

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CUDDALORE

Present: Thiru. A.B.Naseer Ali, B.A.,B.L.,
Principal District Munsif, Cuddalore.

Tuesday, the 31st day of January 2017

OS.No.446/2010

Between

Sivalingam

.... Plaintiff

and

1. Bagyam
2. Gopal

...Defendants

Counsels on Record:

For Plaintiff : Mr. K. Venugopal

For Defendant 1 : Mr. V. Loganathan

For Defendant 2 : (Exparte)

This suit came before this court on 21.01.2017 for final hearing. Both parties were given liberty to file written arguments on or before 27.01.2017. Written arguments of first defendant had been filed already. Learned counsel for plaintiff, in the presence of learned counsel for first defendant argued. Upon perusal of records and having stood over for consideration till this day, this court delivers the following.

JUDGMENT

Suit for Permanent injunction restraining the defendants and their men from in any manner interfering with plaintiff's possession and enjoyment of the suit property or in the alternative grant a decree for recovery demolishing the superstructure unlawfully put up by the defendants and in case if he fails to permit the plaintiff to remove the same and recover suit property and for costs of the suit.

2. Gist of Amended Plaint:

a) The suit property originally belonged to one Pokkilai Ammal and Pavadai Padayachi. They validly sold the property to Thandavaraya Padayachi, father of the plaintiff on 23.06.1945 for valuable consideration and delivered possession. Thandavaraya had been in possession and enjoyment of the suit property. After his death his only son, the plaintiff has been in continuous possession and enjoyment. Patta stands in the name of the plaintiff.

b) While plaintiff was in possession and enjoyment of the property, one Dhandapani Padayachi, son of Veerappa Padayachi attempted to interfere with plaintiff's peaceful possession and enjoyment of the suit property. So, plaintiff was compelled to institute a suit against him in OS.112/1991 on the file of this court for permanent injunction restraining the said Dhandapani Padayachi. The suit was decreed exparte on 31.07.1992. The suit property was in Old S.No.345/2. Later, it was brought to 137/7 and now during Natham Survey a new No.282/8 is given.

c) Dhandapani Padayachi is now dead. First defendant herein is his daughter in law and 2nd defendant is the son in law of 1st defendant. They have absolutely no claim or interest in the suit property. Without any right, defendants 1 and 2 attempted to enter into the suit property and made arrangements to dig foundation in plaintiff's property. That was on 30.09.2010. Plaintiff immediately lodged a police complaint and an application to the Tahsildar to measure his property by a Surveyor to fix the boundaries. But defendants who have no regard for law again came to the property with men on 02.10.2010 and threatened the plaintiff stating that they would go ahead

with digging foundation in plaintiff's property. So, plaintiff is compelled to institute suit for the relief of permanent injunction restraining the defendants from in any manner entering into the suit property.

d) The suit was laid on 05.10.2010. Along with the plaint the plaintiff moved an application for temporary injunction but no interim order was granted. Taking advantage of it, the respondents committed trespass and laid foundation in the suit property. They have encroached upon the southern 1 3/8 cents in the suit property and put up a construction. So, plaintiff is constrained to seek the relief of mandatory injunction and recovery of possession. That apart the defendants have made construction in such a manner closing down the windows of plaintiff's house preventing passing of light and air. Plaintiff will take a separate action if necessary. Hence, this suit.

3. Gist of Written Statement filed by the 1st Defendant:

a) The claim is not true or just and the plaintiff is not entitled to any relief and the suit is liable to be dismissed with costs.

b) The plaintiff's right, title and possession over the suit property is specifically denied.

c) This defendant submits that this suit is barred by the principle of resjudicata as the issues involved and the subject matter in both the suits and the parties are same. The suit for bare injunction is not maintainable without seeking a prayer for declaration of his title, as it is very much in dispute. On this ground also this suit is not maintainable and it is liable to be dismissed.

d) The description of property is not correct and it is misleading. Taking advantage of the fact this defendant is a helpless, illiterate widow the plaintiff is attempting to grab the property of this defendant. The 2nd defendant has nothing to do with the suit property and his name has been unnecessary dragged.

e) Veerappa Padayachi, father of Dhandapani had purchased an extent of 23 ½ feet East West and 48 feet North south and another measurement of North South 25 feet by a registered sale deed dated 07.07.1947 and he had been in possession and enjoyment of the property by residing in the property purchased by him. After his death his two sons namely Kasinathan and Dhandapani had been in possession and enjoyment of the property purchased by their father. Subsequently, after the death of Kasinathan, his sons Ezhumalai and Gunasekaran sold the property to this defendant by a registered sale deed dated 26.06.1995 and Dhandapani also sold his share of property by a sale deed dated 06.06.2005. There is a mistake in the sale deed dated 26.06.1995 in respect of North South measurement of property which was wrongly mentioned as 25 feet instead of 48 feet. As the defendants' vendors were entitled to such an extent. The plaintiff can have no claim over the property comprised in the sale deed dated 07.07.1947. Now the plaintiff is making hectic attempt to grab the eastern portion of the property comprised in the sale deed dated 07.07.1947.

f) This defendant has no knowledge about the suit in OS.112/1991 alleged to have been filed by the plaintiff against Dhandapani who was an illiterate and not wordly wise. This defendant has constructed the house and finished the same 6 months back. Hence, it is false to allege that this defendant made arrangement to dig foundation on

30.09.2010.

g) The plaintiff has trespassed into the property of this defendant about 9 months back and he was questioned by the defendant as to the construction in the property. The plaintiff apprehended that this defendant might file a suit against him. As such the plaintiff has filed this vexatious suit against this defendant. The plaintiff is liable to surrender possession of the property for an extent of 23 feet North South and 7½ feet East West to this defendant after demolishing the construction put up by him. The construction is half way without minding the protests and objections made by this defendant.

h) That the suit may be dismissed with costs.

