

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.349 of 2008

Judgment reserved on 01.06.2015	Judgment pronounced on 08.06.2015
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Periyasamy

.. Plaintiff/Respondent/Appellant

Vs

1.Kasi Ammal
2.Muruvayi
3.Adhimoolam
4.Muthusamy
5.Vijayakumari
6.Shanthi

.. Defendants 2 to 7/Appellants/
Respondents

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 30.11.2007 in A.S.No.153 of 2006 on the file of the Principal Subordinate Court, Vridhachalam reversing the Judgment and Decree dated 01.08.2006 in O.S.No.343 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Thittakudi.

For Appellant : Mrs.Chitra Sampath
Senior Counsel
for Mr.R.Sunil Kumar

For Respondents सत्यमेव जयते
R1 to R3, R5 & R6 : Mr.D.Shivakumaran
R4 : No appearance

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 30.11.2007 in A.S.No.153 of 2006 on the file of the Principal Subordinate Court, Vridhachalam reversing the Judgment and Decree dated 01.08.2006 in O.S.No.343 of 1997 on the file of the District Munsif cum Judicial Magistrate Court, Thittakudi.

2.The averments made in the plaint are as follows:-

The suit property situated in Alampadi Village, Thittakudi Taluk was purchased by the plaintiff's grandfather Munian from one Thandan under the registered sale deed dated 13.02.1948 for a valuable consideration. After the death of said Munian, his three sons, namely, Velayutham/plaintiff's father, Ramasamy and Ayyasamy divided the suit property and other properties by an oral partition forty years ago. In the said oral partition, the suit property was allotted to the plaintiff's father Velayutham and he enjoyed the suit property by putting hayrick and using it as cattle shed. After the death of plaintiff's father Velayutham, the plaintiff and his brother divided the properties by an oral partition fifteen years ago. Since the plaintiff's brother settled at Rajkot, the plaintiff alone is in possession and enjoyment of the suit property. Further, the plaintiff has prescribed titled by adverse possession and no tax was levied since the suit property was natham property and the plaintiff's name alone has been entered in the Government records. While so, the defendants attempted to trespass into the property by denying the title to the suit properties. Hence, the plaintiff issued a lawyer notice dated 05.08.1989 to the first defendant. The first defendant sent a reply notice dated 10.08.1989. Since the defendants who have no manner of right, title or possession attempted to dispossess the plaintiff from the suit property the plaintiff filed a suit in O.S.No.343 of 1997 for declaration of title to the suit schedule properties and consequential permanent injunction restraining the defendants, their men and agents from in way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

3.The gist and essence of written statement filed by the defendants are as follows:

The allegations made in the plaint were denied as highly mischeived and false by the defendants. The defendants submitted that the suit property is a natham poramboke property and it never belonged to Thandan and he was not competent to deal with the suit property. The alleged sale deed dated 13.02.1948 is not true, valid and binding on the defendants. The property mentioned in the alleged sale deed is not the suit property. The defendants submitted that on the northern side of the suit property, the street is situated and on further north of the Street, the house of the defendants situated. The defendants and their ancestors have been in possession and enjoyment of the suit property for more than 50 years and it has been used by them by putting hayrick and as cattle shed. It is further submitted that the description of the suit property is not correct and the defendants are in possession of the property. The defendants further submitted that there is no cause of action for the suit and hence, they prayed for dismissal of the suit.

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side

counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.3, D.W.1, D.W.2 and Exs.A1 to A7, Exs.B1 to B7 and Exs.C1 and C2, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.153 of 2006 on the file of the Principal Subordinate Court, Vridhachalam.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed the appeal. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the plaintiff.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1.Whether the learned Subordinate Judge did not err in requiring that the description of property as found in the plaint did not confirm to the description as found in Exhibit A1, failing to note that the document of purchase was of the year 1948 and the ownership of the persons have changed hands over the period of long years?

2.Whether the finding of learned Judge that the natham property belonged to the Government not erroneous when the expression natham connotes house site that does not vest with the Government under the Land Acquisition Act?"

7.Challenging the judgment and decree of the First Appellate Court, the learned counsel for the appellant/plaintiff would submit that the suit property is only 35 x 22 kaladi in R.S.No.70/1 Natham and one Thandan is the original owner. Under Ex.A1 the grandfather of the plaintiff purchased the property under a registered sale deed. He retains some portion of the property and subsequently that was settled in favour of his relative Chinnapillai/P.W.3 and she has deposed about the possession of the plaintiff. That factum was not considered by the First Appellate Court. He would further submit that there is no dispute in respect of the identity of the property because D.W.1 herself admitted the identity of the property. So, the First Appellate Court without considering the same reversed the judgment and decree of the Trial Court. Hence, he prayed for setting aside the judgment and decree passed by the First Appellate Court.

