

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 19.09.2017

Judgment Pronounced on : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.76 of 2007

Indira

... Appellant/plaintiff

Vs.

1.Gopal Naidu
2.Chengalvarayan
3.C.Radhakrishnan
4.C.Sriramlu
5.C.Ramamoorthy

... Respondents/Defendants

This second appeal is filed under Section 100 of CPC, against the judgment and decree dated 31.07.2006 passed by the Principal Sub Judge, Krishnagiri, in A.S.No.86 of 2004, reversing the Judgment and Decree dated 30.10.2003 passed by the District Munsiff, Krishnagiri in O.S.No.117 of 1994.

For Appellant : Mr.V.Raghavachari
For Respondents : Mr.J.Hariharan for
M/s.V.Nicholas for 1 to 5

JUDGMENT

The above second appeal arises out of the Judgment and Decree dated 30.10.2003 passed by the learned Principal Sub Judge, Krishnagiri, in A.S.No.86 of 2004, reversing the Judgment and Decree dated 31.07.2006 passed by the learned District Munsiff, Krishnagiri in O.S.No.117 of 1994.

2. Brief facts of the case is as follows:-

The plaintiff is the absolute owner of the suit property. She purchased the property from one Mohan and others as per sale deed dated 22.10.1984. The said Mohan was allotted the suit property in the family partition dated 20.09.1954. Ever since purchase, the plaintiff is in possession and enjoyment of the suit property by paying tax to the Government. The first defendant is the father of other two defendants and they are

leaving as joint family. The plaintiff owned 16 cents of land in Survey No.342/2 in Chinnamattrapalli Village, which is the suit property. The defendants owned land in Survey No.340/1, 341/2 and 342/1 on the north east of the said suit property. The defendants also owned property in Survey No.332 of the said village situated south west of the above said lands. There is a well in Survey No.340/1 belonging to the defendants and they have dug up water channel in Survey No.341 and 342/1, so as to cultivate them by using the well water in Survey No.340/1. As the water channel was laid in the land belonging to the plaintiff, she demanded the defendants to remove the water channel. But the defendants failed to oblige. Due to the defendants action, it has become impossible for the plaintiff to do cultivation in her land. Hence the plaintiff caused legal notice dated 22.10.1993 to the defendants to restore the area taken up for water channel and to pay Rs.1000/- towards loss of crops to which the defendants sent a reply dated 02.11.1993 claiming title over the property by way of adverse possession. Hence, the plaintiff has come forward with the suit seeking declaration, mandatory injunction and for mesne profits.

3. On the other hand, opposing the claim of the plaintiff by filing written statement, it is contended by the defendants that the plaintiff is not the absolute owner of the suit property. The alleged partition dated 20.09.1974 is not valid in law. The plaintiff averments regarding the defendants having lands in Survey No.340/1, 341/1 and 342/1 is true. The defendants are having a well in Survey No.340/1 and they have dug water channel in Survey No.341/1 and 342/1 to irrigate their lands in Survey No.340/1. The defendants 2 and 3 purchased the lands from one Thirthagiri as per the sale deed dated 05.08.1968 and the same was surrounded by the suit property. The defendants 2 and 3 were under the impression that the suit land also forms part of the lands purchased by them and they took possession of all the lands on 05.08.1968 itself. After purchasing the lands, the defendants put up water channel through the said lands and there is no dividing ridges between the suit property and other lands of defendants. The defendants claim that due to their long, continuous, open and uninterrupted possession they have perfected the title by adverse possession. Thus, the defendants pleads for dismissal of the suit.

4. Before the trial Court, the plaintiff examined P.W.1 and P.W.2 and produced documents Ex.A1 to Ex.A11 to prove her claim. On the side of the defendants, D.W.1 to D.W.3 were examined and produced documents Ex.D1 and Ex.D2 and Court documents Ex.C1 and Ex.C2 were also produced. On the basis of the same, after contest, the trial court decreed the suit as prayed for. Aggrieved upon that, the defendants preferred appeal before the

lower appellate Court and after re-appreciating the entire materials, the lower appellate Court reversed the findings of the trial Court and dismissed the same by allowing the appeal. Aggrieved upon that, the plaintiff has preferred this second appeal.

5. At the time of admission, this Court framed the following Substantial Questions of Law for consideration:-

(1) When the document under Ex.B1 does not reflect the suit property, can the respondents claim right, title over it?

(2) Whether the lower appellate court is right in dismissing the suit, when the plaintiff/appellant had produced title deeds with respect to the suit property?

(3) Whether the lower appellate court is right in arriving at a finding by misconstruing the relief No.3 sought for in the suit?

6. The learned counsel appearing for the appellant/plaintiff would submit that the plaintiff filed the suit for declaration and to prove the title to the suit property, she relied Ex.A1, A2 and A7 and to corroborate the same she has relied on revenue records, but the lower appellate court without considering the documentary evidences for proving title simply ignored the same without assigning any reason. Further more, the primary ingredient for adverse possession the ownership of another has to be accepted, but the defendants never accepted the same and also failed to prove the plea of adverse possession. But the lower appellate court without considering these aspects reversed the well reasoned finding of the trial court and it is against law hence interference of this court is warranted.

7. The learned counsel appearing for the respondents/defendants would submit that the lower appellate Court had elaborately discussed both oral and documentary evidences and came to a correct conclusion and there is no infirmity. Further more, the defendants claimed title to the suit property by way of adverse possession. Since the defendants proved their defence, the lower appellate court upheld the claim of the defendants and reversed the finding of the trial court and there is no infirmity in the findings of the lower appellate court. Hence there is no merit in the appeal and it has to be dismissed.

