

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27 - 10 - 2015

Coram

The Hon'ble TMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 420 of 2009

and

M.P. No. 1 of 2009

T. Radhakrishnan ... Appellant/Appellant/Plaintiff

vs.

1. Muruvammal

2. Lalitha

... Respondents/Respondents/Defendants

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 19.11.2008 in A.S. No.12 of 2007 on the file of the Subordinate Judge, Ranipet, confirming the judgment and decree dated 22.12.2006 made in O.S. No. 240 of 1998 on the file of the District Munsif - cum - Judicial Magistrate No. I, Walajahpet.

For Appellant : Mr. V. Raghavachari

For Respondents : Mr. B. Ramamoorthy

JUDGMENT

The non-suited plaintiff before the Courts below in a suit for declaration of right, title and interest in the suit property, for consequential injunction and for direction to the defendants to demolish the structures in the suit property, has projected the instant Second Appeal.

2. According to the plaintiff, who claims to be in possession and enjoyment of the suit property, the suit property originally belonged to one Jayammal, Varadammal and others from whom his father Duraisamy Naidu purchased the same as per sale deed dated 20.9.1967. The averment of the plaintiff is that while his father was in possession and enjoyment of the same from the date of purchase, after his demise, he is in possession by constructing a house in a portion in support of which he filed patta and kist receipts. While so, when the defendants, who own a house on the south of the suit property, during March 1998, attempted to trespass in to the same, the plaintiff filed suit O.S. No. 77 of 1998 and obtained an ex parte injunction. The further allegation of the plaintiff is that even thereafter, during December 1998, the defendants

trespassed into the suit property and raised walls and hence, he filed suit O.S. No. 240 of 1998 before the District Munsif - cum - Judicial Magistrate No. I, Walajahpet, for declaration of title of the plaintiff, permanent injunction not to proceed any further work and for mandatory injunction to demolish the said walls.

3. On the contrary, the defendants, who are mother and daughter respectively, have, in their statement, denied the allegations made by the plaintiff besides stating that the judgment in the earlier suit will operate as res judicata and it is hit by limitation. According to them, they are in possession of the suit property from the year 1976 by virtue of the patta issued in their favour. Apart from this, they also claim to pay taxes in respect of the suit property and for the house constructed by them. The further allegation of the defendants is that the plaintiff has not given the proper description of the property with correct boundaries and measurements. Hence, according to the defendants, the suit is devoid of merits.

4. The trial Court, before which the parties adduced evidence and marked documents, found that the plaintiff has not pleaded exactly with proper boundaries and extent and dismissed the suit by judgment and decree dated 22.12.2006 holding that the plaintiff is not entitled to the relief prayed for. The appeal A.S. No. 12 of 2007 filed against the same also met the same fate before the Lower Appellate Court / Subordinate Judge, Ranipet, by its judgment and decree dated 19.11.2008. Feeling aggrieved, the plaintiff is before this Court.

5. At the time of admission of this Second Appeal, the following substantial questions of law were formulated for consideration:-

1. Whether the Courts below are justified in not even appreciating the commissioner's report when he had clearly observed that the extent of the land that had been encroached by the defendant?
2. Whether the Courts below are justified in rejecting the document sought to be marked as additional evidence in I.A. No. 33 of 2008 beyond the scope of Order 41 Rule 27 CPC?

While admitting the Second Appeal on 16.6.2009, this Court, also granted interim injunction insofar as putting up further construction in the suit property.

6. Heard Mr. V. Raghavachari, learned counsel appearing for the appellant / plaintiff and Mr. B. Ramamoorthy, learned

counsel for the respondents / defendants and perused the records.

7. From the materials available on record, it is seen that pending First Appeal, the plaintiff / appellant filed Interlocutory Application in I.A. No. 33 of 2008 before the Lower Appellate Court by which he sought to file additional documents to prove his right and title in respect of the suit property stating that same were not available during the proceedings before the trial Court. He also produced copies of settlement deeds dated 21.6.1959 executed by his father Duraisamy Naidu in favour of Thayarammal, Jayammal and Varadammal, which were contested by the defendants.

8. As regards the property in S. No. 311/1, it was admitted by both the parties that the same is a village natham poramboke. In such circumstance, the Lower Appellate Court rejected the application filed by the appellant seeking to mark the alleged settlement deed, stating that the father of the plaintiff could have no right to execute the alleged settlement deed when it is specifically admitted by the plaintiff himself that it is village natham poramboke.

9. The plaintiff claimed ownership based on Ex. A.1 sale deed dated 28.6.1967 having purchased from Jayammal and Varadammal. It appears that there was an earlier litigation between the parties in O.S. No. 77 of 1998 for the relief of injunction restraining the defendants from putting up construction and to demolish the construction on the encroached portion. However, as the construction was complete and the defendant was in possession, the suit came to be dismissed. Even in the present case, the plaintiff had not established the extent of encroachment by placing necessary evidence.

10. The Interlocutory Application filed in I.A. No. 33 of 2008 filed for receiving additional documents was dismissed as the said documents were self-serving documents. When the suit property is admittedly natham poramboke, it is not made clear by the plaintiff about the power to settle or encumber the property.

11. In fact, the plaintiff himself had admitted in his evidence that the defendant was issued patta based on his possession and had been living there for more than 20 years. The appellant's contention was that as per Ex. A.1, the eastern boundary is a street and hence, the suit property is adjoining the street. The alleged encroachment by the defendants is creating hindrance for the plaintiff to reach his rice mill as the plaintiff is the dominant owner claiming easement by necessity. This contention of the appellant is unacceptable in the absence of any pleading to that effect. The plaintiff having claimed title based on document, is estopped from

claiming right of easement by necessity.

12. Insofar as possession and boundary description are concerned, the findings of the Courts below are after careful consideration of rival contentions of the parties and appreciation of evidence and materials on record pertain only to factual aspects. As such, the present appeal does not involve any question of law, much less, substantial question of law, and the same does not merit any interference by this Court under Section 100 CPC.. Accordingly, the questions are answered against the plaintiff / appellant.

For the foregoing reasons, the Second Appeal fails and the same stands dismissed confirming the judgments and decrees of the Courts below, but, however, without costs. Consequently, connected Miscellaneous Petition is closed.

sd/
ASSISTANT REGISTRAR (CS-V)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

gri

To,

1. Subordinate Judge
Ranipet
2. District Munsif - cum - Judicial Magistrate No. I
Wallajahpet
3. The Record Keeper
V.R. Section
High Court, Madras

+1 CC to MR. V. Raghavachari Advocate. SR.NO. 57963

+1 CC to MR. B. Ramamoorthy Advocate. SR.NO. 58273

S.A. No. 420 of 2009

CO-AK

JD 03/11/2015