

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.12.2017

PRONOUNCED ON : 19.12.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.840 of 2002

Thandavaraya Padayachi ... Appellant/Appellant/Plaintiff
Vs.
1.Dharmalingam
2.Kasilingam Respondents/Respondents/
Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 30.08.2000 made in A.S.No.94 of 1999 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 12.04.1999 made in O.S.No.261 of 1995 on the file of the Second Additional District Munsif Court, Ulundurpet.

For Appellant : Mr.T.Gandhi

For Respondents : Mr.V.Raghavachari

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 30.08.2000 made in A.S.No.94 of 1999 on the file of the Principal District Court, Villupuram, confirming the judgment and decree dated 12.04.1999 made in O.S.No.261 of 1995 on the file of the Second Additional District Munsif Court, Ulundurpet.

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

3. Suit for declaration and permanent injunction and also for declaration, possession and mandatory injunction.

4. The case of the plaintiff, in brief, is that the suit property originally belonged to his grandfather Thandavaraya Padayachi and he was enjoying the same and after his demise, it devolved upon the plaintiff's father Velayutha Padayachi and after the death of Velayutha Padayachi, the plaintiff, his only

son, succeeded to the suit property and enjoying the same by obtaining patta, paying kist etc., and accordingly, the old and new pattas in respect of the suit property stand in the name of the plaintiff and by continuous enjoyment, the plaintiff has also perfected his title by way of adverse possession and the defendants, illegally, attempted to trespass into the suit property without any authority and therefore, the plaintiff issued a notice on 26.02.1988 complaining of the illegal acts of the defendants and to the same, the defendants issued a reply dated 07.03.1988 and the claim of the defendants that the suit property was purchased by their grandfather Thandavayara Padayachi by way of a registered sale deed is false and the plaintiff admits that to the north and south of the suit property, the defendants own house and vacant site and taking advantage of the same, the defendants trespassed into the suit property illegally on 10.10.1990 and hence, the plaintiff has laid the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that it is false to state that the suit property belonged to the plaintiff as he having succeeded to the same from his grandfather Thandavaraya Padayachi and his father Velayutha Padayachi. The plaintiff or his predecessors in title had never been in possession and enjoyment of the suit property at any point of time as they do not have any title to the suit property. It is false to state that the plaintiff is the only son of Velayutha Padayachi and Velayutha Padayachi is having three sons, namely the plaintiff, Mariveeran and Arumugan. On the other hand, the suit property originally belonged to Sriranga Padayachi and was purchased from him by the defendants' grandfather Thandavaraya Padachi S/o Irusappa Padayachi by way of a registered sale deed dated 16.08.1915 and enjoying the property and the same had been inherited by his sons Thandavaraya Padayachi and Irusappa Padayachi and in the partition effected amongst them, the suit property and the northern and southern properties situated in Survey Nos.52/8 and 52/10 were allotted to the share of Thandavaraya Padayachi and accordingly, Thandavaraya Padayachi put up a house in Survey No.52/8 and the remaining property was used by them as backyard and for dumping garbage and the defendants and their predecessors in interest are in continuous enjoyment of the suit property for several years and prescribed title by adverse possession, patta was also granted and they have paid kist and taking advantage of the name of Thandavaraya Padayachi being the same, the plaintiff is trying to grab the suit property from the defendants and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined and Exs.A1 to 20 were marked. On the side of the defendants, DW1 and 2 were examined and Exs.B1 to 43 were

marked. Exs.X1 and X2 and Ex.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the suit. Challenging the same, the present 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:

(i) Whether the courts below are correct in dismissing the suit holding that the appellant has to prove the title only through the title deeds and not by any other documents?

(ii) Whether the Courts below are correct in holding that even in a suit for declaration on the ground of continuous enjoyment of adverse possession by appellants grandfather, father and then appellant and prescribed the title, the plaintiffs has to prove the title only through the title deeds and not by any other document?"

