



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

S.A(MD) No.7 of 2016

and

C.M.P. (MD) .No.128 of 2016

1.Palanivel

2.Renga

.. Appellants/ Appellants /Defendants

-Vs-

The Idol of Arulmigu Mariamman

Represented by its Trustee

V.Rajenderan

.. Respondent/Respondent /Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure code, against the judgment and decree passed by the learned First Additional Subordinate Judge, Tiruchirapalli in A.S.No.108 of 2010 dated 18.12.2014 confirming the judgment and decree of learned Principal District Munsif, Tiruchirapalli made in O.S.No.276 of 2001 dated 26.02.2010.

For Appellants : Mr.M.Ashok Kumar

For Respondent : Mr.P.Thiagarajan

JUDGMENT

The defendants who last before the Courts below is the appellant herein.

2.The plaintiff has filed the suit seeking for declaration of title in his favour in respect of suit 'B' schedule property and also for recovery of possession and the said O.S.No.276 of 2001 on the file of Principal District Munsif, Tiruchirapalli was decreed as prayed for on 28.03.2008 and aggrieved over the same the defendants preferred A.S.No.121 of 2008 and as per judgment dated 12.04.2009, the First Appellate Court remanded the matter back to the trial Court for fresh disposal and subsequently Exs.C1 to C4 were marked and thereafter, the trial Court decreed the suit as prayed for on 26.02.2010. Aggrieved over the same, the Second Appeal is now preferred.

3.The suit property belongs to the plaintiff and the same was purchased as per Ex.A1 sale deed dated 22.03.1950 by the father of the plaintiff by name Kunju @ Mookan Jogi. At the time of purchase, the property was vacant site and after purchasing the property compound wall was raised on all the sides by submitting necessary plan to the concerned Municipal Authority. While putting up the compound wall the plaintiff left space on all the four

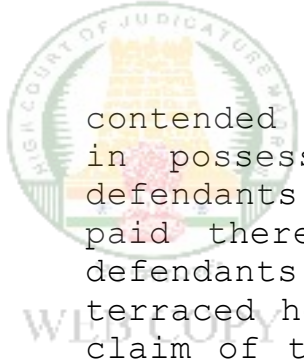


sides to enable procession of the Deity during special occasions and also to carry out the repairs to the compound wall. According to the plaintiff the space left in such a way is described as 'B' schedule property in the suit and the same forms part of the suit 'A' schedule property.

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4.The plaintiff who is the trustee of the temple is the plaintiff and according to him, he is in possession and enjoyment of the entire property. The plaintiff states that the 'B' schedule property was used during the festival occasions for taking procession of the Idol and also for carrying out repairs to the compound wall. The defendants are husband and wife. The plaintiff states that the defendants have no right or interest over the 'B' schedule property, while so they illegally occupied the 'B' schedule property around 1998 and put up a temporary thatched shed and coming to know about it, the plaintiff issued legal notice to the first defendant and a reply was received from the first defendant alleging that he is in possession and enjoyment of the suit 'B' schedule property as a tenant under third party. Thereafter as negotiation for compromise failed, the plaintiff came forward with the present suit. The plaintiff states that he was recognized as trustee and he is in management of the suit temple. Earlier, the plaintiff filed O.S.No.639 of 1984 on the file of District Munsif Court, Tiruchirapalli and decree was passed in his favour restraining the defendants thereon from interfering with the management of the temple by the plaintiff. It is further stated that the plaintiff is in possession and enjoyment of the property as trustee of the temple, ever since the date of purchase of the property. Hence, 'B' schedule property which forms part of 'A' schedule property belongs to the plaintiff as per Ex.A1 sale deed and thus the plaintiff seeks for declaration of title in his favour and consequently for recovery of possession after removal of temporary super structure put up by the defendants herein. Hence the suit.

