



S.A.No.1511 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

S.A. No. 1511 of 2011
and M.P. No.1 of 2011

Thangarasu

... Appellant

Vs.

Kolanjinathan

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 25.10.2010 passed in A.S.No.44 of 2010 on the file of the Additional Sub Court, Virudhachalam, confirming the judgment and decree dated 17.02.2010 passed in O.S.No.49 of 2002 on the file of the Judicial Magistrate-cum-District Munsif Court, Thittakudi.

For Appellant : Mr.C.Prabhakaran
for M/s.V.Anand

For Respondent : M/s.V.Srimathi



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S.A.No.1511 of 2011

JUDGMENT

The Second Appeal is filed by the plaintiff, who is the appellant herein, as against the Judgment and Decree passed by the First Appellate Court in A.S No. 44 of 2010 dated 25.10.2010.

2. For the sake of convenience, the parties are referred as plaintiff and defendant as referred in the suit.

3. The suit was filed for declaration of title and mandatory injunction against the defendant. The plaintiff contended that the suit property in Plot No. 13, S.No. 274/5 was given free of cost by the Government in favour of the plaintiff for construction of house in the year 1976. The plaintiff has constructed a house and residing in the suit property. The plaintiff contended before the Trial Court that the defendant had encroached an extent of 3.4 ft land which belonged to the plaintiff by building a brick wall admeasuring 1 1/2 feet width, 19.3 feet



S.A.No.1511 of 2011

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length and 15.6 feet height which is shown as ABCD in the sketch filed along with the plaint. The plaintiff contended that the defendant has no right or title over the said extent of land.

4. The defendant has filed the written statement and denied the averments made in the plaint. The defendant contended that the Government has given land free of cost in the year 1976 in favour of the defendant also for the purpose of constructing house. On 27.11.1994, patta has been issued in respect of the land in S.No. 274/6 in the name of the defendant covering an extent of 7.6 metre width and 18.8 metre length. The defendant contended that he has constructed house with 21.7 feet width and 23.8 feet length and has been using the land in the south side as garden.

5. The defendant contended that he is in continuous possession of the said extent of property and it is within the knowledge of everyone especially within the knowledge of the plaintiff. Therefore, the defendant has acquired right over the suit property by adverse possession. Hence,



S.A.No.1511 of 2011

WEB COPY

he prayed for dismissal of the suit.

6. The Trial Court after considering the plaint and written statement has framed the following issues:-

“1. Whether the plaintiff is entitled for the relief sought for?

2. Any other relief.”

7. Before the Trial Court, the plaintiff examined himself as P.W.1 and marked Ex. A1 to A5. On the side of the defendant, D.W.1 to D.W.3 were examined and Ex. D1 to D5 were marked. The report and sketches submitted by the Advocate Commissioner were marked as Ex. C1 to C3.

8. The Trial Court, after considering the evidence produced on either side has dismissed the suit. Challenging the Judgment and Decree of the Trial Court, the plaintiff preferred an appeal in A.S No. 44 of 2010 before the Additional Sub Court, Virudhachalam and the First Appellate Court framed the following issues:



S.A.No.1511 of 2011

WEB COPY

“1. Whether this appeal deserves to be allowed? Whether the Judgment and Decree dated 17.02.2010 passed by the Trial Court is liable to be set aside?

2. To what relief the appellant is entitled?”

9. The First Appellate Court considered the plea of adverse possession raised by the defendant. While examining the correctness of the Judgment and Decree passed by the Trial Court, the First Appellate Court had taken note of the fact that the defendant is in continuous possession of the suit property beyond the statutory period and the same is within the knowledge of the plaintiff. The First Appellate Court confirmed the Judgment of the Trial Court and dismissed the appeal. Challenging the same, the present second appeal has been filed by the plaintiff.

10. This Court has admitted the Second Appeal on the



S.A.No.1511 of 2011

WEB COPY

following substantial questions of law:-

“1. Whether the Courts below are correct in law in holding that the plaintiff is not entitled to the relief prayed for as the evidence is not sufficient to establish his title and possession without there being a specific issue framed in the suit with regard to the same?

