



WEB COPY



S.A.No.895 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.895 of 2013

and

M.P.Nos.1 and 2 of 2013

Usharani

.. Appellant

Vs.

1.Thyagarajan

2.Vijayalakshmi

.. Respondents

(Memo recorded dated 24.01.2024 in U.S.R.No.2896, Notice to R2 is dispense with in S.A.No.895 of 2013 vide Court order dated 01.02.2024 made in S.A.No.895 of 2013 by VLNJ)

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment in A.S.No.85 of 2008, dated 22.02.2012 on the file of the Principal Sub Court, Myladuthurai, confirming the decree and judgment in O.S.No.346 of 1991, dated 31.08.2007 on the file of the Principal District Munsif Court, Myladuthurai.



WEB COPY



S.A.No.895 of 2013

For Appellant : Mr.S.Ajith for
Mr.M.Muthuappan

For Respondents : Mr.B.Jawahar for R1
: R2 – NPW

JUDGMENT

The present Second Appeal arises out of the judgment and decree of the Court of the Principal Sub Court at Myladuthurai in A.S.No.85 of 2008, dated 22.02.2012 in confirming the judgment and decree of the Court of the Principal District Munsif Court at Myladuthurai in O.S.No.346 of 1991, dated 31.08.2007.

2. O.S.No.346 of 1991 was presented by the respondents herein for the relief of declaration of title and for a consequential relief of recovery of possession. The plaintiff claims that she is entitled to 3960 Sq.ft. by virtue of a sale deed, dated 11.10.1982. The defendants, who are her neighbours had encroached upon a “வாய்க்கால்” which divided the Survey Nos.962 and 964 and had further encroached upon her property.



S.A.No.895 of 2013

3. The defendants entered appearance and filed a written statement denying the right of the plaintiff and claiming adverse possession in and over the suit property. On the basis of these pleadings, the learned Trial Judge framed the following issues :

1. தாவா பிரகாரம் விளம்பல் பரிகாரம் வாதிக்கு கிடைக்குமா ?
2. தாவா சொத்து வாதிக்கு வசம் கிடைக்குமா ?
3. தாவாவில் உள்ள எபி-எடி என்ற பொழியில் பிரதிவாதிகள் சுவர் கட்டக் கூடாது என வாதி கேட்டுள்ள நிரந்தர உறுத்துக்கட்டளைப்பரிகாரம் வாதிக்கு கிடைக்குமா ?
4. வேறு என்ன பரிகாரம் வாதிக்கு கிடைக்கும் ?
5. உபய பார்ட்டிகளுக்கு கிடைக்கக்கூடிய பரிகாரங்கள் என்ன ?

வனையப்பட்ட கூடுதல் எழுவினாக்கள் :

1. தாவாச்சொத்தை 1ஆம் பிரதிவாதி, உஷாராணி என்பவரிடம் விற்பனை செய்துவிட்டாரா ?

2. உஷா ராணி இவ்வழக்கிற்கு தேவையான வழக்காடியா ?

மீட்டனுப்புக்கு பின்னர் வனையப்பட்ட கூடுதல் எழுவினா :

1. தாவா சொத்தைப்பொருத்து வாதிக்கு அவர் கோரும் விளம்பல் பரிகாரம் கிடைக்கக்கூடியதா ?



S.A.No.895 of 2013

4. The plaintiff has entered into the witness box and examined herself as P.W.1 and the defendants entered into the witness box and examined themselves as D.W.1 to D.W.3. The plaintiff filed Ex.A1 to A8. Whereas, the defendants did not file any documents. Considering the respective evidence, the learned Trial Judge came to the conclusion that the plaintiff had proved the title to the suit property and the defendants had not proved a prescribed title to the property by way of adverse possession. On appeal, the learned Subordinate Judge confirmed the decree against which the present Second Appeal.

5. When this appeal came up for admission on 16.12.2013, this Court did not admit the appeal but had ordered notice regarding admissions. On service of summons, Mr.B.Jawahar entered appearance on behalf of the respondents.

6. Heard Mr.S.Ajith for Mr.M.Muthappan, learned counsel for the appellant and Mr.B.Jawahar for the respondents.



S.A.No.895 of 2013

7. Mr.S.Ajith would vehemently contend that though the appellants had purchased the property on 26.07.1994, her vendor one Anjugathammal had obtained the property by way of a sale on 15.03.1981, which was preceded by the settlement deed, dated 01.12.1974 and therefore, his clients have been in possession and enjoyment of the property for more than the prescribed period i.e., from 1974 till 1991, when the present suit was filed.

