

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-06-2013

CORAM

THE HONOURABLE MR. JUSTICE S. PALANIVELU

S.A.No.1013 of 1998

1.Manickam (died)
2.Vadivel
3.Thangammal
4.Kathiresu ... Appellant/Appellant/1st Defendant

Appellants 2 to 4 brought on records as LRs of the deceased sole Appellant vide order of Court dated 27.9.2012 made in CMP.No.523/11 TO 525/11 in SA.1013/1998.

vs.

1.Devadoss (died) ... Respondent /Respondent/Plaintiff

2.State of Tamilnadu
rep.by District Collector, Collectorate,
Perundurai Road, Erode II.

3.Assitant Director, Survey and Records
Collectorate Buildings,
Perundurai Road, Erode II.

... Respondents 2,3/ Respondents 2,3/
Defendants 2,3

4.Selvammal
5.Chinnathambi
6.Rajendran
7.Joseph

.... Respondents/legal heirs of plaintiff

Respondents 4 to 7 brought on record as LRs of the deceased R.1 vide order of Court dated 8.10.12 made in CMP.No.12164/2005 in SA.1013/1998.

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 18.3.1996 in A.S.No.6 of 1995 on the file of the Principal District Judge, Erode, in confirming the Judgment and decree dated 9.11.1994 in O.S.No.1050 of 1985 on the file of the II Additional District Munsif, Erode.

For appellants : Mr.T. Murugamanickem

For Respondents

: Mr.Pattabiraman
Government Advocate
[for R2 - R3]

Mr.A.K. Kumarasamy
[for R4 to R6]

JUDGMENT

1. The brief averments found in the suit plaint is as follows:

1.(a) The suit property had been obtained by predecessors of the plaintiff as settlement property duly given by the Government to the distress people through the Christian Missionaries. The plaintiff became absolute owner of the properties after the death of his father. In the revenue records, the name of the plaintiff has been recorded as Owner and enjoyer of the suit property, In the year 1956, the plaintiff had been given permit for irrigation by the L.B.P. Canal authorities. Since the rocky position is about 20 cents, they were excluded from irrigation and permit has been granted for 3 acres and 77 cents. After the formation of L.B.P. canal, the plaintiff is cultivating the lands with L.B.P. water and raising crops. In the north western corner, the plaintiff had put up his cattle shed and Thondupatti within 15 cents. The same has been enclosed by Kalli fence on the south and Vallai Vela fence on the east. The plaintiff is keeping his agricultural implements in the thatched shed and is tethering cattle in the said Thondupatti. The 1st defendant was residing in the dilapidated thatched shed situated in the natham puramboke. The son of the defendant is now employed in the Police Department and he is very influential person.

1.(b) On 25.11.1985 taking advantage of the absence of the plaintiff in that place, the defendant and his son trespassed into the north western portion. The plaintiff after return asked about the act of the first defendant, the 1st defendant and his son have assaulted the plaintiff. On the complaint given by the plaintiff, the Sub-Inspector of police enquired the 1st defendant and his son about the act of trespass, the first defendant had stated that under the resurvey his name was included as pattadar and that it is given as R.S.No.690/1, punjai hectare 0.15.5. Thereafter the plaintiff made enquires with the revenue department and learnt that the suit enquires sub divided some years ago and the same had been assigned resurvey number. The resurvey proceedings were done behind the back of the land owners and there was no enquiry as contemplated under the survey and boundaries Act. The plaintiff did not receive any notice from the survey authorities. The survey proceedings are not valid and binding on the plaintiff. He got the knowledge of resurvey proceedings for the first time only on 25.11.1985. Therefore, the defendants 2 and 3 are added as

necessary parties. The first defendant is total stranger in so far as the suit properties are concerned and he has no right or title to the suit property. The alleged pata in favour of the first defendant is not valid. Since the 1st defendant is in unlawful occupation of the north western portion in the suit property, the plaintiff is filing the suit for declaration and permanent injunction for item No.1 and for possession in item No.2, and for declaration that the alleged resurvey done by the defendants 2 and 3 are void and for mandatory injunction against defendants 2 and 3 to carry out the changes by means of mandatory injunction.

