

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1878 of 2000

Thambusamy

... Appellant

Vs.

- 1.Agora Gurukal (Deceased)
- 2.Swaminathan
- 3.Dakshinamurthy
- 4.Chandrasekar

(Respondents 2 to 4 brought on record as LR's of the deceased sole respondent vide order of Court dated 13.02.2018 made in CMP 22486 to 22488 of 2017 in SA 1878 of 2000)

... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Principal Sub Court, Mayiladuthurai in A.S.No.9/99 dated 15.12.1999 confirming the judgment and decree of the District Munsif Court, Sirkali in O.S.No.214/90 dated 19.11.1998.

For Appellant : Mr.S.Sounthar
For Respondents : Mr.R.S.Varadharajan

J U D G M E N T

The defendant who lost his case before the Courts below has filed this second appeal.

2.The appellant herein is the defendant and the first respondent herein is the sole plaintiff in the suit in O.S.No.214 of 1990. During the pendency of the second appeal, the first respondent died and respondents 2 to 6 being his legal heirs are impleaded in the second appeal. For the sake of convenience, the parties will be hereinafter referred to as per their rank in the suit.

3.The sum and substance of the plaint averments are as follows: The plaintiff purchased the suit property for a valuable consideration under registered sale deed dated 22.06.1990. After the purchase, the plaintiff is in possession of the suit property. Prior to his purchase, the predecessor – in – title are in possession of the suit property. A portion of the suit schedule properties were originally situated in S.No.465/4. After sub-division, the properties are numbered as R.S.No.465/4G.

4.The plaintiff further avers that the suit schedule properties

were originally classified as dry land. Thereafter, it was converted into wet by the vendor of the plaintiff. After purchase, the plaintiff converted the same into dry for installing electric motor. Thus, the plaintiff is in exclusive possession of the suit property.

5.The plaintiff further avers that the defendant was residing in the Northern side of the suit property and tried to put up a hut. Under the UDR Scheme, patta for the suit property was given to the defendant by mistake. After coming to know that patta was wrongly granted in favour of the defendant, immediately, the plaintiff applied for cancellation of patta before the Tahsildar, Sirkali. After adjudication, patta was cancelled by the Tahsildar vide order dated 30.07.1990.

6.After the cancellation of patta, the defendant wanted to construct a bigger house for himself and wanted the plaintiff to lease out the suit property. But the plaintiff is not willing to lease out the suit property in favour of the defendant. After the refusal, the defendant is threatening and trespassed upon the suit property and put up hut thereof. Aggrieved by the attitude of the defendant, the

plaintiff filed the suit for permanent injunction. Thereafter, the suit was converted into one for recovery of possession.

7.The sum and substance of the written statement filed by the defendant are as follows: The defendant denied the averments made in the plaint. The plaintiff has no title to the suit property and the plaintiff was not in possession of the suit property. The sale deed referred is not true and valid and the plaintiff is strictly proof of the same. Infact, the defendant is residing in the suit property and put up his residence for long number of years ago. After putting up his residence in the suit property, the defendant was paying the house tax and other revenue taxes in favour of the Government.

8.The defendant would further aver that he was not aware of the alleged cancellation of patta and he was not a party to the proceedings. Any order passed against the defendant is not binding on him without impleading him as necessary party in the said proceedings. The defendant did not want to construct a bigger house for himself and there is no necessity for the same since the defendant is already continuously in possession of the land to an larger extent of

the suit property for his convenience and enjoyment of his residence.

9. In order to establish his case, the plaintiff examined himself as witness and also examined three other persons as witnesses and marked five documents as exhibits. In order to establish his case, the defendant examined himself as witness and also examined one other person as witness and no document was marked. Four documents were marked as Court exhibits.

10. After elaborate discussions and after framing issues, the lower Court decreed the suit. Aggrieved by the same, the defendant filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the decree passed by the lower Court. As against the concurrent findings of the Courts below, the present second appeal has been filed.

11. At the time of admission of the second appeal, this Court framed the following substantial question of law only with regard to the 'A' Schedule property and insofar as the 'B' Schedule property this Court dismissed the second appeal confirming the judgment and decree of the Courts below:

"(a) Whether the respondent/

plaintiff is entitled to decree for possession of 'A' Schedule property, without proving his vendor's title, especially when it is specifically denied?"

12. The learned counsel appearing for the appellant would submit that there are two items of properties involved in this case namely, 'A' and 'B' Schedule properties. There is no dispute with regard to 'B' Schedule property. However, there is dispute with regard to the 'A' Schedule property. The plaintiff himself admitted that the defendant was in possession of the property prior to his purchase. While that being so, the defendant have prescribed adverse possession for long standing possession of the suit property. Mere admission is sufficient to establish his case that the defendant is in possession of the suit property. However, on the contrary, the plaintiff did not establish his entitlement for recovery of possession. Even the plaintiff's admission is sufficient to prove the adverse possession in favour of the defendant. Without considering the admission of adverse possession by the plaintiff, the lower Court as well as the lower Appellate Court has concurrently held in favour of plaintiff and it is un-sustainable in law. Hence, the order of the Courts below are liable to be interfered with. Accordingly, he prayed for allowing the second appeal.

13.Per contra, the learned counsel appearing for the respondents would submit that the plaintiff purchased the property for a valuable sale consideration by a registered sale deed dated 22.06.1990 and the said sale deed is marked as Ex.A1. Through Ex.A1, the plaintiff established the four boundaries in respect of the suit property. However, on the contrary, the defendant did not establish his right or claim of adverse possession before the lower Court and no pleading claiming adverse possession is available in the written statement. Without any pleadings and without any documents, raising the claim of adverse possession at the stage of second appeal will not arise and the defendant has to establish his legal possession in the suit property. In the absence of legal possession, the order of the Courts below are perfectly correct. Accordingly, he prayed for the dismissal of the second appeal.

14.Heard the arguments advanced on either side and perused the materials placed on record.

15.Admittedly, the suit schedule properties were purchased by the plaintiff/ first respondent by a registered sale deed dated 22.06.1990 and that sale deed is marked as Ex.A1. Perusal of Ex.A1

discloses that the four boundaries of the suit properties are mentioned in the sale deed. The four boundaries are as follows:

'East of Neithavasal channel;
North of poromboke irrigation channel;
West of the plaintiff's land purchased from Chandrakasu; and
South of other lands of Bharathi Dassan.'

16.The plaintiff established his title over the suit property. On a perusal of Ex.A1 and the boundaries mentioned therein, the boundaries clearly mention that the first respondent/ plaintiff possessed the property from one Bharathi Dassan. Perusal of the findings of the Courts below shows that the defendant is claiming the property on the Northern portion of the property. However, the Northern portion is poromboke irrigation channel. Except the poromboke irrigation channel, no other property is available for establishing his possession. The defendant has no right to occupy the poromboke irrigation channel.

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17.Admittedly, the defendant occupied the property belonging to the plaintiff. However, the defendant did not establish his legal possession in the suit property either through documents or through

pleadings or through any witnesses. In the absence of any document and pleadings, I do not find any error in the order passed by the Courts below. Accordingly, the substantial question of law is answered against the appellant and the second appeal is dismissed.

18. In the result, the second appeal is dismissed. The judgment and decree of the learned Principal Sub Judge, Mayiladuthurai, passed in A.S.No.9 of 1999, dated 15.12.1999, is confirmed. No costs.

16.03.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. The Principal Sub Court,
Mayiladuthurai.

2. The District Munsif Court,
Sirkali.

M.DHANDAPANI,J.

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S.A.No.1878 of 2000

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