5.On the other hand opposing the suit claim the defendants contended that the claim of plaintiff namely they left vacant space on the northern side of suit 'A' schedule property and the said vacant space is the suit 'B' schedule property is totally false. According to him the Deity is not taken out in procession on any occasion and 'B' schedule property was not in possession of the plaintiff at any point of time. The suit 'B' schedule property was never utilized in taking out procession of the temple Deity nor for any other purpose by the plaintiff herein. The defendants states that they are the absolute owner of the property situated to the north of plaintiff's property and they purchased the same on 03.02.1999 for sale consideration Rs.33,000/- from one Paulraj as per Ex.B1 sale deed. The defendants also produced the parental documents of the property as Exs.B2 and B3. The defendants also produced the house tax receipts standing in 2nd defendant's name as Exs.B4 to B10. The defendants



contended that they themselves and earlier their predecessors are in possession and enjoyment of the property from 1961. The defendants also state that the valuation of the suit and court fee paid thereon by the plaintiff is improper and incorrect. The defendants also stated that to the west of the suit property a terraced house has been constructed and in such circumstances the claim of the plaintiff that the Diety is taken out in procession around the compound wall is false. After purchase of the property by the defendants the property has been assessed in the name of the defendants and they are paying tax to the corporation. The claim of the plaintiff that he is the trustee of the plaintiff temple is incorrect. Hence the defendants prayed for the dismissal of the suit.

6.The trial Court on perusal of the pleadings, framed the following issues.

1.Whether the plaintiff is entitled for declaration as prayed for?

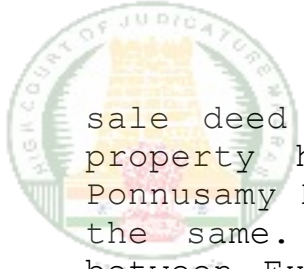
2.Whether the plaintiff is entitled for recovery of possession?

3.Whether the plaintiff is entitled to mesne profits?

4.To what relief?

7.During the course of trial the plaintiff examined himself as PW1 and another witness as PW2 and produced Exs.A1 to A6. On the defendants side the first defendant examined himself as DW1 and produced documents Exs.B1 to B10.

8.The trial Court on consideration of the pleadings and oral and documentary evidence found that the suit property belongs to the plaintiff and the same was purchased by the plaintiff as per Ex.A1 sale deed and they are in enjoyment and possession. The trial Court also concluded on the basis of Ex.C1 commissioner report, Ex.C3 surveyor sketch and Ex.C2 commissioner plan, the suit 'B' schedule property is part and parcel of suit 'A' schedule property. The trial Court also relied upon the admission of D.W.1 in his evidence to conclude that there is a temple and building available in the 'A' schedule property and the same has been treated by the people of the village as a temple. In view of the admission of D.W.1 the objection raised by the defendants that 'A' schedule property cannot be called as temple property and plaintiff has no right to represent the temple has been rejected by the trial Court. The trial Court further stated that Ex.A1 sale deed was executed more than 50 years ago and as per the averments in it the northern boundary of property belongs to one Ponnusamy Moopan. In that event, the trial Court pointed out that the claim of defendants about purchasing the northern property is not to be accepted, as they have not purchased the property from Ponnusamy Moopan or his legal heirs. The defendants has produced a sale deed as Ex.B1 and the parent documents to the same as Exs.B2 and B3. The trial Court by considering the four boundaries in Ex.B3



sale deed which was executed in the year 1989 stated that the property has been purchased from somebody else and not from Ponnusamy Moopan or his legal heirs and no title was passed under the same. The trial Court also pointed out the discrepancies between Ex.B1 and the parent documents Exs.B2 and B3. The trial Court further relied upon Exs.C1 to C3 to conclude that the claim of defendants over the 'B' schedule property is not correct and also arrived at the conclusion that the plaintiff's claim of title over suit 'B' schedule property is clearly established by Exhibit A1 sale deed and also by commissioner report, sketch and surveyor sketch marked as Exs.C1 to C3. Thus, the trial Court decreed the suit holding that the plaintiff is the owner of 'B' schedule property and he is entitled for recovery of possession after removal of superstructure thereon. The defendants aggrieved by the said finding of the trial Court in decreeing the suit filed A.S.No.108 of 2010 on the file of the I Additional Subordinate Judge, Tiruchirappalli.

9.The Lower Appellate Court on perusal of the grounds, formulated the following points for the determination.

1.Whether the plaintiffs are entitled to the relief of declaration, recovery of possession and mesne profits as prayed for?

2.Whether the Judgment and Decree of the trial Court are not sustainable in view of the reasons stated in the grounds of appeal and the same have to be set aside?

