

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.671 of 2004

1.Aayeeammal

2.Kanthammal

.. Appellants/Defendants

Vs

Kamalammal

.. Respondent/Plaintiff

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 28.03.2002 in A.S.No.6 of 1999 on the file of the Subordinate Court, Ranipet, confirming the Judgment and Decree dated 25.11.1998 in O.S.No.230 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Arcot.

For Appellants : Mr.A.Thiagarajan

For Respondent : Mr.K.Thangavelu

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 28.03.2002 in A.S.No.6 of 1999 on the file of the Subordinate Court, Ranipet, confirming the Judgment and Decree dated 25.11.1998 in O.S.No.230 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Arcot.

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

The plaintiff is the absolute owner of the suit property and she is in possession and enjoyment of the same for several decades. Patta was also granted by the Government in favour of the plaintiff confirming her title and possession over the suit property. While so, the defendants who have no manner of right, title or interest over the suit property trespassed and encroached upon into the suit property with the help of rowdy elements and also with the help of police authorities on 04.03.1993 illegally and unlawfully. Hence, the plaintiff filed a suit in O.S.No.230 of 1996 for declaration of title to the suit schedule properties and for recovery of possession.

3.The gist and essence of written statement filed by the second defendant which was adopted by the first defendant are as follows:

It is submitted by the defendants that there is no necessity for them to trespass into the suit property since the second defendant was already in possession of the same along with her mother who has executed a registered Settlement deed on 27.05.1992. It is further submitted that even before the execution of the Settlement deed, the first defendant was in possession of the suit property. The defendants continues to enjoy the suit property for more than forty years without any interference from any quarters. It is also submitted that the defendants are paying tax to the Municipality regularly and the Government authorities have recognised the defendants as owners of the suit property. 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 and Exs.A1 to A10, decreed the suit. Aggrieved against the judgment and decree of the trial court, the defendants preferred an appeal in A.S.No.6 of 1999 on the file of the Subordinate Court, Ranipet.

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

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

"1.Whether the Courts below were right in holding that the respondent has proved the burden of proof cast on her is correct in law?

2.Whether the Courts below were right in deciding the issue based on the boundaries shown in the various documents is correct in law?

3.Whether the Courts below were right in deciding the issued based on the defects found in the appellants case is correct in law?"

7.Challenging the concurrent judgment and decree of both the Courts below, the learned counsel for the appellants/defendants would submit that the second defendant got the suit property from her mother under Settlement deed dated 27.05.1992. But the Trial Court has failed to consider the same. Hence, he prayed for setting aside the judgment and decree passed by both the Courts below.

8. Refuting the same, the learned counsel appearing for the respondent would submit that the respondent is in long and uninterrupted possession of the suit property. He would also submit that recognizing her possession, Patta has also been issued in favour of the respondent. Further, to prove her possession, the respondent has filed the Field Map and since it is a vacant site, she applied for permission to put up construction and permission has been granted under Ex.A9. To prove Exs.A4 to A7, Surveyor was examined as P.W.2 and P.W.3/Arumugam was examined to prove Ex.A10 as he was the witness in Ex.A10. So, the Trial Court and the First Appellate Court has considered all the aspects in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

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

10. The respondent herein as a plaintiff filed a suit for declaration of title and recovery of possession on the basis of Ex.A10/Sale deed, who purchased the same from one A.K.Subramanian and others. In pursuance to that, Patta has been issued under Ex.A1, Ex.A2 is the Field Map and Ex.A3 is the Survey Field Register which shows that the property stands in the name of the respondent herein. Before the respondent purchased the suit property, the said A.K.Subramanian has sought for permission to put up construction on 20.03.1992 and for which, the Commissioner, Arcot Municipality has given permission to put up compound wall on 07.08.1992 and it was marked as Ex.A9. The respondent after purchasing the suit property applied for re-surveying the property and the proceedings was marked as Ex.A5. Exs.A6 and A7 are the Field Maps and Ex.A8 is the Survey Field Register for Survey No.143, which stands in the name of the respondent herein. But the appellants neither examined themselves as witness nor filed any documents to show that they are the owners of the property and the second appellant's mother has executed the Settlement Deed. Further, on perusal of the deposition nothing has been culled out against the respondent. So, the evidence of P.W.1 to P.W.3 and Ex.A1 to Ex.A10 has proved that the respondent is the owner of the suit property and the appellants are doing flower business. It is true that respondent/plaintiff must prove her case both on oral and documentary evidence. He cannot sought for the relief on the basis of the defects in the defence case. Here, the respondent herein has filed the document and let in oral evidence and proved his case. But the appellant herien has neither let in oral evidence nor produce any document. So, I am of the view that both the Courts below have considered all the aspects in proper perspective and came to the correct conclusion. Hence, the decree and judgment passed by both the Courts below does not warrant any interference and the same are hereby confirmed. The second appeal is liable to be dismissed and it is hereby dismissed.

14.In fine,

- Second appeal is dismissed with cost.
- The decree and judgment passed by both the Courts below are hereby confirmed.
- Time granted for delivery of possession is two months.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

1.The Sub Court,
Ranipet.

2.The District Munsif cum Judicial Magistrate Court,
Arcot.

3.The Record Keeper,
V.R.Section, High Court, Chennai.

+1cc to Mr.S. Rameshkumar, Advocate, S.R.No.28046

+1cc to Mr.K. Thangavelu, Advocate, S.R.No.27573

KGK(CO)
EU(07/07/2015)

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