

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2018

PRONOUNCED ON : 27.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.396 of 2015

S.M.A.Kamal

...Appellant/Appellant/Plaintiff

Vs.

1. Paneerselvam
2. Mahalingam
3. Bharathi

...Respondents/Respondents/Defendants

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 09.01.2015 passed in A.S.No.7 of 2014 on the file of the court of subordinate Judge at Mannargudi confirming the judgment and decree dated 22.11.2013 passed in O.S.No.59 of 2010 on the file of the Court of District Munsif at Thiruthuraipoondi.

For Appellant : Ms.R.T.Shyamala

For Respondents 1 to 3 : Mr.J.S.Mahalingam

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 09.01.2015 passed in A.S.No.7 of 2014 on the file of the subordinate Court, Mannargudi confirming the judgment and decree dated 22.11.2013 passed in O.S.No.59 of 2010 on the file of the District Munsif Court, Thiruthuraipoondi.

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

"a) Whether the Courts below are correct in holding that the plaintiff claims his title to the lane only through patta, when the claim of the plaintiff is purely based on the sale deed dated 01.12.1941 stood in the name

of his grand-father and thereafter gifted to his mother and the same is proved by mutation of record in the name of the plaintiff's mother by issuing patta?

b) Whether the findings of the courts below are perverse insofar as the extent of the said property is concerned without referring to the fact that the total extent purchased by the plaintiff under Old Survey No.108 now referable to the New Survey No.109/12 etc., is totally to an extent of 2157 sq.ft. whereas the findings rendered would show as if only an extent of 26 ft x 8 ft was purchased by the plaintiff?

c) Whether the courts below are correct in holding that the plaintiff failed to prove his title to the property by not producing the revenue records to show that S.No.108/1 was subsequently changed as S.No.109/12, and on the other hand erroneously held that the revenue records are not title to the property?

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. The suit property is found to be a lane measuring 2½ feet in width and 122 feet in length and the same is stated to be lying in the New Survey Number 109/12, Old Survey Number 108/1, later sub-divided as Survey Number 108/35 and it is stated that the abovesaid lane is lying to the north of Kalliamman koil street, to the south of Vaduganathan Chettiar Mill and backyard, to the east of the property belonging and enjoyed by the defendants in Survey Number 109/13 and to the west of the house and the remaining property lying in Survey Number 109/12. Seeking the reliefs of declaration and permanent injunction in respect of the abovesaid suit property, i.e., the suit lane, based on the sale deed dated 01.12.1941, contending that the defendants who are the owners of the property lying on the western side of the suit lane are attempting to interfere with his possession and enjoyment of the suit lane, the suit has come to be laid by the plaintiff.

5. The defendants have resisted the plaintiff's suit contending that the suit lane forms part of the property belonging to them and in this connection, the defendants placed reliance upon their parent title deed dated 27.07.1947 marked as

Ex.B4, the sale deed dated 23.06.1952 marked as Ex.B2, the settlement deed executed by Rajalakshmi in favour of the first defendant dated 07.09.2007 marked as Ex.B3 as well as the Usufructury Mortgage deed dated 21.04.1940 marked as Ex.B5 and accordingly contended that the suit property i.e., the lane forms part of the property belonging to the defendants by way of the abovesaid documents and in the possession and enjoyment of the defendants and their predecessors in interest and therefore the plaintiff is not entitled to claim the reliefs sought for in respect of the suit lane.

6. Though the plaintiff claims title to the lane based on the sale deed dated 01.12.1941 said to have been executed by Meenakshiammal in favour of her father, however, as rightly determined by the courts below, on a perusal of Ex.A1 sale deed, it is seen that there is no reference at all about any lane forming part of the suit property comprised therein. Therefore, it is seen that Ex.A1 sale deed, would not, in any manner, advance the case of the plaintiff that the suit lane had been purchased part and parcel of the property comprised therein by his father under Ex.A1. Accordingly, it is seen that unable to trace the title to the suit property based on Ex.A1, the plaintiff is attempting to base his claim on the footing that thoraya patta has been issued in his favour marked as Ex.A3 and accordingly has come forward with the suit seeking the abovesaid reliefs.

7. However, as rightly put forth by the defendants, the thoraya patta relied upon by the plaintiff marked as Ex.A3, could not, by itself, be construed as a valid document of title for upholding his claim of title to the disputed suit lane. The title deed projected by the plaintiff marked as Ex.A1, does not, in any manner, depict the inclusion of the suit lane as part and parcel of the property comprised therein and on the other hand, according to the defendants, the suit lane forms part of the property of their title deed projected in the matter and contended that the plaintiff, cannot be allowed to base his claim upon the thoraya patta marked as Ex.A3.

8. The plaintiff's counsel, during the course of arguments in the second appeal, mainly contended that there is no mention about the suit lane in the title deed of the defendants, particularly, in their parent title deed and therefore the defendants cannot be allowed to raise any claim of title to the suit lane and it is contended in particular that only in the latest title deed of the defendants, there is a reference about the suit lane, which is conspicuously absent in their parent title deed and therefore, according to her, the defendants' claim of title to the suit lane has been wrongly upheld by the courts below and therefore the judgment and decree of the courts

below are liable to be set aside.

