

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU, J.

S.A.No.1378 of 2007

&

MP.No.1 of 2007

1.Dhandapani

2.Balasubramanian

... Appellants/Defendants

Vs.

Ayyasami

... Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 30.11.2006 made in A.S.No.66 of 2006 on the file of the learned Principal Subordinate Judge, Vridhachalam in modifying the judgment and decree dated 08.08.2005 made in the suit in O.S.No.62 of 2001 on the file of the learned II Additional District Munsif, Vridhachalam.

For Appellants : Ms.Jenifher for
Mr.S.Krishnaswamy

For Respondent : Mr.S.Rajendra Kumar for
M/s.Suresh & Associates

J U D G M E N T

This Memorandum of Second Appeal has been directed against the Judgment and decree dated 30.11.2006 made in A.S.No.66 of 2006 on the file of the learned Principal Subordinate Judge, Vridhachalam in modifying the judgment and decree dated 08.08.2005 made in the suit in O.S.No.62 of 2001 on the file of the learned II Additional District Munsif, Vridhachalam.

2. The appellants are the defendants in the suit for declaration and permanent injunction. The respondent herein as the plaintiff filed the suit based on the Sale Deed dated 26.08.1999 executed by one Asai Thambi, in respect of the suit properties. According to the plaintiff, though the Sale Deed referred to the extent of the property conveyed as 1.45 cents, the actual measurement as per the boundaries referred to in the Sale Deed is 1.73 cents, which was in possession and enjoyment

of the vendor of the plaintiff for a long time. Therefore, it is contended by him that the defendants without having any right or title to the suit properties, attempted to interfere with the possession of the plaintiff, which necessitated him to file the present Second Appeal. It is also contended by the plaintiff that U.D.R. Patta has been granted in favour of his vendor in respect of the actual measurement namely 1.73 cents and as the predecessor in title was in enjoyment of the above said extent of property for a long number of years and conveyed the same to the plaintiff, the defendants cannot dispute the title of the plaintiff.

3. The defendants contested the suit by filing the written statement. Their specific contention is that the property conveyed by the vendor of the plaintiff was only to the extent of 1.45 cents and the predecessor of the plaintiff obtained U.D.R. patta for a larger extent without having any right over such larger extent. Even though, they took such plea in the written statement, the defendants also contended that they are not necessary parties to the suit as they do not have any rival claim over the suit properties.

4. Before the Trial Court, the plaintiff examined himself as PW1 and examined his vendor as PW2, apart from examining another person as PW3. The plaintiff, in support of his case, marked Ex.A1 to A4. On the side of the defendants, the second defendant was examined as DW1 and no documents were marked on their side. The Trial Court after considering the rival pleadings of the parties and the evidences let in by them, decreed the suit, however, by confining the relief only to the extent of 1.45 cents. The defendants did not prefer any appeal against such judgment and decree of the Trial Court, on the other hand, the plaintiff filed the Appeal Suit in A.S.No.66 of 2006, aggrieved against the rejection of the relief in respect of the remaining extent of the suit properties. The Appellate Court, after considering the facts and circumstances of the case and finding that the plaintiff is in possession and enjoyment of the suit property measuring the extent of 1.73 cents, allowed the Appeal and decreed the suit as prayed for in the plaint. Thus, in effect, the Appellate Court has granted the relief of declaration and injunction in respect of the entire extent of the plaint schedule mentioned property, namely, 1.73 cents.

5. Challenging the same, the present Second Appeal has been filed before this Court by the defendants.

6. On admission, the following are the substantial questions of law raised in this case for entertaining this Appeal and for further consideration.

(i) Whether the Courts below have erred in law by admitting and accepting the U.D.R. Patta in favour of the respondent, as it is not admissible in evidence and as it is against the provisions of the Patta Pass Book Act, 1983?

(ii) Whether the Courts below erred in law by holding that the respondent perfected title by adverse possession and prescription?

7. Heard the learned counsel on either side and perused the materials placed before this Court.

8. The case of the plaintiff is that he purchased the property, from one Aasai Thambi under Ex.A1, Sale Deed dated 26.08.1999. In turn, the vendor of the plaintiff purchased the suit property from his vendor under Ex.A2, Sale Deed, dated 24.06.1988. Ex.A3 is the joint Patta dated 29.12.2004, issued in favour of the plaintiff and his vendor. Ex.A4 is the Adungal Extract dated 12.07.2005.

9. The categorical case of the plaintiff is that he has purchased the property measuring to the extent of 1.73 cents, even though the Sale Deed referred to the extent only as 1.45 cents. The plaintiff in support of such contention relied on the U.D.R. patta given to his predecessor in title. Admittedly, the Patta granted was not challenged or cancelled till this date. Therefore, it is evident from the above said facts and circumstances, that the predecessor in title were in enjoyment of the extent of the property which comes within the boundary referred to under the Sale Deed executed in favour of the plaintiff by the said Aasai Thambi. There is no dispute to the fact that the total extent of the property within such boundary comes to the extent of 1.73 cents. In any event, as it is contented by the defendants that they are not necessary parties and they do not claim any right over the suit property, and in view of the fact that both the Courts below concurrently found that the plaintiff and his predecessor in title are in enjoyment of the suit property for a long number of years and their possession also recognized by granting of U.D.R. Patta, I do not find any reason for interference of such findings rendered by the Courts below more particularly, the defendants have not chosen to assail the decree and judgment passed by the trial court decreeing the suit in favour of the plaintiff in respect of 1.45 cents.

10. It is well settled proposition that the boundary will prevail over the extent indicated in the sale deed. As per the boundary mentioned in the sale deed in favour of the plaintiff, the plaintiff is entitled to the relief with regard to the measurement actually available within such boundary. In such

view of the matter, I do not find any illegality or perversity in the concurrent findings rendered by the Courts below by granting such decree.

11. Considering the facts and circumstances of the case, I am of the view that the questions of law raised in the Second Appeal are to be answered against the defendants/ appellants. Accordingly, they are answered against the defendants.

12. Therefore, the Second Appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Vridhachalam.

2. The II Additional District Munsif,
Vridhachalam.

3. The Section Officer,
VR Section,
High Court, Madras-107.

+1cc to M/S. Suresh Associates Sr. 53337

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