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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2018

PRONOUNCED ON:20.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.187 of 2015

and

M.P.No.1 of 2015

1.Devanathan

2.Rajkumar ... Appellants/Plaintiffs

Vs.

1.P.Deivasigamani

2.P.Krishnamurthy

3.Palanivelu ... Respondents/Dependents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the III Additional Subordinate Judge, Cuddalore dated 07.02.2015 made in A.S.No.61 of 2012 reversing the judgment and decree of the II Additional District Munsif, Cuddalore dated 28.10.2011 made in O.S.No.376 of 2009.

For Appellants : M/s.G.Sumitra

For Respondents : Mr.R.Sunil Kumar

J U D G M E N T

This second appeal is directed against the judgment and decree dated 07.02.2015 passed in A.S.No.61 of 2012 on the file of the III Additional Subordinate Court,



Cuddalore, reversing the judgment and decree dated 28.10.2011 passed in O.S.No.376 of 2009 on the file of the II Additional District Munsif Court, Cuddalore.

2. The second appeal has been admitted on the following substantial questions of law:

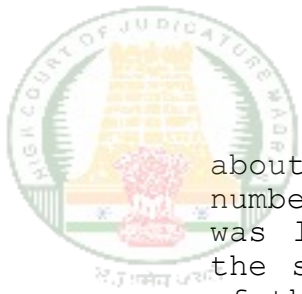
(a) Whether the non consideration of the material evidence in the forum of registered instruments and revenue records would render the judgment of the Lower Appellate Court perverse and liable to be set aside?

(b) Whether the Lower Appellate Court was right in holding that Patta is not evidence of possession?

(c) Whether the Lower Appellate Court was right in reversing the judgment of the trial Court in the absence of any appeal by defendants 4 & 5 and they not being made parties to the appeal filed by the defendants 1 to 3 ?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suffice to state that the suit has been laid by the plaintiffs seeking for the reliefs of declaration and permanent injunction in respect of the suit property. The suit property has been described as situated at Naduveerapattu village in old survey No.4/5, 0.03 cents corresponding to new survey No.4/5A lying to the west of road, north of Ganesan's land, south of Kunjitham Muthaliar's land, east of Deivasigamani Vagaiara and Rajan's property and for deriving title to the suit property as described in the plaint, the plaintiff relying on Exs.A1 to A5 sale deeds and accordingly, it is stated that the suit property and the remaining extent in the suit survey number was originally owned by Chakkara Padayachi, who had sold the same in favour of Thoppala Padayachi and who in turn sold the same in favour of Narayanasamy Padayachi and who in turn sold in favour of Duraisamy and who in turn sold the same in favour of Pavunambal Ammal and who in turn had sold the same in favour of Ramachandra Padayachi by way of a registered sale deed dated 02.08.1959. Ramachandra Padayachi is the father of the first plaintiff and the paternal grandfather of the second plaintiff and accordingly, it is found that the plaintiffs claim title to the suit property based on the abovesaid sale deed marked as Ex.A5 and according to the plaintiffs, by way of Ex.A5 sale deed, a total extent of Acre 0.28 $\frac{1}{4}$ cents had been conveyed and it is further stated that in or



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about 1962, a road was found through the above said survey number and resultantly, it is stated that the suit property was left on the western side of the road and accordingly, the suit property has been in the possession and enjoyment of the plaintiffs and their predecessors in interest and it is also stated that Ramachandra Padayachi had mortgaged the suit property and other properties to third parties exercising ownership, while so, it is contended that the defendants, who are the adjacent owners are attempting to encroach into the suit property without any authority and accordingly left with no other alternative, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The defendants after denying the case projected by the plaintiffs in toto contended that one Ponnammal, is the paternal grandmother of defendants 1 to 3, who is the wife of Sarangapani and they had two sons namely Veerappan and Paandu, Paandu being the father of the defendants 1 to 3 and it is also further stated that the paternal grandmother Ponnammal had a sister by name Sowbakkiam Ammal, whose husband is Munusamy Padayachi and they had no issues and it is the case of the defendants that Sowbakkiam Ammal had purchased the suit property and remaining extent by way of a registered sale deed dated 27.11.1935, Sowbakkiam Ammal purchased an extent of acre 1.41 ½ cents out of acre 2.83 cents in Survey No.4/5. After the death of Sowbakkiam Ammal and her husband, the abovesaid property was inherited by Ponnammal and her husband Sarangapani Padayachi and it is stated that the Government had acquired an extent of 0.15 cents and left the property on the east and west of the road and Sarangapani Padayachi had received the compensation for the property for the formation of the road and the property left on the western side is the suit property and accordingly, it is stated that the suit property has been in possession and enjoyment of Sarangapani Padayachi and in the oral partition effected, it is the case of the defendants that same had been allotted to the share of their father Paandu and since then it is only the defendants' father, thereafter the defendants, who had been in possession and enjoyment of the suit property. It is also pleaded that the remaining extent of 1.41 ½ acres in the suit survey number belonged to Narayanasami, Sarangapani, Gopal, Sakkarai and Venu and the said brothers divided the said property and other property by way of a partition dated 24.10.1944 and accordingly the properties allotted to the authorized sharers had been enjoyed by them respectively and thus, it is contended that suppressing all these facts, the plaintiffs had come forward with the suit without any entitlement to the suit property or possession and



