

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1549 of 2001

Dakshinamurthy

..Appellant/Defendant

Versus

1.Natesan
2.Tirugnanam
3.Sundari
4.Dhanam
5.Manam
6.Gunam

..Respondents/Respondents

PRAYER: This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.46 of 1997 on the file of the Court of Additional Subordinate Judge, Mayiladuthurai dated 02.02.2001 in confirming the judgment and decree made in O.S.No.497 of 1981 on the file of the Court of District Munsif, Sirkali dated 28.02.1997.

For Appellant :: Mr.A.Muthukumar
For R1 :: Died

ORDER

The defendant in O.S.No.497 of 1981 on the file of the District Munsif Court, Sirkali is the appellant herein. The said suit came up for consideration before the learned District Munsif, Sirkali on 28.02.1997, and the suit was decreed. Challenging that decree, the defendant filed A.S.No.46 of 1997. This appeal came up for consideration before the Additional Sub-Court, Mayiladuthurai. By Judgment dated 02.02.2001, the appeal was dismissed. As against the same, the defendant had filed the present Second Appeal.

2. O.S.No.497 of 1981 (District Munsif Court, Sirkali) --
The plaintiff Lakshmi Ammal had filed the suit against the

defendant Dakshinamurthy seeking a judgment and decree for declaration that the 'B' schedule property described in the plaint belongs to the plaintiff and for consequential relief and Permanent Injunction protecting possession or in the alternative, for declaration title and for recovery of possession and also for Mandatory Injunction to remove the trees in the 'B' schedule property. The 'B' schedule property was described as lane, measuring 3-1/2 feet on the side of the house of the plaintiff. The house of the plaintiff was given in 'A' schedule in the plaint. The disputed portion is to a width of 3-1/2 feet. The plaintiff claimed that she purchased the house by sale deed dated 24.06.1965 from Chinnammal. She claimed ownership of both A and B schedule properties. The defendant is the owner of the house on the other side of the lane and also claimed title to the same. It is under the above circumstances that the suit was filed for declaration of title and possession.

3. The defendant filed a written statement stating that the lane described in 'B' schedule was part and parcel of his property. He therefore claimed title, and did not accept the recitals in the sale deed dated 24.06.1965. He also claimed to be in possession of the lane. He also stated that the plaintiff was not in possession of the lane. He therefore stated that the plaintiff was not entitled for any relief of declaration.

4. On the basis of the above pleadings, the learned District Munsif, Sirkali framed the following issues for trial.

- i) Whether the plaintiff is entitled for relief of declaration and Permanent Injunction?
- ii) Whether the plaintiff is entitled for alternative relief claimed their right?
- iii) Whether the plaintiff is entitled for Mandatory Injunction? and
- iv) To what relief, the plaintiff is entitled to?

5. During trial, the plaintiff was examined as P.W.1. and three independent witnesses, namely Chelliyan, Kasinathan and Rajankam were examined as P.W.2, P.W.3 and P.W.4. On the side of the defendant, the first defendant was examined as D.W.1. He also examined 2 other witnesses Pakkirisami and Dharumar as D.W.2 and D.W.3. The plaintiff marked Exhibits A1 to A6. Exhibit A1 is the sale deed dated 24.06.1965. Exhibit A2 is the copy of the Advocate notice and Exhibit A3 is the reply notice. Exhibit A4 is the registered title deed dated 24.10.1963 and Exhibit A5 is the plan of the property. On the side of the defendant, Exhibit B1 to B2 were marked. Exhibit B1 is the sale deed in favour of the defendant dated 17.06.1979 and Exhibit B2 is the partition deed dated 24.08.1945. During trial, Exhibits C1 to C11 were also marked. Exhibit C1 to Exhibit C4 are the report

and sketch of the Commissioner and Exhibits C5 to C11 are the reports and sketch of the second Advocate Commissioner. It must be mentioned that the suit was remanded back once and thereafter, the said documents were marked.

6. On the basis of the said documents, the learned trial Judge found that the 'B' schedule lane was within the plaintiff's property as found in the sale deed, Exhibit A1. It was therefore held that the plaintiff is entitled for declaration of title and also for recovery of possession. It was also found that the defendant did not have title over the property and that he was in wrongful possession. The suit was therefore decreed as above.

7. A.S.No.46 of 1997 - (Additional Sub-Court, Mayiladuthurai) - The defendant filed the first appeal. The learned Additional Sub Judge re-appraised the evidence and framed points for consideration. Pending the appeal, the plaintiff who was the first respondent therein, died and her legal representatives were brought on record. The learned First Additional Sub Judge, Mayiladuthurai also found that the appellant/defendant did not have title over the property. It was specifically found that the lane was part of the sale deed in favour of the first respondent who was the plaintiff. It was therefore held that the plaintiff had title over the same and consequently, the appeal was dismissed.

8. S.A.No.1549 of 2001:

The defendant had filed the present Second Appeal as stated above. The Second Appeal was admitted on 20.11.2001, and the following Substantial Questions of Law were framed for consideration:-

a) Whether on the facts established has not the appellant perfected his title to the suit property by adverse possession?

b) When admittedly the earliest documents of title relating to the suit property do not contain the measurements of the property conveyed and such measurements having found reflected only in the later documents of title, whether the finding of the Courts below that the plaintiff had established his title to the suit property is sustainable in law?

9. The learned counsel for the appellant/defendant stated that the disputed property is a lane with a width of 3-1/2 feet, running on the East side of the property of the plaintiff. However, on facts, both the Courts had found that the title rested with the respondents and that the appellant/defendant was

in wrongful possession of the same. With regard to the first substantial question of law, whether the appellant had prescribed his title by adverse possession, it is held that the respondents have claimed title to the property. The appellant had stated in the written statement that when the respondent constructed her house, she had to put roads over the lane and he had objected to the same. It is seen that the respondent had always asserted title. Consequently, there cannot be prescription of title by adverse possession by the appellant.

10. The second question of law relates to the measurement of the property. Both the Courts below have concurrently found that the lane comes within the property of the plaintiff. As a matter of fact, after remanding the case to the trial Court, a second Advocate Commissioner was appointed, who also took the assistance of a Surveyor and measured the property. It was found that the lane came within the property of the plaintiff.

11. In view of the concurrent findings, I hold that it would be inappropriate for this Court to re-examine facts once again.

12. This Second Appeal is dismissed. No costs. The judgment and decree of the first appellate Court and the trial Court are confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional Subordinate Judge,
Mayiladuthurai

2.The District Munsif, Sirkali.

Copy to

The Section Officer,
VR Section High Court,
Madras. (2Copies)

+1cc to Mr.V.k.Vijayaragavan, Advocate, S.R.No.83783

S.A.No.1549 of 2001

MP (CO)
GSP (15/02/2019)