10.The lower Appellate Court after considering the oral and documentary material available on record, held that Ex.A1 is the earliest document and as such the recitals as well as boundaries in Ex.A1 sale deed can not be disputed. The first Appellate Court also held that as per Ex.B1 sale deed, the defendant claims to have purchased 400 sq. feet as vacant site, but as per the parent document Ex.B2 and B3 only 300 sq. feet was conveyed to the vendors of the defendants and as such no explanation was given by the defendants for the addition of 100 sq. feet in Ex.B1 sale deed. The first Appellate Court also pointed out that in Ex.A3 letter written by the plaintiff it is specifically stated that an extent of 4 feet alone in the northern portion of the land is used as common pathway and nothing is mentioned in Ex.A3 letter about the said land being purchased by the defendants or their predecessors under Ex.B1 to B3 sale deeds. The first Appellate Court also held that Ex.A1 being the earliest document, the averments in Ex.A3 letter written by the plaintiff will not be of any use to the defendants. Further the first Appellate Court on the basis of Ex.C1 Commissioner Report concluded that the measurements of the property given in Ex.A1 sale deed is in accordance with the measurements found in Commissioner's report and as such suit 'A' and 'B' schedule properties are covered under the Ex.A1 sale deed and on that basis the claim of the plaintiff is clearly established. Thus the

finding of the trial Court in that regard has been upheld by the first Appellate Court which confirmed the judgment and decree passed by the trial Court and dismissed the first appeal as per judgment dated 18.12.2014.

11.The defendants who have lost before the Courts below aggrieved by the concurrent findings rendered by the trial Court as well as the lower Appellate Court have filed the present Second Appeal.

12.The Second Appeal was listed for adjourned admission on 11.10.2017.

13.Heard both side.

14.In the memorandum of the grounds of Second Appeal the following Substantial Questions of law are raised by the appellants/defendants.

- 1.Whether the admitted facts of the plaintiff require any proof by the defendants?
- 2.Whether the plaintiff can prick hole into the case of the plaintiff especially in a suit for declaration?
- 3.Whether a person will not be estopped from claiming title to their property when the same belong to other person through a register sale deed?
- 4.Whether in a suit for declaration and recovery of possession the plaintiff need not give measurements and four boundaries of the alleged encroached portion?
- 5.Whether the plaintiff can seek for recovery of possession after claiming adverse possession over the suit property?
- 6.Whether the Courts below are right in decreeing the suit for declaration and recovery of possession in the absence of relevant document to prove title and possession of the suit property?

15.The learned counsel for the appellants/defendants vehemently contended that the Courts below have failed to appreciate the evidence properly and wrongly concluded that the suit property belongs to the plaintiff. The learned counsel further contended that the suit 'B' schedule property was purchased by the defendant as evidenced by Exs.B1 to B3 sale deed and they are in possession and enjoyment of the same including 4 feet common pathway. The defendants who are in enjoyment of the property have produced Exs.B4 to B10 tax receipts to substantiate their claim, but the Courts below failed to consider and appreciate the same properly. The learned counsel further pointed out that the plaintiff has not placed any documentary evidence to prove their claim of the deity being taken out in procession through the said 'B' schedule property, which is a lane. Thus the learned counsel for the appellant contended that the suit 'B' schedule property belongs to them as per Ex.B1 sale deed and the



suit filed by the plaintiff is based on wrong facts and the same is liable to be dismissed.

16. Per contra the learned counsel appearing for the respondent/plaintiff /Decree holder contended that the trial Court and the first Appellate Court has considered the material placed before them properly and has arrived at just conclusion on the basis of available documentary evidence and also admission of DW1. He also relied upon the commissioner report, sketch, surveyor sketch marked as Exs.C1 to C3 and contended that the findings of the Courts below are concurrent and they are based on solid material produced before them which does not warrant any interference at the hands of this Court under the exercises of jurisdiction under section 100 of Civil Procedure Code, as the findings of the Courts below is on factual things and as no question of law is involved in the Second Appeal, prays for dismissal of the Second Appeal with costs.