2. In the written statement filed by the first defendant, the following contentions have been raised:-

2.(a) It is not correct to state that the plaintiff is entitled to 3.77 acres. The allegation that after the formation of LBP canal, the plaintiff is cultivating the entire 3.77 acres and put up cattle shed and thondupatti in the north eastern corner and that the first defendant was residing in dilapidated house in Natham porambokku are not true. The first defendant had been in possession for the last 35 years, he had built house about 34 years ago. As per the orders of the Government, village had been resurveyed and as per the resurvey proceedings the first defendant had been given separate patta for the land in 690/1. The plaintiff has not questioned the resurvey proceedings before the proper authority within time. The proceedings cannot be questioned in this Court. Patta was given to the plaintiff only with regard to 3.58 ½ cents and out of that he had sold 55 cents under two sale deeds. So on the date of the suit he is entitled to 3.03 ½ cents only. The plaintiff is not entitled to 3 acres 77 cents in item No.1. The plaintiff is not entitled to mandatory injunction against the defendants 2 and 3. The suit is barred by limitation and the same may be dismissed.

3. The following are the averments in the written statement filed by the defendants 2 and 3:

3.(a) The suit property was registered in the name of first defendant according to his enjoyment. The demarcation and registration of the disputed land was made under the rules in force as per possession and enjoyment, it is registered in the name of first defendant. The resurvey was carried out in accordance with the legal provisions, by giving wide publicity after observing all formalities. Notification under Section 6(1) of the said Act was published in Coimbatore District Gazette on 27.4.1960 and 27.5.1960 inviting the attention of all the persons interested in the land. On completion of survey of the village, notice under Section 9(2) were served on all the land holders. On expiry of period of three months, the final notification was published in the District Gazette on 27.7.1979. The plaintiff has not filed the suit within 3 years. Hence the suit is not maintainable insofar limitation as well as for want of notice under Section u/w 80(1) C.P.C.

4. On the plaintiff's side 2 witnesses were examined and marked 13 documents and on the side of the defendant, including 1st defendant 2 witnesses were examined and 24 exhibits were marked. After perused the oral testimony and documents of both sides, the trial Court has decreed the suit in respect of Declaration of title in respect of item No.1 and 2; Permanent injunction in respect of 3.97 acres; delivery of possession in respect of a portion encroached upon by the 1st defendant and dismissed the prayers for resurvey and mandatory injunction against Government. The judgment and decree were confirmed by the first appellate Court in A.S.No.6 of 1995. Aggrieved against the judgment the 1st defendant has preferred this Second Appeal. During the pendency of the case, the appellant/1st defendant and the 1st respondent/plaintiff were died and their legal heirs were impleaded as parties respectively.

5. The following substantial questions of law have arisen for consideration in this Second Appeal:-

1. Whether the suit is maintainable in view of the specific bar as provided for under Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923?

3. When the Lower Appellate Court has declined to grant the relief, that the re-survey proceedings are void as against the plaintiff has subsequently held, that, the re-survey proceedings are not binding to the plaintiff?

5. Whether the plaintiff is estopped from questioning the re-survey proceedings in view of his admission of his knowledge of the re-survey proceedings?

Question No.1 and 3:

6. It is stated by D.W.2 who is working as Surveyor in Taluk Office that as per his evidence the resurvey works were started in the year 1960 and completed in 1979. Hence, it is the contention of the first defendant that as per the provisions of Tamil Nadu Survey and Boundaries Act, 1923, any objection as to the resurvey has to be made within three years from the date of its notification. In the Law Weekly 1934 Vol.XL Pg.536 [Penumetcha Seetharamaraju v. Kalidini Narayanaraju and another] it is held that under S.13, Survey and Boundaries Act, the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded, and S.14 makes the order in dispute under Ss.10 and 11 final unless set aside by a suit filed within 3 years from the date of the order.

