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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.09.2018

PRONOUNCED ON:23.10.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.510 of 2015

Pachamuthu ... Appellant/ 1st Defendant

Vs.

1.Krishnamurthi

2.Kaliamurthi .. Respondents 1 & 2/Plaintiff 1&2

3.Ganesan .. 3rd Respondent /2nd Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.2 of 2012 on the file of the Sub Court, Neyveli dated 17.04.2014 confirming the decree and judgemnt in O.S.No.11 of 2004 dated 29.06.2010 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Appellant : Mr.R.Muralidharan

For RR1 : Mr.C.Munusamy

For RR2 and R3 : No appearance
Set exparte
vide order dated 17.09.2018

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 17.04.2014 passed in A.S.No.2 of 2012 on the file of the Subordinate Court, Neyveli, confirming the judgment and decree dated 29.06.2010 passed in O.S.No.11 of 2004 on the file of the District cum Judicial Magistrate, Neyveli.

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



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(a) Whether the finding that the grant of patta in favour of the plaintiff overlooking Ex.B1 granted in favour of the first defendant are legally sustainable?

(b) Whether the proceedings in culminating into grant of patta to plaintiff without notice to the defendant is legally sustainable?

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 parties are at issue only as regards the 'C' schedule property. The 'C' schedule property is described as located in north Melur Natham survey No.129/1D, 1B shown as "IAHKJ" in the plaint plan [000780 sq.mts] north-south 14 mts, east-west 2 mts. The abovesaid 'C' schedule property as well as the other properties, according to the plaintiffs had been acquired by their father Katchiraya Padayachi, by way of a sale deed dated 25.02.1964 and the abovesaid document has come to be marked as Ex.A1. Now, according to the plaintiffs, they had been using the 'C' schedule property as a lane for gaining access to the other properties and the road portion and inasmuch as the first defendant without any authority attempted to interfere with their possession and enjoyment with reference to the 'C' schedule property as well as the other properties, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs. As regards the 'C' schedule property, the plaintiffs had sought for the reliefs of declaration, permanent injunction and mandatory injunction. The Courts below had granted the reliefs of declaration and permanent injunction in respect of the 'C' schedule property as prayed for by the plaintiffs. Impugning the same, the present Second Appeal has been laid.

5. According to the first defendant, the 'C' schedule property belong to him and he has been in possession and enjoyment of the said property over a long period of time, beyond the statutory period and accordingly, he has prescribed title to the 'C' schedule property by way of adverse possession and recognizing his possession and enjoyment of the 'C' schedule property, patta had been granted in his favour and hence the plaintiffs are not entitled to seek and obtain the reliefs prayed for in respect of the 'C' schedule property.



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6. Based on the materials placed on record, it is found by the Courts below rightly that the plaintiffs' father had acquired the 'C' schedule property as well as the other properties by way of the sale deed marked as Ex.A1 and accordingly, the plaintiffs and their predecessors in interest had been using the 'C' schedule property as a lane for gaining access to their other properties and the road portion. Recognizing the plaintiffs' title, enjoyment of the 'C' schedule property as a lane, it is found that the patta had been also issued in favour of the plaintiffs, which documents have come to be marked as Exs.A2 and A3. Therefore, as rightly found by the Courts below, based on Exs.A1 to A3, the plaintiffs have established their legal right and as to their entitlement of the 'C' schedule property in using the same as a lane for having access to their other properties and the road portion. In addition to that, as could be seen from the evidence of D.Ws.1 to 4 and their admissions, it is found that, it is only the plaintiffs, who had been using the 'C' schedule property as a lane for gaining access to their other properties and the road portion, and therefore, the Courts below had also considered the clear admissions of D.Ws.1 to 4 in upholding the plaintiff's possession and enjoyment of the 'C' schedule property as a lane and in such view of the matter, the contention of the first defendant that the 'C' schedule property belong to him and that he had been granted the patta in respect of the same as such cannot be readily countenanced.