4. The following issues were framed:-

1. Whether the suit is barred by resjudicata?
2. Whether the plaintiff is in possession and enjoyment of the suit property?
3. Whether the suit for bare injunction is maintainable?
4. Whether the plaintiff is entitled for permanent injunction as prayed for?
5. What are the other reliefs that the plaintiff is entitled to?

5. Additional Issue framed:-

1. Whether the defendants high handedly proceeded with the construction and encroached the southern 13/2 cents in the suit property pending lis?
2. Whether the plaintiffs is entitled to the alternative relief of recovery of possession?
3. Whether the court fees paid by the plaintiffs is correct?
6. PW1 was examined and Ex.A.1 to Ex.A.9 were marked on the side of plaintiff. DW1 was examined and Ex.B.1 to Ex.B.4 were marked on the side of first defendant.

7. Issue No.1:-

a) OS.No.112/91 was filed for permanent injunction alone, setting out a cause of action said to have been arisen on 13.12.1990. On a different cause of action, alleging that the suit property is going to be encroached by way of construction, this suit has been filed. Therefore, the suit is not hit by the principle of resjudicata. Accordingly, this issue is answered against the claim of 1st defendant.

8. Issue No. 2:-

a) Plaintiff claims title through a sale deed dated 23.06.1945. The certified copy of the same has been produced as Ex.A1. To show possession he has filed chitta as Ex.A2 and Adangal as Ex.A3. These two documents belong to survey number.282/8 for an extent of 0.0255 square meter. Plaintiff had filed an application under Order 23 Rule 1 and disclosed in that application that actual Survey number is not 282/8 but, it is only 282/5 and 282/6. Further, the correct extent to be mentioned is 0.0118 square meter in 282/5 and 0.0111 square meter in 282/6. In that application he had candidly admitted that the name of the western side owner was mistakenly given. Therefore, it is explicitly clear that Ex.A2 and Ex.A3 are not related to suit property, which means that the plaintiff is not able to prove his possession. Therefore, this issue is answered against the claim of plaintiff.

9. Issue No.4:-

a) Since issue No.2 has been answered against the claim of plaintiff, this issue is also to be answered against the claim of plaintiff.

10. Additional Issue No.1:-

a) It has been pleaded by the plaintiff that during the pendency of the suit, the suit

property was encroached. On the other hand, it is the case of the 1st defendant that even before filing of the suit, the construction was completed. Ex.A9 is the photo marked during cross examination of DW1. It shows that both the properties of plaintiff and 1st defendant are under construction. However, the court is not able to ascertain whether that much of construction showed in Ex.A9 has been completed already when the suit was filed. In any event, it is the duty of the plaintiff to show that the construction was made only during the pendency of the suit. No clinching evidence is available as to how much area has been encroached (as alleged) by the defendants. Therefore, this issue is answered against the claim of plaintiff.

11. Issue No.3 and Additional Issue No.2:-

- a) Initially plaintiff had filed the suit for permanent injunction. During the pendency of the suit he converted the suit to claim alternative relief of recovery of possession stating that the defendants have invaded the suit property. If it is so, the relief of recovery of possession need not be sought as an alternative relief. Plaintiff in one breath says that he is in possession and seeks permanent injunction and in the same breath he seeks, alternatively, recovery of possession as if he was dispossessed. These two pleadings are mutually destructive which a plaintiff should not take. The plaintiff should not approbate and reprobate. He should not blow hot and cold.
- b) Further, as title itself is seriously disputed, the plaintiff might have converted the suit into a comprehensive one to seek declaration and recovery of possession. Failure in this aspect takes the case of plaintiff to down fall.
- c) It is no doubt true that the first defendant's case is also not clear and clinching

evidence is not available on her side. However, the failure of defendant cannot strengthen the case of plaintiff. Hence, these issues are answered against the claim of plaintiff.

12. Additional Issue No.3:-

a) Seeking recovery of possession the plaintiff has paid court fee under Section 25(a) of TamilNadu Court Fees Act and Suit Valuation Act. The correct provision to be quoted is Section 30 of the Act. However, failure in quoting correct provision should not be a hindrance to render justice. Therefore, on this ground the suit is not going to be dismissed. However, this issue is answered in favour of defendant since, the quoted provision is not proper.

13. Issue No.5 :-

a) Already the plaintiff has been denied with the relief for which he approached the court. Hence, this issue is answered against his claim.

In the result, this suit is dismissed. However, there is no order as to costs.

Dictated to Steno-typist, typed by her and corrected and pronounced by me in open court, on this day, the 31st day of January 2017.

Principal District Munsif,
Cuddalore.

List of Witnesses

Plaintiff side:

PW1 – Thiru. Sivalingam

Defendant side:

DW1.– Tmt. Bagyam

List of Documents

Plaintiffs side:

Ex.A.1/	-	Sale deed dated 23.06.1945
Ex.A.2/	-	Chitta
Ex.A.3/	-	Adangal
Ex.A.4/	-	Certified Xerox copy of Complaint in OS.No.112/1991
Ex.A.5/	-	Certified Xerox copy of Judgment in OS.No.112/1991
Ex.A.6/	-	Certified Xerox copy of decree in OS.No.112/1991
Ex.A.7	-	Police Compliant Carban Copy
Ex.A.8/	-	Copy of Application to Tahsildar
Ex.A.9/	-	Photo

Defendants' side:

Ex.B.1/ 07.07.1947	Sale deed	Original
Ex.B.2/ 26.06.1995	Sale deed	Original
Ex.B.3/ 06.06.2005	Sale deed	Original
Ex.B.4/ Series	House Tax Receipts	(6 Nos)

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