2. Whether the Courts below are correct in law in ignoring the Commission Report and Plan completely with reference to the location of the property allotted by the Government through pattas in 1976 to the plaintiff and the defendant and the area trespassed by the defendant?

3. Whether the Courts below are correct in law in concluding that the defendant is entitled to adverse possession of the property trespassed by him without there being a specific issue framed in the suit, since the parties have gone to trial based on the title created in their respective names by the patta granted by the Government?

4. Whether the Courts below are correct in law in dismissing the suit even after the plaintiff



S.A.No.1511 of 2011

WEB COPY

having established by oral and documentary evidence that the plaintiff is entitled to the suit property and the defendant is entitled only to the Plot No.14 and to the extent for which he has been granted patta in 1976, even as per the admission of the defendant during cross-examination of D.W.1? ”

11. The learned counsel appearing for the appellant would contend that the Advocate Commissioner who was appointed in this case has given a specific finding that the respondent has encroached upon the property belonging to the appellant and the same is extracted hereunder:-

வரைபடம்-1ல் கண்டுள்ளபடி 1, 3, என்ற இடத்தில் உள்ள சர்வே கற்கள் சரிபார்க்கப்பட்டு அதன்பின்னர் அளக்கப்பட்டது. லைக் கற்கள் அளவுகளுடன் இருந்ததையும் என்னால் காணமுடிந்தது. லைத் தாவா சொத்தை நில அளவையர் உதவியுடன் அளந்து பார்த்ததில் வாதியின் இடமானது என்னால் சிவப்பு வண்ணத்தில் வரைபடம் 2ல் காட்டப்பட்டுள்ள பி என்ற புள்ளியில் ஆரம்பித்து இ என்ற புள்ளியில் முடிவடைகிறது. அதேபோல் வடபுறம் கே.ஜே.



என்ற புள்ளில் முடிவடைகிறது. ஷை வழக்கு சொத்தின் முழு விஸ்தரணத்தை அளந்து பார்க்கையில் வாதி மேல்புறம் பெருமாள் என்பவருக்கு பாத்தியமான இடத்தில் 1.6 அடி ஆக்கிரமித்து கட்டிடம் கட்டப்பட்டுள்ளது தெரியவருகிறது. அதேபோல் பிரதிவாதியானவர் வாதிக்கு பாத்தியமான கீழ்புறம் எனது வரைபடத்தில் கண்டுள்ள டி, இ, ஐ, ஏச். பகுதியில் 3.4 அடி கீழ்மேலாக ஆக்கிரமித்து கட்டப்பட்டுள்ளது. ஷை பிரதிவாதியின் வீடு தென்வடல் 19.3 அடி உள்ளது வாதியின் வீடு தென்வடல் 39.3. அடி உள்ளது. ஷை 2 வீடுகளுக்கும் நடுவே வரைபடத்தில் சி.டி. எனக்குறிப்பிடப்பட்டுள்ள பகுதி 4.6 அடி அகலத்திற்கு சந்து போல் காணப்பட்டது. ஷை உபய வாதிகளின் வீடுகள் இரண்டும் தெருவை ஆக்கிரமித்து கட்டப்பட்டுள்ளதை என்னால் காண முடிந்தது. வாதியின் வீடு தென்வடல் 9 அடி அளவிற்கும் பிரதிவாதியின் வீடு தென்வடல் 9 அடி அளவிற்கும் பிரதிவாதியின் வீடு தென்வடல் 4.3 அடி அளவிற்கும் ஆக்கிரமித்து கட்டப்பட்டுள்ளது.