8.Refuting the same, the learned counsel appearing for the respondents would submit that the description of the suit property and the property mentioned in Ex.A1 is different. The northern boundary was not clear and there is no pleadings in respect of that. P.W.1, in his cross examination himself has admitted that he is now working as Load Man at Gandhi Market, Trichy and before that, he was at Rajkot. So, the First Appellate Court is correct in holding that the plaintiff has not proved his title and also the possession and

hence, he is not entitled to injunction. He further submitted that the First Appellate Court is the final fact finding court and unless the judgment of the First Appellate Court is perverse, the Second Appellate Court shall not interfere with the finding. Hence, he prayed for dismissal of the appeal. To substantiate his arguments, he relied upon the following decisions:

1. 2013 (1) MWN (Civil) 541 (Subramaniya Pillai vs. Mannammal)
2. 2014 (2) LW 301 (Raja and another vs. Paramanathan and another)

9. Considered the rival submissions made on both sides and also perused the typed set of papers.

10. It is well settled principle of law that the plaintiff/appellant himself has to prove his case and he cannot sought for relief on the basis of the loopholes in the case of the defence. Here the appellant's candid case is that his grandfather, Munian purchased the property under the sale deed Ex.A1 dated 13.02.1948 from Thandan, who is a Village Menial. Admittedly, Ex.A1 is a registered document and the description of the property in Ex.A1/sale deed is as follows:

"Chidambaram Division, Thittakudi S.R.O., Alambadi Village, R.S.No.70/1, Natham, North by East to West Street in between Slum and Residential Street, West by South to North Lane to Slum, South by Murugan house, East by my Cattle Shed and vacant site, in the boundary, the vacant land measure East to West 35 Kaladi, South to North 22 Kaladi."

11. The description of the suit property in the plaint filed by the plaintiff/appellant is as follows:

"Chidambaram Division, Thittakudi S.R.O., Alambadi Village, R.S.No.70/1, Natham, East by vacant site of Chinnapillai, W/o. Pattathan, South by East to West Street, West by South to North Lane, North by Mangalore Road in which East to West 35 Kaladi, South to North 22 Kaladi including cattle shed approximate value of the plaintiff is Rs.600/-."

12. Considering both the documents, i.e. Ex.A1/sale deed and the plaint, the Southern and Western boundary has not been disputed, Eastern boundary mentioned as Chinnapillai which was retained by the plaintiff's grandfather as per Ex.A.1 and subsequently he settled the same under Ex.A7 and one of the boundary was shown as appellant's property. The Northern boundary in Ex.A1 has been shown as Murugan's house, who is none other than the first defendant's father. But whereas in the plaint, it was stated as South of East to West. Hence, the Northern boundary has been wrongly mentioned. So, I am of the view that the boundary given in Ex.A1 tallies with the description of the suit property in respect of three sides, but not tally with the Northern boundary. In Ex.A1, it was specifically

mentioned that Northern boundary is Murugan's house, who is the father of the first defendant, but in the description of the suit property, it was mentioned as Mangalore Road. No explanation has been given as to when the Mangalore Road has been formed and how the Northern boundary has been different from Ex.A1. So, there is no evidence to show that the suit property is the property purchased by the plaintiff's grandfather Munian in the year 1948 under Ex.A1.

13.The learned counsel appearing for the appellant would also submit that D.W.1 herself deposed the identity of the property. But it is well settled dictum of the Hon'ble Apex Court that the appellant/plaintiff must prove his case and he must sought for relief on his own case and not from the loopholes in the case of the defendant and sought for the relief.

14.It is also pertinent to note that after 1948 even though he has stated that there was a partition between the father and junior paternal uncle and also himself and his brother, but except Ipse Dixit P.W.1, no other supporting evidence has been let in and there is no mutation of revenue records. Ex.A4 is the Patta which came into existence after filing of the suit. Ex.A5 has also came into existence only after filing of the suit. Before filing the suit, the appellant/plaintiff issued a notice under Ex.A2 dated 05.08.1989 and reply has been given under Ex.A3 on 10.08.1989. Then only the suit has been filed. Ex.A6 is the document, wherein villagers have made an allegation against the said Thandan, who is a Village Menial. Thandan has also given a statement before the Revenue Inspector. This document will no way help both the parties but it shows that the said Thandan is a Village Menial.

15.Considering the documents filed by the defendants, it is seen that as per Ex.B1 dated 25.08.1989, S.No.70/1 Natham, Plot No.98 has been assigned to Adhimoolam, son of Ramasamy/the first defendant. But the same was assigned before filing the suit, since the suit was filed on 12.09.1989. Hence, it is not related to the suit property and no relevance can be placed. Similarly, Ex.B2, Chitta for Fasali 1399 dated 03.05.1994 and Ex.B3, Chitta copy, Ex.B4, Kist receipt, Ex.B5, house tax receipt dated 29.01.1991, Ex.B6 dated 04.02.1991, Ex.B7 dated 11.07.1991 were came into existence only after filing of the suit. But all those things are related to Plot No.98, which was assigned by the Government in favour of Adhimoolam/third respondent, son of first defendant.

