



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2017

CORAM:

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THE HONOURABLE Mr. JUSTICE N. SESHASAYEE

S.A. (MD) No.91 of 2017
and
C.M.P (MD) No.1659 of 2017

Vijaya ..Appellant/Appellant/Defendant

Vs.

Raman ...Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 C.P.C. Against the Judgement and Decree dated 4.11.2016 made in A.S.No.138 of 2013 on the file of the Subordinate Court, Sivaganga confirming the judgment and decree dated 23.10.2009 made in O.S.No.149 of 2006 on the file of the District Munsif, Thirupathur.

For Appellant : Mr.S.Rajasekar

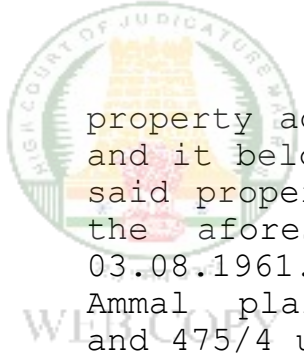
For Respondent : Mr.R.Nandakumar

J U D G M E N T

The defendant, who has lost successively before the Courts below in a suit filed by the plaintiff for declaration of title and recovery of possession, has approached this Court with the Second Appeal.

2.The suit property is described as one comprised in Survey No.475/4 in Kunnakudi Village, Thiruppathur Taluk, Sivagangai District. It is a plot measuring 3,180 sq. fts in Grama Natham with a tiled roof house.

3.The case of the plaintiff is that the suit property originally was comprised in old Survey No.162/21 and is correlated to R.S.No:475/4, originally belonged to one Chidambaram and another Subramanian, both of who are brothers. On 07-05-1971, they sold the property to a certain Dhanajayam Pillai, the plaintiff. The



property adjacent to the suit property was blocked in S.F.No:475/3 and it belonged to one Ramasamy Pillai. On 12-04-1946 he sold the said property to one Shanmugam Pillai, who in turn had sold it to the aforesaid Dhanajeyam Pillai's wife Chinthamani Ammal on 03.08.1961. After the demise of Dhananjeyan Pillai and Chinthamani Ammal plaintiff purchased both the properties in S.No:475/3 and 475/4 under sale deed dated 03-06-1996. However, in describing S.F.No:475/3, an inadvertent error had crept in and the survey number was wrongly mentioned as S.F.No:468/3, and this was later rectified Vide a Rectification deed. Ever since, the plaintiff has been in enjoyment his properties.

3.1. While so, in 1997 the defendants encroached into about 3,180 sq.ft in S.F.No:475/4 and put up a hut. This site the suit property. The plaintiff, having come to know of such encroachment, came to the suit property and required the defendants to vacate the same. However, the defendants refused and contended that the suit property belonged to them. When he enquired, it came to his knowledge that the defendants are attempting to obtain patta in Survey No.475/4(suit property). Therefore, the plaintiff applied to the Assistant Settlement Officer, Madurai for obtaining patta for suit property as well as the property in Survey No.475/3. After due enquiry, the Revenue Divisional Officer, Devakottai, granted patta for Survey No.475/4 in favour of the plaintiff. This order was challenged by the defendant before the District Revenue Officer, Sivagangai and that was dismissed. So far as the petitioner's prayer for grant of patta in Survey No.475/3 is concerned, the same was rejected by the authorities concerned. On the strength of these facts, the plaintiff has come forward with the suit for declaration his title and for recovery of possession.

4. Denying the allegations in the plaint, the first defendant would contend that she was in occupation of the suit property, a natham poromboke for over 20 years and has been paying necessary taxes to the State and other local bodies and that he has prescribed title by adverse possession. The allegations in the plaint that the defendants had encroached upon the suit property only in the year 1997 and had put up a structure therein are false and as earlier alleged the first defendant has been in physical possession of the suit property for well over 20 years at the time of filing of the suit. The suit is barred by limitation.

5.1 When the suit went for trial, the plaintiff examined himself as P.W.1 and examined one other witness. The first defendant has examined herself as D.W.1.

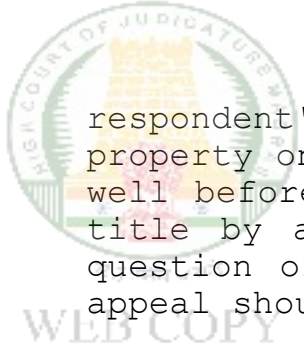


5.2 Both the Courts below found in favour of the plaintiff. They both reasoned that the title to the suit property vested in the plaintiff under Ext.A-1 sale deed backed by Ext.A-5, the proceeding of the Tahasildar. The first appellate Court in particular has gone an additional distance and has held that none of the documentary evidence, more particularly those in Ext.B-8 Property Tax receipts, the door number vary violently and found that the first defendant/appellant has not even established the door number of her hut.

6. The only contention of the learned counsel for the appellant is that the plaintiff claims title to both the suit property as well as the property in Survey No.475/3 under Ex.A-4, which he had obtained from the legal heirs of its predecessors in title. However, in the matter of grant of patta, the Settlement Authorities have accepted the case of the appellant/defendant with regard to the assertion of possession in Survey No.475/3 under the same sale deed Ex.A-4. Inasmuch as, one of the properties that the plaintiff claims to have purchased under Ex.A4 is found not to confer any title on the plaintiff, the appellant suspects plaintiff's title to the other survey number viz., the suit property. He also contended that the Courts below have ignored the long and continuous possession of the defendant in the suit property well over the period of limitation which is necessary for conferring title by adverse possession.

7. Per contra, the learned counsel for the plaintiff/respondent argued that the grant of patta under Ex.A-5 was based on title of the plaintiff to Survey No.475/4 and it has not been challenged by the defendant. Consequently, he argued that the defendant/appellant claims title solely based on long and continuous possession adverse to the right and interest of the plaintiff or his predecessors in title, as the case may be, and this implies that the defendant has admitted the title of the plaintiff and/or of his predecessor's title as regards the suit property. Further, there is hardly any evidence to show that the first defendant has been in possession of the suit property adverse to the interest either on the plaintiff or on his predecessors in title well over the statutory period of 12 years to the knowledge of such title holders.

8. What survives for consideration is if the appellant at all has perfected title by adverse possession. There is hardly any evidence to suggest that she was in occupation of the property well beyond the minimum statutory period of twelve years prior to the filing of the suit with the hostile intent to occupy the plot that belonged to the plaintiff/respondent. The earliest of documentary evidence that the appellant has produced is Ext.B-2 notice from Assistant Settlement Officer dated 18-12-1997. This only matches



respondent's contention that the appellant has encroached the suit property only in 1997. And, admittedly the suit was laid in 2006, well before the expiry of the statutory period required to perfect title by adverse possession. There is therefore, no substantial question of law involved for this Court engage and resolve. This appeal should necessarily fail.

9. In the result, this Second Appeal is dismissed and the judgment 4.11.2016 made in A.S.No.138 of 2013 on the file of the Subordinate Court, Sivaganga is hereby confirmed. No costs. Consequently, connected C.M.P.(MD) No.1659 of 2017 is closed.

Sd/-
Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To,

- 1.The Subordinate Court, Sivagangai
- 2.The District Munsif, Thirupathur.

Copy to:-

The Section Officer, (2copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+One cc to Mr.R.Nanda Kumar, Advocate, SR.No.61523

CM/ds
RL/6C/4P/KK/SAR1/1/3/2018

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