8. He would further contend that the 2nd defendant died pending the litigation and no steps were taken to bring on record the legal representatives and therefore, the suit that had been abated as against the 2nd defendant would have been dismissed as against all the defendants as the plaintiff seeks for a joint decree. He would further state that, in any event the plaintiff has not proved title to the property and therefore, the appeal should be allowed and the suit should be dismissed.

9. Mr.B.Jawahar would point out that the defendants had not let in any documentary evidence before the Trial Court in order to substantiate the proof of having been in possession of the property open, continuous and with hostility necessary to fructify a plea into adverse possession. He would



S.A.No.895 of 2013

further contend that the property of the defendants is situated on the Southern side of the plaintiff's property which was divided by way of a channel as it would be clear from the document under Ex.C1 and Ex.C2, the Advocate Commissioner's report and plan. He would state being a concurrent finding of fact, the decree may be confirmed and the appeal may be dismissed.

10. I have carefully considered the arguments on either side particularly the persuasive arguments of Mr.S.Ajith.

11. While going through the judgment and decree and the documents available, it is clear that the plaintiff had purchased the property to an extent of 3960 Sq.ft. under Ex.A7 from the predecessors in title/the Society. The property of the plaintiff is situated in Survey No.964. Over the said property, the defendants do not have a right. It would not be out of place to point out here that the original title holder of the plaintiff as well as the defendants was a Co-operative Society. The Society had developed a large extent and the plaintiff and the defendants had purchased portions there on. The plan that has been annexed would show that Survey No.964 belongs to



S.A.No.895 of 2013

the plaintiff and the Survey No.963 is the channel and the Survey No.962 is the property belonging to the defendant/appellant. There has been no evidence that has been filed by the defendant to show that she has a right across the channel and beyond it on the Southern side in Survey No.964 itself.

12. On the contrary, both the Courts below have come to the conclusion that insofar as the purchase by the plaintiff, she has title to the said property by virtue of Ex.A7. This corroborates with Ex.C1 and C2. Unfortunately for the defendant, she has not objected to the Advocate Commissioner's report or plan. The plan very clearly distinguishes the aforesaid three survey numbers namely Survey Nos.962, 963 and 964. It has shown that the defendant had not only encroached upon the “வாய்க்கால்” but had crossed that and had encroached upon the property situated in Survey No.964.

13. This takes us to the plea of adverse possession. The very plea of adverse possession shows that the defendant tacitly concedes to the title of



S.A.No.895 of 2013

the plaintiff. Apart from that, neither the defendant's vendor i.e., Anjugathammal nor the 3rd defendant/Usharani have produced any records, in particular, the settlement deed, dated 01.12.1974 or the sale deed, dated 15.03.1991 or her own sale deed, dated 26.07.1994 in order to substantiate the case that they had been in open, continuous and hostile possession of the property beyond the statutory period of 12 years.

14. Insofar as the plea that the 2nd defendant had passed away and the suit had been dismissed as abated and the steps not having been taken and the entire suit should have been dismissed, it is a very interesting argument indeed. The perusal of the plaint would show that the relief that had been sought for was against Vijayalakshmi, who claimed to be the owner of the property. Apart from that, pending the litigation Usharani had purchased the property on 26.07.1994 from the 1st defendant. Thereby, conveying all the right, title and interest of the 1st defendant had in favour of the 3rd defendant. Once the 3rd defendant becomes the owner of the property, the presence of 2nd defendant is absolutely unessential. In fact as pointed out by Mr.B.Jawahar, a memo had been filed stating that the 2nd defendant is neither a proper nor a necessary party to the suit. Therefore, the death of the



S.A.No.895 of 2013

2nd defendant does not make a difference to the case. In any event, the 3rd defendant having purchased the right of the 1st defendant, steps into the issue as legal representative under Section 2(11) of the Code of Civil Procedure and therefore, the factum that the suit has abated against the unnecessary party does not mean the suit against the necessary party should also be dismissed. Since the plea of adverse possession as well as abatement fail, I do not find any questions of law involved in the appeal much less any substantial questions of law that requires consideration.

15. In fine, this Second Appeal stands dismissed. The judgment and decree of the Court of the Principal Sub Court at Myladuthurai in A.S.No.85 of 2008, dated 22.02.2012 in confirming the judgment and decree of the Principal District Munsif Court at Myladuthurai in O.S.No.346 of 1991, dated 31.08.2007 stands confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.02.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
mkn2



WEB COPY



S.A.No.895 of 2013

V. LAKSHMINARAYANAN, J.

mkn2

To

- 1.The Principal Sub Court,
Myladuthurai
- 2.The Principal District Munsif Court,
Myladuthurai

S.A.No.895 of 2013
and
M.P.Nos.1 and 2 of 2013

12.02.2024