9. However, as rightly put forth by the defendants' counsel, on a perusal of the title deeds projected by the defendants, right from the inception, it is seen that the suit lane forms part of the property comprised therein. The earlier title deed dated 27.07.1947 marked as Ex.B4, on a perusal of the same, would go to show that the property comprised therein is inclusive of the lane on the eastern side and such being the position, the contention of the plaintiff's counsel that the earlier title deed of the defendants' doesnot depict the lane in question, as such, cannot be accepted in any manner. The next tile deed of the defendants dated 23.06.1952 marked as Ex.B2 also would go to show that inclusive of the suit lane, the property had been dealt with thereunder and in such view of the matter, it is seen that the argument of the plaintiff's counsel that only in the latest document of the defendants, the suit lane has been depicted, as such, cannot be countenanced. The settlement deed projected by the defendants dated 07.09.2007 marked as Ex.B3 also go to show that inclusive of the suit lane the property had been settled by way of the same. Not only that, it is seen that the defendants predecessors in interest had been dealing with the property and accordingly while mortgaging the same under Ex.B5 mortgage deed dated 21.04.1940 has also described the property as inclusive of the compound wall and the eastern lane comprised therein. In the light of the abovesaid factors, when all the documents projected by the defendants right from Exs.B4, B2, B3 as well as B5 go to show that the lane is lying on the eastern side of the property belonging to the defendants and had been dealt with by them as the absolute property of the defendants and their predecessors in interest and when the title deed of the plaintiff marked as Ex.A1, does not, in any manner indicate as inclusive of the suit lane, it is seen that the plaintiff is endeavouring to obtain the reliefs sought for only based upon the thoraya patta marked as Ex.A3. However, as rightly determined by the courts below, when thoraya patta cannot be the basis for upholding the plaintiff's claim of title to the lane in dispute and furthermore when the plaintiff has not placed any material worth acceptance to show that the lane in dispute has been in his possession and enjoyment as put forth by him, it is found that the courts below are justified in negating the plaintiff's suit as regards the lane in question.

10. Furthermore, as could be seen from the evidence of the plaintiff examined as PW.1, he has clearly admitted that the suit lane is the portion lying to the east of the defendants' compound wall and west of the plaintiff's compound wall and also admitted the defendants' backyard exists along the lane portion continuously and further admitted that the defendants'

backyard can be accessed by going through the suit lane and also admitted that his western compound wall joins with the wall on the north side and also would admit that his western compound wall is put up on the extreme western boundary of his property and further admitted that at the north end of the suit lane, the bathroom and well of the defendants are located and that the suit lane is situated along the house of the defendants. Such being the clear evidence and admission of the plaintiff, it is found that, coupled with the title documents projected by the defendants as above discussed, when the suit lane forms part of the property belonging to the defendants and accordingly the same is in the possession and enjoyment of the defendants as admitted by the plaintiff, the claim of the plaintiff to the suit lane based on the thoraya patta marked as Ex.A3, has been rightly turned down by the courts below and in such view of the matter, no interference is called for in the judgment and decree of the courts below in nonsuiting the plaintiff.

11. The counsel for the defendants in support of his contentions placed reliance upon the decisions reported in 1997-1-L.W.582 (Noorjahan Bibi v. Abdul Wahab Rawther and another)

(2008)6 MLJ 597 (Udhayakumar and others v. Krishnamoorthy @ S.K.Moorthy)

1995 (1) MLJ 426 (Kuppuswami Nainar v. The District Revenue Officer, Thiruvannamalai and others)

2010 (2) TLNJ 225 (Civil) (Venkatesan Assary v. Prakash Mull Chordia)

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at the hand.

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12. In the light of the above discussions, the plaintiff's title deed dated 01.12.1941 not showing that the property comprised therein as inclusive of the suit lane in any manner and on the other hand, the plaintiff has attempted to base his claim based on the revenue record, namely, the patta and on the other hand, when the documents of title projected by the defendants clearly show the inclusion of the suit lane in the property dealt thereunder and accordingly the defendants are also found to be in the possession and enjoyment of the suit lane and the same has also been admitted by the plaintiff as above discussed and when the title deeds of the defendants themselves are clear in exhibiting the title of the defendants

and their predecessors in interest to the suit lane, the mere fact that the defendants have not produced any revenue record to sustain the same, as such, would not, in any manner, militate against their case and in such view of the matter, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

13. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bga

To

1. Subordinate Judge, Mannargudi
2. District Munsif Court, Thiruthuraipoondi.
3. The Section Officer,
V.R.Section, High Court, Madras.(2 Copies)

+1cc to Ms.R.T.Shyamala, Advocate in sr.no.66998

+1cc to Mr.J.S.Mahalingam, Advocate in sr.no.66802 (20/12/2018)

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SSV(CO)
CS/12/12/2018

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