9. The plaintiff traces his title to the suit property from his grandfather and father. According to the plaintiff, his grandfather is Thandavaraya Padayachi and his father is Valayutha Padayachi. The defendants claim title to the suit property from their grandfather, who is also named Thandavaraya Padayachi. According to the defendants, the suit property was purchased by their grandfather Thandavaraya Padayachi S/o. Irusappa Padayachi from the original owner Sriranga padayachi by virtue of the sale deed dated 16.08.1915, which has been marked as Ex.B1. A perusal of Ex.B1 would go to show that as claimed by the defendants, Thandavaraya Padayachi S/o. Irusappa Padayachi had purchased an extent of 3 cents in Survey No.64 and as per Ex.B2, " A" register true copy, it is seen that survey No.64(2) has been subdivided as 52/7, 52/8, 52/9, 52/10 & 52/11. Survey No.52/9 measuring 4 cents is the suit property involved in this matter. It is admitted by the plaintiff himself that the defendants own house and site to the north and south of the suit property, which is located in Survey Nos.52/8 and 52/10. It is thus seen that the defendants own properties adjacent to the suit property on the southern and northern side. From Ex.B1, it is found that it is only the defendants' grandfather had purchased the suit property, no doubt, in the said document, it is measured as 3 cents, from the original owner Sriranga Padayachi. The plaintiff examined as PW1 has

admitted during the course of his evidence, that his grandfather Thandavaraya Padayachi, is the son of Pavadai Padayachi. Such being the position, it is found that the plaintiff's grandfather Thandavaraya Padayachi not being the son of Irusappa Padayachi, it is seen that Thandavaraya Padayachi S/o Irusappa Padayachi mentioned in Ex.B1 does not relate to the plaintiff's grandfather Thandavaraya Padayachi. However, with a view to have some link with Ex.B1, as if the same relates to his grandfather and the plaintiff, during the course of his evidence, subsequently, the plaintiff would claim that the father of Thandavaraya Padayachi name is Irusappa Padayachi, based upon the death certificate marked as Ex.A18 corresponding to Ex.X1. However, the above case of the plaintiff, as such, cannot be accepted merely on the basis of the death certificate Ex.A18 to hold that his grandfather Thandavaraya Padayachi is the son of Irusappa Padayachi. The plaintiff basis his claim on the above said document on the footing that the death information of Thandavaraya Padayachi mentioned in Ex.A18 had been furnished by Velayutha Padayachi. In this connection, PW3 through whom, Ex.X1 has come to be marked as admitted that he does not know anything directly about Exs.X1 and X2 as he was not working in the concerned department at that point of time and also admitted that he does not know the names of the parties referred to in the said documents. Therefore, merely because, the death information of Thandavaraya Padayachi as reflected in Ex.A18 had been given by one Velayutha Padayachi that by itself would not lead to the conclusion that Thandavaraya Padayachi mentioned in Ex.B1 only pertains to the plaintiff's grandfather Thandavaraya Padayachi. That apart, when the witness examined as PW3 is not able to throw any light on the contents of Exs.X1 & 2, it is seen that the plaintiff has miserably failed to establish that his grandfather is Thandavaraya Padayachi S/o. Irusappa Padayachi. The plaintiff also points out the boundary recitals found in the document Ex.A16 and contends that if Thandavaraya Padayachi, the defendants grandfather had been owning the suit property and the adjacent lands, the southern boundary would have been furnished as their own lands in Ex.A16 and on the other hand, it is only referred to as situated to the north of Thandavaraya Padayachi, therefore, on that basis argues that Thandavaraya Padayachi, the defendants' grandfather, would not be the owner of the suit property. However, the above said boundary recitals by itself would not automatically lead to the conclusion that it is only the plaintiff's grandfather Thandavaraya Padayachi, who has title to the suit property.

10. The plaintiff, though, traces title to the suit property from his grandfather Thandavaraya Padayachi, it has not been clearly recited in the plaint as to how the said Thandavaraya Padayachi had acquired title to the suit property whether ancestrally or by way of purchase etc., Very vaguely, it has

been mentioned that the suit property belonged to the plaintiff's grandfather Thandavaraya Padayachi. There is no material placed on the part of the plaintiff to evidence that his grandfather Thandavaraya Padayachi and his father Velayutha Padayachi had been exercising ownership over the suit property and been in possession and enjoyment of the same. Though, the plaintiff during the course of evidence would claim that he has marked the relevant documents with reference to the same, on a perusal of the materials placed by the plaintiff, it is found that nothing has been placed on record to evidence that the plaintiff's grandfather Thandavaraya Padayachi and his father Velayutha Padayachi had been in possession and enjoyment of the suit property as full owners thereof. Accordingly, it is seen that the plaintiff is unable to claim as to on what basis his grandfather Thandavaraya Padayachi had acquired title to the suit property.

