyment of the suit property. By spending huge amounts of money she has made the land cultivable and she had also fenced the property, with wire fence, and has put up constructions therein. While so, one Pappal, who is a stooge of the first plaintiff, had attempted to interfere with the construction operations of the defendant.

6. In the year, 1988, the defendant had filed a suit on the file of the District Munsif Court, Tirupur, in O.S. No. 467 of 1988, wherein, an ex parte decree of permanent injunction had been passed restraining Pappal and her men, from interfering with the defendant"s peaceful possession and enjoyment of the suit property. While so, the plaintiffs had filed the present suit, in O.S. No. 516 of 1995, without having any semblance of right, in respect of the suit property, by making false claims. While, the defendant is in possession and enjoyment of the suit property, the plaintiffs had made a blatantly false claim that the defendant had attempted to trespass into the suit property, in the month of May, 1999.

7. The claim regarding usufructuary mortgage can relate, if at all, only in respect of the property situated on the eastern side of S.F. No. 622/1, as

shown in the written statement. However, it cannot relate to the property, in S.F. No. 622/1. Further, the description of the suit property in the

plaint is erroneous, misleading and incomplete. It had also been stated that the defendant and the other vendors had also obtained title, in respect

of the suit property, by way of adverse possession. There is no truth or merit in the averments made by the plaintiffs, in the plaint filed in support of

the suit. As such, the suit filed by the plaintiffs is liable to be dismissed, as it is devoid of merits.

8. Based on the averments made on behalf of the plaintiffs, as well as the defendant, the trial Court had framed the following issues for

consideration:

1) Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for in the suit?

2) Whether the plaintiffs are entitled for recovery of possession from the defendant?

3) Whether the statements made in the written statement, regarding the oral partition and the possession in respect of S.F. No. 622, are true and

correct?

4) Whether the defendant and her vendors had obtained title of the suit property, by adverse possession?

5) Whether this Court has pecuniary jurisdiction to try the suit?

6) Whether the plaintiffs are entitled to the relief of declaration?

9. In view of the averments made on behalf of the plaintiffs, as well as the defendant, and in view of the evidence available on record, the trial

Court had dismissed the suit stating that it would be open to the plaintiffs to file a fresh suit, by giving the proper description of the suit property and

by impleading the proper parties, within a period of two months. However, the trial Court had also granted a decree of injunction against the

defendant, for a period of two months, restraining her from making any changes, in respect of the suit property. Further, the trial Court had

restrained the defendant from committing any act in the suit property, contrary to the interests of the plaintiffs.

10. Aggrieved by the judgment and decree of the trial Court, dated 31.12.2003, made in O.S. No. 516 of 1995, the plaintiffs had filed an appeal,

on the file of the Subordinate Court, Tirupur, in A.S. No. 11 of 2004. The

defendant in the suit had filed a cross appeal, challenging the judgment and decree of the trial Court, dated 31.12.2003.

11. The First Appellate Court, by its judgment and decree, dated 20.4.2005, made in A.S. No. 11 of 2004, had set aside the judgment and decree of the trial Court, dated 31.12.2003, and had dismissed the suit filed, in O.S. No. 516 of 1995.

12. The First Appellate Court had stated that the trial Court had erred in granting certain reliefs to the plaintiffs, even though such reliefs had not been prayed for by them. Further, the trial Court, having found that the plaintiffs in the suit had not shown, by sufficient evidence that they have certain rights in the suit property, ought not to have granted the reliefs in favour of the plaintiffs, permitting them to file a fresh suit, with proper description of the suit property and by adding the necessary parties. The First Appellate Court had also held that the judgment and decree of the trial Court was contrary to law and the principles of natural justice.

13. Aggrieved by the judgment and decree of the First Appellate court, dated 20.4.2005, made in A.S. No. 11 of 2004, the plaintiffs in the suit, in O.S. No. 516 of 1995, who were the appellants in the first appeal, had preferred the second appeal before this Court.

14. The learned Counsels appearing on behalf of the parties to the second appeal had been given sufficient opportunity to make their submissions on the substantial questions of law raised on behalf of the appellants, which are as follows:

1. Whether the title of the suit property can be determined on the basis of the Revenue Record alone when there are other Registered Documents, which substantially prove that the title and the ownership of the property vest with the plaintiff?
2. Whether the Courts below are right in holding that the order of the Settlement Officer is ultimate proof for the establishment of the title of the suit property?

15. The learned Counsel appearing on behalf of the appellants had submitted that the judgment and decree of the Courts below, are contrary to law, weight of evidence and the probabilities of the case. He had also submitted that the Courts below had failed to see that the title of the plaintiffs, in respect of the suit property, had been proved by sufficient evidence.

It had also been shown that the plaintiffs are in possession and enjoyment of the suit property. While so, the trial Court had, erroneously, dismissed the suit, without giving proper reasons for doing so. The Courts below had failed to see that the usufructuary mortgage had been discharged by the legal heirs of the erstwhile owner of the property concerned.

16. Further, the Courts below had failed to note that the revenue records, by themselves, cannot create or extinguish the title in respect of the suit property. The Courts below had erred in relying on the documents filed on behalf of the defendant, which had come into existence after the filing of the suit. Further, the First Appellate Court had, by its judgment and decree, dated 20.4.2005, had erred in setting aside the judgment and decree of the trial Court, which had granted certain reliefs to the appellants.

17. The learned Counsel appearing on behalf of the respondent had submitted that the First Appellate Court was right in setting aside the judgment and decree of the trial Court, dated 31.12.2003. Having dismissed the suit filed by the appellants, the trial Court had granted certain reliefs in favour of the appellants, who were the plaintiffs in the suit, in O.S. No. 516 of 1995, contrary to the established procedures of law and the principles of natural justice. No proper reasons had been shown by the trial Court for granting the reliefs in favour of the plaintiffs in the suit. In such circumstances, the First Appellate Court had rightly set aside the judgment and decree of the trial Court, dated 31.12.2003, made in O.S. No. 516 of 1995. Further, no substantial question of law arises for the consideration of this Court, in the present second appeal.

18. In view of the submissions made by the learned Counsels appearing on behalf of the appellants, as well as the respondent, and in view of the records available, this Court is of the considered view that the appellants have not shown sufficient cause or reason for this Court to interfere with the judgment and decree of the First Appellate court, dated 20.4.2005, made in A.S. No. 11 of 2004.

19. The trial Court, having found that the plaintiffs had not adduced sufficient evidence to substantiate their claims, in respect of the suit property, had, erroneously, granted certain reliefs, while dismissing the suit filed by the plaintiffs, in O.S. No. 516 of 1995. Further, it has not been shown as

to how the trial Court had passed a decree permitting the plaintiffs to file a fresh suit, by giving proper description of the suit property and by adding the necessary parties in the suit. Hence, the First Appellate Court had rightly set aside the judgment and decree of the trial Court, by its judgment and decree, dated 20.4.2005. Further, this Court, is of the considered view that no substantial question of law has been raised for the consideration of this Court, in the present second appeal. As such, the present second appeal is devoid of merits and therefore, it is liable to be dismissed. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.