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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2017
PRONOUNCED ON : 15.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1215 of 2002

Kannaiyan ... Appellant/Respondent/Defendant
Vs.
Kesava Gounder ... Respondent/Appellant/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 17.09.2001 made in A.S.No.102 of 2000 on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 19.07.2000 made in O.S.No.438 of 1995 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellant : Mr.V.Raghavachari
For Respondent : Mr.T.Gandhi

JUDGMENT

This second appeal is directed against the Judgment and decree dated 17.09.2001 made in A.S.No.102 of 2000 on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 19.07.2000 made in O.S.No.438 of 1995 on the file of the Principal District Munsif Court, Ulundurpet.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction

4. The case of the plaintiff, in brief, is that he has acquired title to the suit property by way of the sale deed dated 03.10.1968 executed by one Krishnamoorthy S/o Perumal gounder and accordingly, enjoying the same by paying kist etc., and on account of his long and continuous enjoyment of the suit property, he has also prescribed title to the same by adverse possession and inasmuch as the defendant, without any legal authority, attempted to interfere with his possession and enjoyment, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.



5. The case of the defendant, in brief, is that the claim of the plaintiff that he had purchased the suit property as described in the plaint by way of the sale deed dated 03.10.1968 is false and further the case of the plaintiff that he had prescribed title to the suit property by adverse possession is also false and his further case that the defendant attempted to interfere with his possession in respect of the suit property is also false. According to the defendant, the suit property, totally measuring an extent of 8 cents, originally belonged to four brothers and after various sale transactions effected amongst themselves and in favour of the third parties and as the defendant had also purchased $\frac{3}{4}$ cents in the suit survey number from Kesava Kounder S/o. Aadikala Kounder and according to the defendant, the plaintiff would be entitled to only for two cents in the suit property and hence, the plaintiff, without any cause of action, has laid the suit and the same is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 5 were marked. On the side of the defendant, DWS1 & 2 were examined and Exs.B1 to 5 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the suit. On appeal, the first appellate Court, on a reconsideration of the matter, set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the plaintiff, granted the reliefs in favour of the plaintiff as prayed for. Aggrieved over the same, the second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

" 1. Whether the lower appellate Court is right in ignoring Exs.B4 and B5, the documents under which Perumal Gounder had sold $3\frac{3}{4}$ cents in favour of Pichaimuthu and Thoppula Gounder, and he possessed of only $1\frac{1}{2}$ cents and he is not entitled to sell two cents in favour of the respondent herein?

2. Whether the lower appellate Court ought not to have appreciated that Arunachala Gounder had under Ex.B1 sold the property to Kesava Gounder and the latter in turn had alienated it to the appellant herein and whether the lower appellate Court had not ignored the share of Arunachala Gounder to which he is entitled as the son of Muthu



gounder?"

9. The plaintiff claims title to the suit property by way of his purchase of the same under a sale deed dated 03.10.1968 from one Krishnamoorthy S/o. Perumal gounder and the said sale deed has come to be marked as Ex.A1. From the evidence and materials placed, it is found that the total property involved in the survey number measuring 8 cents originally belonged to four brothers and after several transactions amongst themselves and others, it has been held by the Courts below that Perumal gounder was entitled to 6 $\frac{1}{2}$ cents. It is further stated that by way of Exs.B4 & B5 sale transactions, he had alienated 2 $\frac{3}{4}$ cents to others and the above said sale transactions are found much anterior to the title deed of the plaintiff Ex.A1. Thus, it was found by the first appellate Court that during the time of execution of Ex.A1, Perumal gounder would be owning only 3 $\frac{3}{4}$ cents in the suit survey number. However, it is the case of the plaintiff that he had purchased 4 cents in the suit survey number under Ex.A1 and been enjoying the property since then. Materials placed on record disclosed that in the suit survey number, admittedly the defendant had purchased $\frac{3}{4}$ cents by way of Ex.B3 and the same has not been controverted. No doubt, it is found that the defendant has purchased the undivided share of $\frac{3}{4}$ cents in the survey number under Ex.B3 and according to the defendant, the said $\frac{3}{4}$ cents lie in the southern portion of the suit property. In view of the above determination of the title of Perumal gounder by the Courts below that on the date of execution of Ex.A1, he owned only 3 $\frac{3}{4}$ cents in the suit survey number, it does not stand to reason as to how his son Krishnamoorthy would be entitled to alienate 4 cents in the said survey number to the plaintiff by way of Ex.A1. It is thus found that the vendor of Ex.A1 did not have a valid title to convey 4 cents to the plaintiff under Ex.A1 and in such view of the matter, it is seen that the plaintiff, as rightly determined by the Courts below, had failed to establish that he has a valid title to the suit property measuring 4 cents as described in the plaint. No doubt, the defendant has purchased only undivided share of $\frac{3}{4}$ cents in the suit survey number under Ex.B3.