8.I have heard the rival submissions and perused the materials available on record.

9.The specific case of the plaintiff is that She is entitled to the suit property by right of purchase from one Mohan through Ex.A1 Sale Deed. Originally, the suit property was purchased by one Govindammal through Ex.A7 on 01.07.1970 and she was in possession and enjoyment of the same till her life time and after her life time her sons partitioned the family properties through Ex.A2 partition deed in which the suit property was allotted to one Mohan who is the vendor of the plaintiff. To corroborate Ex.A1, she has produced Ex.A2 partition deed of her vendor and Ex.A7 the parent title deed in favour of Govindammal and Ex.A8 to Ex.A10 revenue records. The above narration of facts will clearly reveal how the plaintiff derived title to suit property.

10.Per contra, the specific case of the defendants as per their averment in para 6 of the written statement is that defendants 2 and 3 purchased the lands in S.No.333, 332, 344/1, 343, 324, 173, 330 and 335 from one Theerthagiri Chetty through Ex.B1 sale deed dated 05.08.1968. To corroborate Ex.B1 no other parent document was produced by the defendants.

11.On verification, it is clear that the suit property bearing S.No.342/2 measuring to an extent of 0.16 cents situated at Chinnamattarapalli village, Krishnagiri (Tk) does not find place in the sale deed of defendants produced as Ex.B1. It is not the case of the defendants that they have purchased the suit property along with their other property. Their only contention as per their written statement is that "the defendants 2 and 3 were under the impression that the suit land also formed part of the said lands". As per their written statement, it is very clear that they have not purchased the suit land for price. Their only contention is that they are in possession and enjoyment of the suit lands from the date of their purchase. So the defendants have not claimed right over the suit property. They only put forth rival claim by way of adverse possession. Regarding title of the suit property is concerned, the defendants have not denied the purchase made by the plaintiff. The documents relied by the plaintiff to prove her title to the suit property namely, Ex.A1, Ex.A2, Ex.A7 to Ex.A10 clearly proves the title. However, the lower appellate court, without considering these documents, negatived the claim of the plaintiff to suit property on the ground that the vendors of the plaintiff were not examined. As stated above, when the defendants themselves have not specifically denied Ex.A1 sale deed in favour of the plaintiff, there is no need or necessity for the plaintiff to examine her vendor. It is clear that the finding of the trial Court with regard to title of the plaintiff was reversed by the lower appellate Court without sound reasoning and acceptable materials. Hence the finding of the

lower appellate court is not sustainable.

12.As such the only claim put forth by the defendants against the plaintiff is that they are entitled to the suit property as they perfected title over the suit property by adverse possession. It is pointed out that as per WHARTON'S LAW LEXICON, the term "Adverse Possession" means denial of title of true owner". The defendants nowhere admitted in the written statement that the plaintiff is the owner of the suit property. According to the written statement filed by the defendants, they were under the wrong impression that the suit land also formed part of the land purchased by them. According to the defendants 2 and 3, they took possession of the said lands on 05.08.1968 and ever since they are in possession and enjoyment of the same. As such, it is to be seen whether the claim of the defendants can be entertained. Admittedly, the basic principle of adverse possession is open, hostile, uninterrupted, continuous possession of others property for more than 12 years, knowingly when the property belongs to the other person and the same is to be proved by the person seeking rival claim of adverse possession. In this case, the defendants failed to admit the ownership of the plaintiff and further more it is admitted by the defendants that they have been in possession under the impression that it is their own property being part of land purchased through Ex.B1. In short it is said that Adverse possession begins with a wrong and ends with right. In this case, the defendants have miserably failed to prove that their possession was held opening adverse to the plaintiff. Hence, the claim of the defendants on the ground of adverse possession cannot be sustained and the same has to fail.

13.The 3rd substantial question of law raised in this appeal is with regard to the relief No.3 sought for in the plaint. The said 3rd relief is as follows: "Directing the defendants to restore the entire suit property for cultivation of the plaintiff". In this regard, the plaintiff pleaded in para 5 of the plaint last line as "the said action of the defendants virtually made it impossible to do cultivation in there". The lower appellate court in para 5 of its judgment stated that the 3rd prayer in the relief impliedly only recovery of possession and it is inconsistent with the allegation of plaint with regard to possession of suit property. The specific allegation of the plaintiff is that the defendants by laying water channel in the suit property, has changed the nature land, making it impossible for the plaintiff to do cultivation. Hence, she sought for restoring the same for cultivation and the same will not amount for recovery of possession. In view of the above said discussions, the 3rd relief sought for in the suit will not amount to recovery of possession and the conclusion of the first appellate Court to the contrary is unsustainable. Hence, the 3rd substantial question of law is answered in favour of the

plaintiff.

14.In the light of the above said discussions, the substantial questions of law raised in this appeal are answered in favour of the plaintiff and the lower appellate Court findings are not sustainable and the same is liable to be set aside. As such, the findings of the trial Court is well reasoned one and the reversal of the said finding of the trial Court by the lower appellate court is not correct and the same is unsustainable under law. Thus, this appeal is to be entertained and the point is answered accordingly.

15.In the result, this Second Appeal is allowed. The decree and judgment dated 31.07.2006 made in A.S.No.86 of 2004 passed by the learned Principal Sub Judge, Krishnagiri is hereby set aside and the decree and judgment dated 30.10.2003 made in O.S.No.117 of 1994 passed by the learned District Munsif, Krishnagiri is hereby confirmed. However, there is no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg
To

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsif Court,
Krishnagiri.

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.57848

+1cc to Mr.V.Nicholas, Advocate, S.R.No.58509

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KJI (CO)
GSP(25/01/2019)