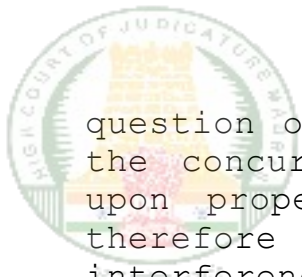
17. This Court considered the rival claims put forth by both the respective counsels and also perused the impugned judgments passed by the Courts below. The plaintiff has claimed title over the suit property under Ex.A1 sale deed. The Courts below have considered the document Ex.A1 and concluded that as the same was executed nearly 50 years ago the averments in it cannot be challenged by subsequent documents or letter written by the plaintiff. In Ex.A1 sale deed the measurements and the boundaries are clearly mentioned. Admittedly the northern side of the said property alone is disputed. It is evident from the available material that the boundaries on the south and east of the 'A' schedule property are permanent in nature as the 40 feet road is on the southern side and the eastern boundary is the property of one Srinivasan and a road. The northern property is described as property of Ponnu Samy Mooppan. On the other hand the defendants claimed title over the property under Ex.B1 sale deed and relies upon the parent documents marked as Ex.B2 and B3. In the said document nothing is mentioned about Ponnu Samy Mooppan or any of his legal heirs. On the other hand in the said documents the name of one Nagappan is mentioned and no material placed before the Court to prove as to whether the said Nagappan is successor of the said Ponnu Samy Mooppan. There is no explanation on the side of the defendants as to why the earliest document namely the registered sale deed dated 21.12.1961 is not produced. The Courts below have rightly held that only if the said document is produced, the relationship of Ponnu Samy Mooppan and Nagappan could be explained and in the absence of the same the claim of the defendants has to fail. As stated earlier there is discrepancy above the extent of the land covered under Exs.B2 and B3 sale deed on one hand and Ex B1 on the other and there is no proper explanation for the same on the side of the defendants.



18.The Courts below have considered the measurements given in Ex.A1 sale deed and discussed about the same in detail. The same is corroborated by the measurements given in commissioner report Ex.C1 and also the plan Ex.C2. If the measurements mentioned in Ex.C1 plan is taken into consideration it tallies with the measurements mentioned in Ex.A1 sale deed. The said documents Exs.C1 and C2 will clearly establish that the suit 'A' and 'B' schedule properties is the property purchased under Ex.A1 sale deed. The particulars furnished in Exs.C1 and C2 is also corroborated by the surveyor sketch Ex.C3. The surveyor has clearly stated that the encroached area in the suit property is shown as red vast portion in Ex.C3 and the same is the shortage portion of the property as per Ex.A1 sale deed. Thus the claim of the plaintiff that suit 'A' and 'B' schedule property is covered under Ex.A1 sale deed is clearly established by the documentary evidence Exs.C1 to C3 produced before the trial Court. In the case on hand the plaintiff is able to establish the identity of his property with clear cut boundaries and in such circumstances the contrary claim of the defendants that they purchased the suit 'B' schedule property as in Ex.B1 sale deed has to fail.

19.The learned counsel for the appellants/defendants contended that Ex.A3 letter written by the plaintiff himself would clearly establish the claim of the defendant. However in the said letter nothing is mentioned about the 4 feet lane being purchased by the defendants or their predecessors. It only states that the northern portion of the temple is used as common pathway. Ex.A3 is only a letter under which no title or right is conveyed to any one and in the absence of any proof of title of the 'B' schedule property in favour of the defendants Ex.A3 letter will not be of any use to prove the claim of the defendants. Further as stated earlier the Courts below has considered the documents produced before them especially Exs.C1 to C3 and factually arrived at the conclusion about the title of the property. In such circumstances as rightly contended by the learned counsel for the respondent/plaintiff, this Court exercising jurisdiction under section 100 of Code of Civil Procedure is not interfered in the concurrent factual finding in the Courts below unless and until it is totally perverse and contrary to the material available on record. Since no such thing is pointed out and established by the appellants/defendants the findings of Courts below are not to be interfered with. Further the learned counsel for the respondent/plaintiff also stated in his arguments that delivery of the property has been effected and possession was taken over by the plaintiff as per the proceedings in E.P.No.48 of 2015 dated 05.10.2017 on the file of Principal District Munsif, Tiruchirapalli and E.P.No.48 of 2015 has also been terminated.

<https://hcservices.ecourts.gov.in/hcservices/> 20.The substantial question of law raised by the appellants/defendants have already been answered by the Courts below. In the considered opinion of this Court no substantial



question of law arise for consideration in the Second Appeal and the concurrent findings recorded by the Courts below are based upon proper appreciation of oral and documentary evidence and therefore the impugned judgments of the Courts below warrant no interference.

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21. In the result, this Second Appeal is dismissed at the admission stage itself by confirming the judgments of the Courts below. No costs. Consequential Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The First Additional Subordinate Judge, Tiruchirapalli.

2. The Principal District Munsif, Tiruchirapalli.

COPY TO:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.P. THIAGARAJAN, Advocate SR.No.82469

TM/PSD

MAS/MR-KKR/SAR1:14.11.2017:8P-5C

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