

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1552 of 2000

Ramalingam

... Appellant/Plaintiff

Vs.

1.Chinnaponnu @ Kamalambal

2.Paneer

3.Vadivel

4.Ramadoss

...Respondents 1 to 4/Defendants 2 to 5

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and Decree made in A.S.No.235/99 dated 31.03.2000 on th file of the Court of Additional Subordinate Judge, Nagapattinam in confirming the judgment and decree made in O.S.No.48/94 dated 11.08.1999 on the file of the Court of District Munsif, Nannilam.

For Appellant :Mr.A.Muthukumar

For Respondents:No appearance for R1, 3 & 4
Batta with petition due Reg.R2

J U D G M E N T

The unsuccessful appellant / plaintiff, who had lost before the Courts below, has filed the second appeal before this Court. The sum and substance of the plaint averments read as follows:

The immovable suit schedule property belonged to the plaintiff. The same was purchased under a registered sale deed dated 08.04.1966 from one Vaithianathan Pillai and from the date of purchase, the plaintiff was in possession and enjoyment of the same. He has put up a cattle thatched hut from a small wall put up in the north south direction on the eastern side.

2.The first defendant is the eastern neighbour of the plaintiff. Formerly he was having an old house and he later he removed the same and made arrangements to put a new constructions. The plaintiff's property measures 33 links in east west direction and 120 links in north south direction.

3.The first defendant sought a permission of the plaintiff to put up electric meter board in the property of the plaintiff and to put up the electric meter board in the southern face of the wall and promised to remove the same as and when the new construction is made in his property. Since, there was a thatched superstructure in his property and the house was made up of mud wall and it was not possible for him to put up the meter board in the said mud wall. The plaintiff also accorded sanction to put up wall and fix the meter board.

4.The said portion is indicated as ABCD in the plan. It measured 5' in the east-west direction. The total extent occupied by the defendant is 7 sq. ft. The property lying on the north as well as on the south of the disputed wall is in the occupation of the plaintiff. The first defendant requested the plaintiff that these properties to be conveyed to him and the same was refused.

5.Hence, there was strained relationship between the plaintiff and the first defendant. The whole thatched shed was in the occupation of him in his property, was removed by the plaintiff and he was making arrangement to put up a new construction. Finding the portion lying north and south of ABCD portion, the first defendant was making arrangement to put up new construction in those portions also. Those portions are indicated as ABEF and CDGH. The first defendant is not entitled to encroach upon the plaintiff's property. Since the first defendant was acting against the interest of the plaintiff, the plaintiff filed a suit for recovery of possession of the ABCD portion and injunction before the Trial Court. The Trial Court dismissed the suit and the First Appellate Court confirmed the order passed by the Trial Court, against the concurrent findings, the second appeal has been preferred.

6.The sum and substance of the written statement filed by the defendant reads as follows:

The suit property does not belong to the plaintiff. This defendant is the owner of the property. The plaintiff's property is situated west of the suit property and so he cannot claim title over the suit property. Surveyor measured the property and had put up a survey stone and accordingly the suit property lies well within the boundaries of the first defendant's property.

7.The plaintiff was never in occupation or possession of the suit property. It is false to allege that he was enjoying the suit property by putting up a thatched & cattle shed.

8.The first defendant never sought permission of the plaintiff to put up electric meter board in the suit property. The wall on which the meter board is fixed, belonged to the defendant and the wall was raised in the defendant's property alone and hence no permission was necessary for the same.

9.The first defendant was constructing a new house and it was in basement level. The new construction was well within the defendant's site's boundaries. He neither encroached nor attempted to encroach upon the plaintiff's property. The co-operative society actually measured the property and sanctioned the loan after verifying the title deeds of the defendant. The plaintiff had filed the vexatious suit against the first defendant in order to grab the suit property.

10.This Second Appeal is admitted on the following substantial questions of law:

i) Whether the Courts below erred in law, in holding that the decision rendered in S.A.No.1754/1998 is not binding on the parties, on the ground that defendants were not parties to the earlier suit, contrary to the decision of Supreme Court reported in AIR 1998 SC 1132?

ii) Whether the Courts below erred in law, in holding that the plaintiff had not proved his title to 4 cents, when admittedly he purchased 4 cents under Ex.A3 and the defendants' predecessor in title had only 6 cents as per Ex.A6?

11.The learned counsel appearing for the appellant / plaintiff would submit that the approved plan is annexed in order to establish his case. On a perusal of the suit schedule property which measures 100 links in north south direction and 15 links in east west direction, the recovery of possession sought by the plaintiff is ABCD property and injunction sought by the plaintiff is EBAF and CDGH. In order to prove his title, Ex.A3 title deed and Ex.A4 is the parent document (partitioner deed) have been marked. Without perusing the documents and materials filed by the plaintiff, the Trial Court has erroneously dismissed the suit.

12.No one represented for the respondent / defendant. However, this Court decides to proceed with the matter, based on the available materials on record. On a perusal of the material records, which disclose that the suit property lies in Survey No.207/1. Ex.A3, is the title deed belongs to the plaintiff and Ex.A4 is the parent document.

13.Ex.A3 is the plaintiff / appellant's sale deed dated 08.04.1966 and Ex.A4 is the copy of the partition deed of plaintiff's vendor. The plaintiff's vendor's family purchased three cents in the suit Survey No.207/1. Further, there is no reliable evidence on the side of the appellant / plaintiff to show that the vendor's family owned more than three cents. The extent is mentioned only in Ex.B2, sale deed.

14.Further, from the Ex.C1 and Ex.C2, the report and plan of the surveyor, appointed as commissioner in the suit, it is seen that the plaintiff is entitled only for an extent of 0.03 cents.

15.On a perusal of the commissioner report, it is clear that the appellant/ plaintiff possessed only three cents and the same is tallied with Ex.B2 marked by the respondent / first defendant. The appellant / plaintiff had failed to make out his case that the suit property was purchased by him.

16.However, the respondent / first defendant had marked Ex.B2 in order to prove his case. The extent of properties admittedly in the suit Survey No.207/1, shows that the plaintiff and one Chockkalingam Pillai are entitled to three cents each and the first defendant is entitled for seven cents as per Kudiyruppu patta issued by the Government which has been marked as Ex.B1 and B2. By producing the same, the respondent / first defendant had established his possession of the property of seven cents and the suit property portion falls well within the defendant's possession.

17.In view of the above findings, I do not find any error or infirmity to interfere with the judgments and decrees passed by the Trial Court as well as the First Appellate Court. Accordingly, the substantial questions of law have been answered against the appellant / plaintiff and in favour of the first defendant.

18.In the result, this Second appeal is dismissed. The Judgment and Decree made in A.S.No.235/99 dated 31.03.2000 on the file of the Court of Additional Subordinate Judge, Nagapattinam in confirming the judgment and decree made in O.S.No.48/94 dated 11.08.1999 on the file of the Court of District Munsif, Nannilam is confirmed. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To.

1.The Additional Subordinate Judge, Nagapattinam

2.The District Munsif, Nannilam

copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate sr.no.10533

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