enjoyment of the same and accordingly the defendants prayed for the dismissal of the plaintiffs' suit.

6. The plaintiffs having come forward with the suit seeking the reliefs of declaration and permanent injunction in respect of the suit property on a particular set of facts and the same had been vehemently disputed by the defendants and the defendants on the other hand, had set up a rival claim of title to the suit property, in such view of the matter, at the foremost, it is for the plaintiffs, to establish that they have a valid title to the suit property as put forth by them and the same is in their possession and enjoyment as claimed by them.

7. As above noted, the plaintiffs claim title to the suit property on the basis of Ex.A5 sale deed. On a perusal of Ex.A5 sale deed, it is found that the first plaintiff's father had purchased two items of properties by way of the abovesaid sale deed in the same survey number each measuring 14 1/8 cents of land and located within specific boundaries and as rightly determined by the first appellate court, on a perusal of the boundary recitals given to the abovesaid two items of properties, it is evident that the said properties are not adjacent to each other. The one common factor is that both the items of properties described in Ex.A5 sale deed are found to be bounded on the west and east by the properties belonging to Sowbakkiyam Ammal and the northern and southern boundaries differ as regards the two items of the suit properties comprised in Ex.A5.

8. Now according to the plaintiffs, during 1962, the road was formed through the survey number and as a result thereof, it is stated that the suit property had come to be located on the western side of the road measuring about 3 cents of land and the same has been in the possession and enjoyment of the plaintiffs and their predecessors in interest. Though the plaintiffs would seek the claim of title, possession and enjoyment of the suit property by way of Ex.A5 and other title deeds marked as Exs.A1 to A4, however, it is found that the plaintiffs had focused their case only based upon the documents marked as Exs.X2 to X4 and such being the position, it is seen that the plaintiffs are endeavoring to seek title to the suit property based on the revenue records as they are unable to correlate the suit property with the properties comprised in Ex.A5. As found by the first appellate court, only during the course of cross examination, the plaintiffs had come forward with the case that the road had been formed only in respect of the second item of the properties described in Ex.A5 and accordingly it has to be seen



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whether the second item of the suit properties described in Ex.A5 is related to the suit property as described in the plaint. As above pointed out, according to the defendants, the plaintiffs have no land on the western side of the road and in such view of the defence projected by the defendants, it is for the plaintiffs to establish their claim of title, legal possession and enjoyment of the suit property as put forth by them. However, as found by the first appellate court, the boundaries given for the second item of the properties described in Ex.A5 and the suit property as set out in the plaint are found to be not tallying with each other. Accordingly, the plaintiffs also unable to correlate the same, is found to have based their case mainly upon the FMB sketch marked as Ex.X2. However, as could be seen from the FMB Sketch marked as Ex.X2 produced by the Taluk Surveyor, it is seen that the suit property is, found to be particularly lying in survey No.4/5A, triangular in shape and it has only three sides i.e., east by road, north-eastern side by Kunjitham Muthaliar's land and south by Duraisamy's property. However, when compared with the boundaries set out for the second item of the properties comprised in Ex.A5, the same do not tally. But, when the lie of the property as found in Ex.X2 comprised in survey No.4/5A is not found to be tallying either with the plaint schedule property or the second item of the properties described in Ex.A5, the case of the plaintiffs that after the formation of the road the suit property was left on the western side of the road as such cannot be countenanced. Accordingly, unable to correlate the suit property with their title deed as well as the other acceptable records, the plaintiffs are now found to be relying upon the revenue records, which have not been taken into consideration by the first appellate court as the revenue records cannot be construed as title documents. As rightly found by the first appellate court as the while the second item of the properties comprised in Ex.A5 is shown to be surrounded by Sowbakkiyam Ammal's property on the eastern and western side however, considering the FMB sketch marked as Ex.X2, it does not in any manner serve the case of the plaintiffs to correlate the suit property as the property described as the second item of the properties in Ex.A5.

