

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2017

PRONOUNCED ON: 17.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.657 of 2011

&

M.P.No.1 of 2011

C.Namachivaya Chettiar Family Trust,
Kancheepuram, rep. by its Trustees,

1.C.N.Sivakozhundu Chettiar

2.N.Palani Chettiar

3.S.Saminatha Chettiyar

4.T.Sivakumaran Chettiar ...Appellant/Respondent
Plaintiff

Vs.

1.Tamil Selvan ...1st Respondent/Appellant/Defendant 5

2.The Thiruthani Town Panchayat,
Rep.by its Executive Officer,
Thiruthani,
Thiruvallur District.

3.The Sub-Registrar,
Sub Registrar Office,
Thiruthani,
Thiruvallur District.

4.The Tahsildar,
Taluk Office,
Thiruthani,

Thiruvallur District....Respondent 2 to 4/Respondent 2 to 4/
Defendants 2 to 4

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 07.07.2010 made in A.S.No.75 of 2008 on the file of the Additional District Court/Fast Track Court-III, Tiruvallur reversing the judgment and decree dated 16.07.2008 made in O.S.No.126 of 2003 on the file of the Sub Court, Tiruvallur.

For Appellant : Mr.A.S.Narasimhan
For Respondents : Mr.V.Manoharan
R2 to 4 given up

J U D G M E N T

Challenge in this second appeal is made by the plaintiffs against the Judgment and decree dated 07.07.2010 made in A.S.No.75 of 2008 on the file of the Additional District Court/Fast Track Court-III, Tiruvallur reversing the judgment and decree dated 16.07.2008 made in O.S.No.126 of 2003 on the file of the Sub Court, Tiruvallur.

2.The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal:

''Whether the judgment and decree of the first Appellate Court in dismissing the suit laid by the plaintiffs are misdirected against the evidence on record and based upon the perverse findings and conclusions''

3.The suit has been laid by the plaintiffs for declaration and mandatory injunction.

4.The plaintiffs claim title to the suit property based upon the Sale Deed dated 07.10.1876 marked as Ex.A2. The plaintiffs have filed a plaint plan, which has been marked as Ex.A1 and according to the plaintiffs, the portion marked as ''ABCD'' is the disputed property in the suit survey number. As regards the portion stated to be situated to the south of CD line, there is no issue between the parties. Now according to the plaintiffs, inclusive of the disputed portion shown as ''ABCD'' in the plaint plan, they had acquired title under Ex.A2. According to the plaintiffs, the property purchased under Ex.A2 measures 40 feet east west, 252 feet north south on the eastern side and 236 feet on the western side within the specific boundaries. The fifth defendant is contesting the case of the plaintiffs. Now according to the fifth defendant, his predecessor in title had purchased the disputed portion under Ex.B1 from the sons of Ramakrishna Iyer and the same had been bequeathed to the fifth defendant by the deceased first defendant under the Will, marked as Ex.B2.

5.As seen by the courts below, it is found that there is no dispute as regards the east west measurement belonging to the parties. Only the dispute lies in the north south measurement. As adverted to earlier, the plaintiffs claim title to the disputed portion only under Ex.A2. Under Ex.A2, it appears that the plaintiffs have purchased the property measuring east west only 36 feet and as regards the north south measurement of the property comprised in Ex.A2, no measurement has been given. It

is found that the property acquired under Ex.A2 is situated to the south of Pacharisi Malai and Vaikal. Now according to the plaintiffs reckoning the above northern boundary, the plaintiffs have title to the property east west 40 feet, north south 252 feet on the eastern side and 236 feet on the western side as described in the plaint schedule. In the plaint schedule, the suit property is stated to be situated to the south of Narasimmaswamy Koil Street. However, Ex.A2 reads that the property acquired under it is situated to the south of Pacharisi Malai and Vaikal. There is no material produced on the part of the plaintiffs that Narasimmaswamy Koil Street and Pacharisi Malai and Vaikal denote the same boundary. Therefore, when the north south measurement of the property acquired under Ex.A2 had not been depicted and only the east west measurement alone had been given and when the said property is stated to be situated to the south of Pacharisi Malai and Vaikal, it does not stand to reason on what basis, the plaintiffs have now claimed that the property purchased by them under Ex.A2, lies to the south of Narasimmaswamy Koil Street.