S.A.No.1511 of 2011

WEB COPY

12. The learned counsel for the appellant would contend that the Trial Court has not specifically framed any issue with regard to adverse possession. When a specific issue was not framed, it is not appropriate for the Trial Court as well as the First Appellate Court to give a finding on adverse possession. The learned counsel for the appellant would further contend that when a judgment is delivered, it is necessary for the Trial Court as well as for the First Appellate Court to consider the specific plea of the plaintiff and the denial in the written statement and also to see that the necessary issues are framed. Order XLI Rule 31 of C.P.C. reads as follows:-

“Order XLI Rule 31. Contents, date and signature of judgment —The judgment of the Appellate Court shall be in writing and shall state—
(a) the points for determination;
(b) the decision thereon;
(c) the reasons for the decision; and
(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and



S.A.No.1511 of 2011

shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

13. The learned counsel for the respondent would contend that the appellant, in his evidence before the Trial Court, has categorically admitted that the respondent was in possession of the suit property. The evidence of the appellant is extracted hereunder:-

1976 ல் பட்டா கொடுத்தார்கள்.
பட்டா கொடுத்த ஒரு வருடம் கழித்து
பிரதிவாதியும் வீடு கட்டி அந்த வீட்டில்
குடியிருந்து வருகிறார். பிரதிவாதி வீடு
கட்டுவதற்கு முன்பு அவரது தகப்பனார் அந்த
இடத்தில் கூரைவீடு கட்டி குடியிருந்து வந்தார்.
நான் வழக்கு போட்டது 2002ல் தான். 1982ம்
ஆண்டிலிருந்து 2002ம் ஆண்டு வரை
பிரதிவாதிதான் அந்த வீட்டில் குடியிருந்து
வருகிறார் என்றால் சரிதான்.

14. The learned counsel for the respondent would contend that when the appellant has specifically admitted that the respondent was in



S.A.No.1511 of 2011

WEB COPY

possession of the land in dispute, now the appellant cannot contend that the issue was not framed by the Trial Court and that was ignored by the respondent herein.

15. The learned counsel for the respondent would contend that it is the case of the respondent that the appellant and the respondent were living in the same area in their respective Plot Nos.13 and 14 and the respondent has constructed a wall in the land belonging to the appellant herein and thus, encroachment was done by the respondent with the knowledge of the appellant herein. The appellant did not dispute the encroachment made by the respondent and the respondent is now in possession for more than 42 years in the encroached area.

16. Admittedly, the appellant is not disputing the fact that the respondent is in possession of the encroached portion. The appellant himself has admitted before the Courts below that the respondent is in possession of the suit schedule property and the Advocate Commissioner has also reiterated in his report that the respondent has encroached upon



S.A.No.1511 of 2011

WEB COPY

the property. The evidence of the appellant and the respondent shows that the respondent has been in possession for nearly 20 years prior to the institution of the original suit by the appellant herein and the possession of the suit property by the respondent is well within the knowledge of the appellant.

17. When the appellant was well aware of the fact that the respondent has encroached upon his property and is in continuous possession of the property beyond the statutory period, by virtue of adverse possession, the respondent has acquired absolute right over the suit property which cannot be denied.

18. The 1st and 2nd substantial questions of law raised by the appellant is factual in nature and is decided in favour of the respondent herein. With regard to the 3rd and 4th substantial questions of law, the evidence of the appellant before the Trial Court proves that the appellant had complete knowledge about the respondent's possession over the suit



S.A.No.1511 of 2011

WEB COPY

schedule property from the year 1982 to 2002 and has not raised any dispute. The report of the Advocate Commissioner marked as Ex. C1 evidently makes it clear that the respondent has encroached the suit schedule property belonging to the appellant. Therefore, the respondent is entitled to claim the suit schedule property by adverse possession. Accordingly, the 3rd and 4th substantial questions of law are also decided in favour of the respondent.

19. In view of the above, the Second Appeal fails and stands dismissed. The Judgment and Decree in A.S No. 44 of 2010 dated 25.10.2010 passed by the Additional Sub Court, Virudhachalam is hereby confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

09.09.2024

Index :Yes/No
Speaking/Non-Speaking Order
Neutral Case Citation : Yes/No
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Page 13 of 15



WEB COPY



S.A.No.1511 of 2011



WEB COPY



S.A.No.1511 of 2011

N.SENTHILKUMAR, J.

Gsa

To

- 1.The Additional Subordinate Judge,
Vriddhachalam.
- 2.The Judicial Magistrate-cum-District Munsif,
Thittakudi.

S.A. No. 1511 of 2011

09.09.2024