9. During the course of arguments, the plaintiffs' counsel contended that the first appellate court has failed to consider the evidence of D.W.2, Revenue Inspector for upholding the plaintiffs claim of title to the suit property. Other than Exs.A1 to A5, the plaintiffs have also produced the mortgage deeds marked as Exs.A6 to A8. However, when the description of the suit property has not been clearly spelt out in the abovesaid mortgage deeds by



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giving boundaries, it is seen that the abovesaid documents would not in any manner be helpful to sustain the plaintiffs' case. That apart, the plaintiffs have produced the patta document marked as Ex.A9. Ex.A9 is relied upon by the plaintiffs to contend that they have title to the suit property. Thus, patta is the only document projected by the plaintiffs for seeking title to the suit property. However, the extent given in Ex.A9 is found to be 0.01.0 ares. Similarly, even in Ex.X4, the extent of survey No.4/5A is shown to be 0.01.0 ares. However, in Ex.X2, FMB sketch, as per the evidence of D.W.2, the extent is shown as 0.02.0 ares. As per the evidence of Revenue Inspector examined as D.W.2, the extent in Ex.X4 showing the extent as 0.02 ares is correct and the extent shown as 0.01.0 ares for survey No.4/5A is incorrect. Even during the course of cross examination by the plaintiffs, he would assert that only the extent as found in Ex.X2 is correct. Accordingly, if the abovesaid statement of D.W.2 is taken into consideration, it is found that when survey No.4/5A is found to be comprising of an extent of 0.02.0 ares, it is seen that the extent comes to more than 3 cents and when according to D.W.2, the extent found in Exs.X4 and A9 are incorrect, resultantly, it has to be held that the patta document projected by the plaintiffs marked as Ex.A9 also does not reflect the correct description of the suit property. When the plaintiffs are found to be unable to correlate the suit property with the second item of the properties comprised in Ex.A5 and when according to the plaintiffs, the suit property lying in survey No.4/5A is only measuring 3 cents and for the said purpose, the plaintiffs are now relying only upon Ex.X2 and when according to D.W.2, Ex.X2 refers to the property comprised in survey No.4/5A and measuring 0.02.0 ares, it is seen that the extent do not tally with the suit description of 3 cents comprised in survey No.4/5A, thus, as rightly putforth, even Ex.X2 does not advance the plaintiffs' case for deriving the title to the suit property or the possession and enjoyment of the same as putforth by the plaintiffs.

10.The first plaintiff examined as P.W.1, during the course of cross examination has asserted that the suit has been laid only for an extent of 3 cents and further he has also admitted that he has not filed any document to evidence that the Government had acquired lands in the suit survey number for the formation of the road and also admitted that the mortgage deeds do not detail the boundaries of the suit survey number and when from his evidence, it is found that he has admitted the documents projected by the defendants, in all, when the description of the suit property as focussed in the plaint is found to



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be rectangular in shape and on the other hand, Ex.X2 now relied upon by the plaintiffs depict the suit property as triangular in shape and the boundary recitals of Ex.X2 do not tally with the second item of the properties comprised in Ex.A5, accordingly, it is found that the plaintiffs are unable to trace the title of the suit properties as comprised in item 2 of the properties described in Ex.A5 and such being the position, when the plaintiffs have miserably failed to establish or trace their title to the suit property as described in the plaint and also established their legal possession and enjoyment of the same, as determined by the first appellate court, the plaintiffs cannot be allowed to pick holes in the defence version and thereby endeavor to succeed in their case without establishing their claim of title to the suit property. As rightly found by the first appellate court, the trial court seems to have only focused upon the weakness of the defendants' case and thereby proceed to uphold the plaintiffs case, despite the position that plaintiffs have miserably failed to establish their claim of title, possession and enjoyment of the suit property as described in the plaint.

11. In the light of the above discussions, the first appellate courts is found to have analyzed all the documents projected in the matter in the right perceptive and accordingly found that the plaintiffs had failed to correlate the suit property with their alleged title deed marked as Ex.A5 and thereby finding that the plaintiffs attempted to trace the title only through the patta and accordingly further holding that the patta cannot be construed as a document of title and furthermore, the plaintiffs having also failed to establish their legal possession and enjoyment of the suit property as claimed by them, it is seen that there is no warrant to interfere with the judgment and decree of the first appellate court negating the plaintiffs' case. The substantial questions of law formulated in the second appeal are accordingly answered.

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

Sd/-

Assistant Registrar(Ccc)

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Sub Assistant Registrar

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1. The III Additional Subordinate Judge, Cuddalore.

2.The II Additional District Munsif, Cuddalore.

The Section Officer,
VR Section,
High Court.

+1cc to M/s.G.Sumitra , Advocate SR.No. 65314

+1cc to Mr.R.Sunil Kumar, Advocate SR.No. 65595

S.A.No.187 of 2015
and
M.P.No.1 of 2015

ASK (05/12/2018)