7. Though, in this matter, the defendant would rely upon the patta marked as Ex.B1 said to have been issued in his favour as regards the 'C' schedule property, as rightly determined by the Courts below, the property covered under Ex.B1 patta is not shown to be related to the 'C' schedule property located in survey No.129 1D 1B. As per the property comprised in Ex.B1, it is found to be related to the survey No.129/1D. To evidence that the property comprised in Ex.B1 also denote the 'C' schedule property, the first defendant has not placed any acceptable and reliable material and also not endeavored to examine the author of Ex.B1. Further in this matter, according to the first defendant, the plaintiffs suppressing the material facts had obtained the patta in respect of the 'C' schedule property and accordingly, it is his case that he had challenged the said order granted in favour of the plaintiffs before the higher authorities. In this connection, as could be seen from the materials placed on record, it is found that the Appeal preferred by the first defendant challenging the genuineness of the patta granted in favour of the plaintiffs in respect of the 'C' schedule



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property had been dismissed. Thereafter, it is found that the first defendant had also preferred the revision to the next higher authority and the same is still pending. Thus, it is noted that the first defendant, as on date, has not been issued any patta in respect of the 'C' schedule property. The first defendant, other than the patta document Ex.B1 has not placed any material to show as to how he seeks claim of title, possession and enjoyment of the 'C' schedule property. As above noted, the Ex.B1 patta is not shown to be related to the 'C' schedule property, hence the said document would not in any manner advance the first defendant's case. Admittedly, the challenge projected by the first defendant with reference to the issuance of the patta in favour of the plaintiffs in respect of the 'C' schedule property ended in failure and the other proceeding in connection with the same is still pending. Be that as it may, as on date, there is no material placed on the part of the first defendant evidencing his claim of title, possession and enjoyment of the 'C' schedule property as put forth by him.

8. Further, the Commissioner's report and plan as well as the surveyors plan marked as Exs.C1 to C3 also go to show that it is only the plaintiffs, who have been using the 'C' schedule property as a lane for gaining access to their other properties and the road portion. The first defendant has not placed any objection to the Commissioner's report and plan.

9. Furthermore, the first defendant having taken the plea of adverse possession for seeking title to the 'C' schedule property, thereby also impliedly admitted the title of the plaintiffs in respect of the said property. However, as rightly determined by the Courts below no valid material has been projected by the first defendant to sustain his claim of adverse title to the 'C' schedule property. Therefore the abovesaid case of the first defendant has been rightly discountenanced by the Courts below.

10. The counsel for the first defendant would contend that the plaintiffs having taken inconsistent pleas of ownership and easementary right regarding the 'C' schedule property and hence they are not entitled to maintain the suit. On that basis and in this connection, it is also his argument that merely on the basis of the patta issued in favour of the plaintiffs which is under challenge, the plaintiffs should not have been granted the reliefs by the Courts below and hence the judgments and decrees of the Courts below are liable to be set aside. In this connection, he placed reliance upon the decisions reported



in

(i) 2003 (2) Law Weekly 152 [Varadarasu alias Devarasu Vs. Malone Veerasamy alias Thanapal and two others]

(ii) 2015 (1) Law Weekly 570 [K.Krishnamoorthy Vs. Nagammal & Others]

(iii) MANU/TN/1768/2003 [Arunachalam Pillai and another Vs. Sorimuthu Pillai]

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

11. Considering the averments contained in the plaint, it is seen that the plaintiffs have sought for the declaration of his title to the 'C' schedule property and the other properties set out in the plaint schedule and also for the other reliefs restraining the first defendant from interfering with their possession and enjoyment in respect of the same. Such being the position, when the plaintiffs have claimed title to the 'C' schedule property by way of Ex.A1 sale deed and accordingly recognizing their title, the patta had also been issued in their favour, in such view of the matter, it is seen that the arguments putforth by the first defendant's counsel that the plaintiffs are putting forth inconsistent pleas of ownership and easementary right in respect of the 'C' schedule property, as such, cannot be readily countenanced.

12. In the light of the above discussions, the Courts below had rightly appreciated the materials placed on record, including the patta documents projected by the respective parties and found that it is only the plaintiffs, who have title to the 'C' schedule property and the same is in their possession and enjoyment and accordingly, granted the necessary reliefs in favour of the plaintiffs and against the first defendant.

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 v)

//True Copy//

Sub Assistant Registrar

mfa



To

1. The Subordinate Judge,
Neyveli.

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2. The District Munsif cum Judicial Magistrate,
Neyveli.

+1cc to Mr.R.Muralidharan , Advocate SR.No. 71923

+1cc to Mr. C.Munusamy, Advocate SR.No. 72115

S.A.No.510 of 2015

ASK (30/11/2018)