7. Repelling the contention the learned counsel Mr.A.K. Kumarasamy appearing for the plaintiff would contend that if the suit is filed for title of the property, there is no time limit prescribed in the Act. Only for the objections as to the boundaries they have to be made within three years. In support of his contention, he placed reliance upon decision of this Court reported in 2002-2-L.W. 237 [Ponnu @ Kodappa Naicker and antoher v. Marammal and another] wherein it is held that although the property is sub-divided after notice under the Act, it will not bar the aggrieved party from moving civil court to establish his title to the property and that even assuming that there was sub-division and patta was issued in the name of the appellants, it will not confer any title to them unless they are able to establish that they have legal title to the property either by purchase or adverse possession. He also relied on a judgment of this Court in AIR (80) 1943 Madras 727 [G.Nagarathnam Pillai v. Guruswami Pillai] wherein similar proposition has been laid down.

8. The present case on hand is not for objecting the boundaries in the suit land. But for agitating the plaintiff's title. Hence the suit is very well maintainable. Even though the plaintiff was aware of the resurvey proceedings, he can agitate title by a civil suit at any time and hence no question of estoppel against the plaintiff. I answer these Question Nos.1 and 3 as above.

Question No.2

9. The plaintiff has come forward with the suit on the strength of settlement proceedings Ex.A-13 in respect of Ellispattai revenue village dated 25.01.1929 which has been issued in the name of one Maral wife of Ammasi. The said Ammasi is none other than the father of the plaintiff. By means of Ex.A.13, an extent of 3 Acres 97 cents in S.No.18/B were given to the parents of the plaintiff. P.W.1 has been granted patta for irrigation of the above said land after formation of L.B.P. canal. Ex.A.10 is the permit granted for irrigation from Bhavani reservoir. The plaintiff has produced Exs.A-1 to A-9 and A-12 kist receipts, which show that the plaintiff paid kists for the years 1963, 1964, 1965 and 1974.

10. As far as the claim of the first defendant is concerned, he produced Ex.B-17 Patta issued to him for the fasli in ,.No.10 Section I-1401. In this document it is noted that an extent of 0.155 Hectare in S.No.690-1 has been in the name of first defendant. It is contended that in the north-west corner he put up a house and he has been residing there by paying house tax, etc., Exs.B-2 to B-11 are the House Tax receipts paid by first defendant among which Exs.B-4 to B-6 are paid before the suit and the remaining receipts are after the suit. But the lower appellate court found reason that the above kist receipts do not relate to

the suit property as these receipts belonged to house in Matha Koil Street. As far as Ex.B.1 'B' Memo is concerned it was issued by Deputy Tahsildar, Perundurai, which does not relate to the suit property. As regards house receipts Exs.B-4 to B-11 it is found that house tax was paid to the house in Mada Koil Street. As for Ex.B-3 and Ex.B-2 it is for Door No.2.1.C.which is not related to the house shown in the suit property.

11. Excepting the above documents, the first defendant has not produced any record to show that he was in possession of item No.2 property at the time of resurvey proceedings. As far as Ex.B-17 Patta, it is in respect of 0.15.5 hectares in Survey No.690/1 is in possession and enjoyment of the plaintiff. Hence by taking advantage of the Patta issued in his name, the first defendant could not lay claim for the suit property. By the documents produced by the plaintiff, it is established that the plaintiff has been in possession and enjoyment of the property. In view of the existence of the above said factual scenario it has to be held that the resurvey proceedings are not binding on the plaintiff. Hence as already answered, the suit is for establishing the plaintiff's title to the suit property. In such a view of the matter there is no valid ground made out to interfere with the judgment and decree of the Courts below and the same are confirmed. The second appeal is devoid of merits. This substantial question of law is answered accordingly.

11. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Asst. Registrar[CO]
DT/-17.02.2014.

/true copy/

Sub Asst. Registrar.

ggs

To

1. The Principal District Judge,
Erode.

2. The II Additional District Munsif,
Erode.

3. The District Collector,
State of Tamil Nadu,
Collectorate, Perundurai Road,
Erode II.

4. The Assistant Director,
Survey and Records,
Collectorate Building,
Perundurai Road, Erode.

5. The Section Officer, VR Section,
High Court, Madras.

1 CC To Mr.T.Murugamanickam, Advocate SR NO.32302

1 CC To Mr.A.K.Kumarasamy, Advocate SR NO.32345

1 CC to the Spl. Government Pleader SR NO 32357

S.A.No.1013 of 1998

mp[co]
gp/19.2.



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