10. As seen above, the trial Court did not accept the plaintiff's case and dismissed the suit. However, the first appellate Court finding that under Ex.A1, the plaintiff would be entitled to purchase 3 $\frac{3}{4}$ cents from the vendor Krishnamoorthy, still, holding that inasmuch as the document had conveyed 4 cents of land to the plaintiff and accepting the claim of the plaintiff that he has been in possession and enjoyment of 4 cents and further holding that inasmuch as $\frac{3}{4}$ cents purchased by the defendant by way of Ex.B1 has not been localized properly in the suit survey number as to where it lies actually, the first appellate Court proceeded to hold that since the plaintiff has been enjoying 4 cents of land right from 1968 onwards and the



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defendant had purchased $\frac{3}{4}$ cents only on 21.08.1984 under Ex.B3, according to the first appellate Court, it is only the plaintiff, who had been continuously and uninterruptedly enjoying the 4 cents of land for more than statutory period without any interference from any one, particularly, the defendant and his predecessor in interest exhibiting hostile attitude and thereby, upheld the plaintiff's title to the suit property only on the point of adverse possession. The first appellate Court had disbelieved the case of the defendant that he has been in possession and enjoyment of $\frac{3}{4}$ cents under Ex.B3, which lies in the southern portion of the suit property on the footing that no clinching evidence is forthcoming to hold that he is in possession and enjoyment of the said portion, other than, his ipsi dixit evidence, however, proceeded to hold that the plaintiff has been in possession and enjoyment of an extent of 4 cents in the suit property by way of Ex.A1 and the above determination of the first appellate Court in favour of the plaintiff also proceeds only on the ipsi dixit evidence of the plaintiff examined as PW1 and there is no material forthcoming on the part of the plaintiff to hold that he has been in possession and enjoyment of the disputed $\frac{3}{4}$ cents in the suit property for the continuous period of time for entitling him to claim right over the same by way of adverse possession.

11. When a query has been raised by this Court to the plaintiff's counsel, as to on what basis, he seeks claim of title to the suit property whether on a regular claim of title or on the plea of adverse possession, finding that the plaintiff cannot sustain his regular claim of title to the suit property under Ex.A1, it is represented by his counsel that the plaintiff is claiming title to the suit property only on the plea of adverse possession. However, it does not stand to reason as to how the plaintiff could lay a suit claiming title to the suit property on the plea of adverse possession, which plea normally is used only as a shield and not as a sword. Be that as it may, when according to the plaintiff's counsel, he traces title to the suit property only on the plea of adverse possession and when the said plea is raised by the plaintiff as against the defendant, in other words, it is found that indirectly, the plaintiff has admitted the title of the defendant to the disputed portion of the suit property and accordingly, as put forth, the plea of adverse possession has to be established by the plaintiff on the footing that he has been in possession and enjoyment of the disputed portion of the suit property for a continuous period of time, openly and uninterruptedly to the knowledge of the defendant exhibiting hostile attitude for more than statutory period and thereby prescribed title by way of adverse possession. However, with reference to his above claim, it is found that other than his ipsi dixit evidence, we have no other proof, worth acceptance, to hold that he has been exercising possession and enjoyment of the said portion adverse



to the interest of the defendant for more than the statutory period by exhibiting all the animus of hostile enjoyment and to the knowledge of the defendant. It is seen that other than the sale deeds marked as Exs.A1 to 5, there is no other reliable and convincing material placed on the part of the plaintiff to hold that he has been in possession and enjoyment of the disputed portion of the suit property to uphold his plea of adverse possession. In such view of the matter, it is found that the first appellate Court has totally erred in upholding the plea of adverse possession projected by the plaintiff sans any material pointing to the same other than his self serving evidence and in view of the above position, as rightly contended by the defendant's counsel, the findings and conclusions of the first appellate Court for upholding the plea of adverse possession set out by the plaintiff are found to be perverse and illogical as being not based on any evidence on record and accordingly, liable to be set aside. The substantial questions of law formulated in the second appeal are accordingly answered.

In conclusion, the Judgment and decree dated 17.09.2001 made in A.S.No.102 of 2000 on the file of the Principal District Court, Villupuram, are set aside and the judgment and decree dated 19.07.2000 made in O.S.No.438 of 1995 on the file of the Principal District Munsif, Ulundurpet, are confirmed and accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petitions, if any is closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

sms

To

1. The Principal District Judge, Villupuram.
2. The Principal District Munsif, Ulundurpet.

+1 CC to Mr.T. Gandhi, Advocate sr 89531.
+1 CC to Mr.V. Raghavachari, Advocate sr 89464.

S. A.No.1215 of 2002

GJII(CO)
SP(06/03/2018)