11. It is found that only based on the revenue records such as patta and kist receipts, the plaintiff seeks to obtain the reliefs claimed in the plaint. However, as rightly argued by the defendants' counsel, when the revenue records like patta, kist receipts etc., would not be the basis for accepting the title of a person as they being not documents of title, it is seen that the revenue records projected by the plaintiff by itself could not be accepted to uphold his claim of title to the suit property. In this connection, the defendants' counsel placed reliance upon the decisions of this Court dated 25.11.20016 passed in S.A.Nos.445 & 446 of 2011, dated 22.11.2016 passed in S.A.No.318 of 2011, dated 01.12.2016 passed in S.A.NO.512 of 2011 and a perusal of the above decisions would go to show that the revenue records, as such, cannot be the basis for upholding one's title and accordingly, it is seen that the claim of the plaintiff that he has acquired patta, paying kist etc., as rightly found by the Courts below, would not be sufficient to uphold his title to the suit property and the entitlement of the reliefs claimed. It is found that similarly, the defendants have also produced patta and kist receipts in respect of the suit property and accordingly, they have traced their title to the suit property based on Ex.B1.

12. No doubt, it is seen that both the plaintiff and the defendants had been vying with each other in the obtainment of patta from the revenue authorities as regards the suit property. However, when the revenue records projected cannot be the basis for upholding the title of a person and when the plaintiff has not placed any acceptable and reliable evidence other than the revenue records, the Courts below were rightly in rejecting the plaintiff's case and no inference is called for with reference to the same.

13. The plaintiff has miserably failed to establish the alleged trespass of the suit property by the defendants on 10.10.1990. On the other hand, according to the case of the defendants, they had put house structure in survey No.52/8 and in a portion of the suit property i.e. 52/9 and using the remaining area owned by them for allied purposes and from the Commissioner's report and plan Exs.C1 & C2, it is seen that the house structure put up by the defendants consists of three huts are located in the suit property as well as in survey No.52/8 and they are found to be of old origin. It is found that the defendants' case has been probablised that they had been residing and enjoying the suit property by putting up house structure and obtaining electricity etc., and therefore, the plea of the plaintiff that the defendants had only trespassed into the suit property during 1990 as such cannot be accepted.

14. The other plea put up by the plaintiff for claiming title to the suit property is by way of adverse possession. This plea itself is found to be a destructive plea to the plaintiff's claim of regular title to the suit property. Even as regards the plea of adverse possession, it is found that, as determined by the Courts below rightly, no acceptable and reliable materials have been placed by the plaintiff to show that he has been in possession and enjoyment of the suit property continuously, openly, uninterruptedly exhibiting animus hostile attitude towards the defendants and enjoying the suit property for more than the statutory period and in such view of the matter, the Courts below have also rightly negatived the plea of adverse possession. With reference to the above aspect of the matter, the defendants' counsel placed reliance upon the decision reported in AIR 2007 SC 1753 (P.T.Munichikkanna Reddy and Ors Vs. Revamma and Ors) and as rightly argued by the defendants' counsel, the principles of law as regards the plea of adverse possession particularly, the proof of the same has not been established by the plaintiff. It is found that the Courts below have rightly discarded the plea of adverse possession put forth by the plaintiff in respect of the suit property.

15. Further, the plaintiff cannot maintain the suit, on the basis of the plea of adverse possession for claiming title which plea normally is taken only as a shield and not as a sword and with reference to the same, the defendants' counsel placed reliance upon the decision reported in (2014) 1 SCC 669 (Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Anr.)

16. The Courts below have considered the materials in the right perspective and found that the revenue records, the only documents projected by the plaintiff for claiming title to the suit property, not being the documents of title, have rightly disbelieved the same and also found that the plaintiff has

miserably failed to establish his plea of adverse possession and accordingly, dismissed the suit laid by the plaintiff. No interference is called for in the judgment and decree of the Courts below. The substantial questions of law formulated in this second appeal are accordingly, answered.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Principal District Court,
Villupuram.
2. The Second Additional
District Munsif, Ulundurpet.

+1cc to Mr.V.Girishkumar, Advocate in sr.90452

+1cc to Mr.V.Raghavachari, Advocate in sr.90352

S. A.No.840 of 2002

GJ(CO)
CS/26/02/18

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