16.The suit property is S.No.70/1. But the Government has plotted out the property and assigned in favour of the landless people in respect of S.No.70/1. In such circumstances, it is the duty of the appellant to prove that after he purchased the suit property under Ex.A1 on 13.02.1948, the property was in his possession and patta has been changed in his name. But except the sale deed/Ex.A1, he has not filed any scrap of paper to show that he was in possession. The appellant issued notice only in the year 1989

after 41 years and they may very well file the revenue records, A Register to show that patta for the property stands in the name of Thandan and subsequently transferred to the name of the appellant's grandfather Munian and his father Velayutham and thereafter in his name. But he has not taken any steps to produce the revenue records. As already stated the suit property is different from the property mentioned in Ex.A1 because the northern boundary of the suit property was different from the property mentioned in the sale deed/Ex.A1.

17.In such circumstances, I am of the view that the appellant has miserably failed to prove that the description of the property in Ex.A1 is the suit property. So, the Substantial Question of Law Nos.1 and 2 has been answered against the appellant. The appellant herein has also failed to prove the title and possession since the description of the suit property is not tallying with the description of the property in Ex.A1. So, I am of the view that the appellant is not entitled to any relief.

18.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing for the respondents reported in 2013 (1) MWN (Civil) 541 (Subramaniya Pillai vs. Mannammal), wherein it was held that unless the finding of the First Appellate Court is perverse, the Appeal Court cannot interfere. It is appropriate to incorporate paragraph No.9 of the judgment, which reads as follows:

"9.A careful consideration of the above said questions suggested as substantial questions of law will lead to an inevitable conclusion that none of the questions can be accepted to be a substantial question of law. Question Nos.i to iv and vi are vague and general. Unless a finding of fact is projected to be perverse, there cannot be any question of elevating the same to the position of a substantial question of law. Perhaps, the attempt made by the appellant is to show that there is perversity in the finding of the lower appellate court. But the learned counsel for the appellant was not able to show that any part of the evidence was omitted to be considered by the lower appellate court or that any inadmissible piece of evidence was taken into account by the lower appellate court. The appellant is not in a position to make out a case that no reasonable person would have arrived at such a conclusion on a question of fact based on the evidence adduced. Hence the attempt made to show that there is perversity in the findings of fact rendered by the appellate court has ended in a failure. The reasons for the above said conclusions arrived at by this court are found in the succeeding paragraphs."

Hence, I am of the view that the appellant herein has not proved his title and possession. So, he is not entitled to any relief.

19.The learned counsel appearing for the respondents also relied upon the judgment reported in 2014 (2) LW 301 (Raja and another vs. Paramanathan and another), wherein it was held that in a suit for declaration of title and possession when identity of property in dispute, relief in favour of plaintiff cannot be granted by picking weakness in defendant's case. It is appropriate to incorporate paragraph No.11, which reads as follows:

"11.Even this court made an attempt to find out a solution regarding the identification of the property, but such effort ended in a failure. As this court is of the view that the materials available are not enough to render a finding as to the identity of the suit property and also the correlation of old and new survey numbers, it shall not be prudent to pick holes in the defendants' case and grant the relief in favour of the plaintiffs solely relying on the weaknesses in the case of the defendants. As the learned Subordinate Judge has chosen to do it, this court does have no hesitation in holding that the second substantial question of law is to be answered in favour of the appellants/defendants."

20.Considering the above citation, I am of the view that mere statement is not an admission, but the entire evidence has to be looked into. Since the appellant has not proved that the property mentioned in Ex.A1 is the suit property and also not filed any scrap of paper to prove his possession from the year 1948 till filing of the suit in the year 1989, I am of the view that the First Appellate Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, the decree and judgment passed by the First Appellate Court does not warrant any interference and the same is hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

21.In fine,

- Second appeal is dismissed.
- The decree and judgment passed by the learned Principal Subordinate Court, Vridhachalam in A.S.No.153 of 2006 dated 30.11.2007 is hereby confirmed.
- There shall be no order as to costs.

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Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Vridhachalam.

2.The District Munsif cum Judicial Magistrate,
Thittakudi.

3.The Section officer,
V.R.Section, High Court, Chennai.

+1 cc to Mr.R.Sunilkumar, Advocate,SR.27664.

+1 cc to Mr.D.Shivakumaran, Advocate,SR.27301.

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Pre-delivery Judgment in
S.A.No.349 of 2008



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