6.As adverted to earlier, the said northern boundary is not co-related as Pacharisi Malai and Vaikal as described in Ex.A2. Therefore, from Ex.A2, we cannot safely conclude that the plaintiffs have acquired the property measuring north south 252 feet on the eastern side and 236 feet on the western side as described in the plaint. Barring Ex.A2, the plaintiffs have placed reliance upon the surveyor plan marked as Exs.A28 and 29 for claiming title to the suit property. When Exs.A28 and A29 have come into existence after the exchange of notices between the parties, particularly, when Exs.A28 and 29 have not been shown to be form part of the revenue records, as rightly put forth by the defendants counsel, no safe reliance could be attached to Exs.A28 and 29 to uphold the plaintiffs claim to the disputed portion. In this connection, PW1 examined on behalf of the plaintiffs has admitted that he does not know whether the plans marked as Exs.A28 & 29 form part of the revenue records maintained by the department and it is found that the defendant has thrown a challenge to the genuineness and the authenticity of the above said documents. Despite the position above mentioned, the plaintiffs have not cared to establish that Exs.A28 & A29 plans had been prepared based upon the correct survey pursuant to the proper inspection of the properties of the concerned parties based upon their respective title deeds. The authors of the same have not been examined. Therefore, it is found that no reliance as such could be placed upon Exs.A28 and A29 to uphold the plaintiffs case. The plaintiffs also place reliance upon the documents marked as Exs.A31 & 31. The said documents being the judgment and decree between the plaintiffs' trust and HR & CE passed in O.S.No.47 of 1984, even the said

documents did not support the plaintiffs case. Even in the said suit, the property is stated to be situated to the south of Pacharisi Malai and Vaikal. That apart the north south measurement has also been not given in the said suit. Therefore, the judgment and decree marked as Exs.A31 and A32 would not be useful to uphold the plaintiffs title to the disputed portion of the suit property.

7.A perusal of Ex.A2 would go to show that there is a phrase or term used as ''valveechu'' in the document and according to the plaintiffs counsel, the said term would only indicate that northern measurement extends up to the Narasimmanswamy Koil Street. However, when with reference to the same no inference could be made from Ex.A2 and when there is no material as such to hold that the plaintiffs have acquired title to the disputed portion also under Ex.A2 and when Exs.A28 & A29, A30 & A31 do not advance the case of the plaintiffs, it could be seen that the plaintiffs suit for the relief of declaration and injunction as regards the suit property would not lie.

8.The plaintiffs counsel contended that the defendants vendor Ramakrishna Iyer was only a tenant of the suit property under the plaintiffs trust and hence he or his heirs are not competent to sell the disputed portion to the deceased first defendant under Ex.B1. No doubt, the defendant has not placed any title deed to establish that Ramakrishna Iyer had title to the disputed portion.

9.Be that as it may, the plaintiffs having come forward with the suit seeking the relief of declaration and the other incidental prayers have to establish their claim. They cannot pick holes in the defendants case and thereby tried to succeed in their case sans proof. Therefore, when the plaintiffs have failed to establish that at any point of time the disputed portion had been in their legal possession and enjoyment and when the alleged plea of encroachment made by the plaintiffs is not established and when it is found that it is only the defendants 1 and 5 who has been in possession and enjoyment of the disputed portion for a long time, it is evident that inasmuch as the plaintiffs have no title to the same, despite the possession and enjoyment of the disputed portion by the defendants 1 and 5, they had not evinced any interest to lay a complaint against them. This has been admitted by PW1 that despite having acknowledge of the encroachment made by the defendants, the plaintiffs had not preferred any complaint to the concerned authorities. Further, other than PW1 none has been examined on the side of the plaintiffs to show that the disputed portion is in the possession and enjoyment of the plaintiffs.

10.In the light of the above discussions, it is found that the first appellate court has rightly found that the plaintiffs have failed to establish that they have right, title or possession at any point of time over the disputed portion of the suit property i.e., marked as 'ABCD' in the plaint plan.

11.In such view of the matter, the first Appellate court has rightly set aside the judgment and decree of the trial court and dismissed the plaintiffs suit. The rejection of the plaintiffs case by the first Appellate court is found to be based upon the proper appreciation of the evidence on record and also the correct reasonings and conclusions. Therefore, the substantial question of law formulated in this second appeal is answered against the plaintiffs and in favour of the defendant.

12.In conclusion, the second appeal fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Court
Fast Track Court-III, Tiruvallur.

2.The Subordinate Court,
Tiruvallur

3.The Section Officer,
V.R.Section,
High Court, Madras-104.

+1cc to Mr.V.Manoharan, Advocate, S.R.No.10772

RSK(CO)
RS(07/03/2017)

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