

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2018

PRONOUNCED ON : 09.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1036 of 2003

1.Kuppusami
2.Chinnammal

..
Vs.

Appellants

Alamelu

..

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.02.2002 made in A.S.No.40 of 2001 on the file of the III Additional District Court, Salem, confirming the Judgment and Decree dated 27.07.2000 made in O.S.No.891 of 1994 on the file of the II Additional District Munsif Court, Salem.

For Appellant : Mrs. Muthumani Duraisamy

For Respondent : Mr.D.Shivakumaran

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 22.02.2002 passed in A.S.No.40 of 2001 on the file of the III Additional District Court, Salem, confirming the Judgment and Decree dated 27.07.2000 passed in O.S.No.891 of 1994 on the file of the II Additional District Munsif Court, Salem.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration, permanent injunction, mandatory injunction and recovery of possession.

4. The case of the plaintiff, in brief, is that the suit property measuring 285 sq.feet in survey No.63/2 originally belonged to Ramasamy Gounder and his sons, who are father and brothers of the plaintiff and the suit property measuring 3' X 95' was set apart by the plaintiff's father and brothers, as pathway for reaching the land in survey No.63/9 and subsequently, the plaintiff's father sold 41 cents of land excluding the pathway to one Sengoda gounder in the year 1964, who sold the same to one Perumal Gounder and the same was subsequently sold by Senraya gounder to the first defendant. The suit property had been set apart by Ramasamy gounder for reaching the lands in Survey No.63/9 and on 29.07.1988, he had executed a registered settlement deed in favour of the plaintiff in respect of the suit property and as per the settlement deed, the plaintiff has taken possession and enjoyment of the suit property as a vacant site and the defendants being the neighbouring owners, attempted to interfere with the plaintiff's possession and enjoyment of the suit property and further, the defendants, during the pendency of the suit, illegally put up construction by encroaching into a portion of the suit property on the western side and

hence, they are liable to deliver possession of the encroached portion by demolishing the illegal construction put up by them and hence, the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the plaintiff has title to the suit property and there is no lane in existence measuring 3' X 95' as claimed by the plaintiff for reaching the lands in survey No.63/9. It is false to state that the plaintiff's father had retained the suit pathway and it is false to state that the same had been settled in favour of the plaintiff on 29.07.1988 and on the other hand, the first defendant had purchased the property from Perumal Gounder by means of a registered sale deed dated 13.09.1979 and Perumal Gounder in turn purchased the same from Sengoda Gounder on 13.03.1969, who in turn purchased the same in the year 1964 by means of a sale deed executed by the plaintiff's father Ramasamy Gounder and the plaintiff cannot claim any right over the suit property by virtue of the alleged settlement deed, the plaintiff is not a resident of the suit village and the plaintiff is a permanent resident of Cuddalore and the defendants had been in continuous possession and enjoyment of the suit property and thereby, prescribed title to the same by adverse possession and the plaintiff has no cause of action to institute the suit and hence, the suit is liable to be dismissed.

6. In the additional written statement, the defendants have denied the case of the plaintiff that they had illegally encroached into a portion of the suit property during the pendency of the suit and put up unlawful construction on the same. On the other hand, the defendants are in possession and enjoyment of the suit property for a long period of time asserting title over the the same and hence, they are not liable to hand over possession of the suit property by removing the construction put up thereon and the suit laid by the plaintiff is also barred by limitation and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 9 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to 7 were marked. Exs.C1 & 2 were also marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to decree the suit as prayed for. Impugning the same, the present second appeal has been laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration in this second appeal:

“ (i) Whether the defendants had

**perfected their title over the suit property
by adverse possession? and**

***(ii) Whether the relief of mandatory
injunction is barred by limitation?"***

9. The plaintiff claims title to the suit property based upon the settlement deed executed in her favour by her father on 29.07.1988, which document has come to be marked as Ex.A2. It is found that the suit property is a vacant site/pathway measuring 3' X 95' i.e. 285 sq.feet situated in Survey No.63/2. It is found that, on the materials placed, there is no dispute between the parties concerned that the suit property originally belonged to the plaintiff's father Ramasamy Gounder. Now, according to the defendants, they had purchased the property from the plaintiff's father, which documents have come to be marked as Exs.B1 to 3 and the first defendant claims title to the suit property by virtue of Ex.B1. However, on a perusal of Exs.B1 to 3, it is found that the plaintiff's father Perumal Gounder had not alienated the suit property by way of the same and on the other hand, it is found that the same had been retained by Perumal Gounder and accordingly, it is found that the claim of the defendants that they had right / title to the suit property as such cannot be accepted. On the other hand, a perusal of the boundaries found in Ex.B1 would go to show that in between the defendants' property and Odai, the suit property situated and thus, it is seen that the defendants had not purchased the suit property by way of their title

deeds as discussed above and on the other hand, only excluding the suit property, they had purchased the property from Ramasamy Gounder. Accordingly, it is found that Ramasamy Gounder, the plaintiff's father had retained the suit property and used the same as a pathway to reach the lands in Survey No.63/9, later settled the same in favour of the plaintiff by way of Ex.A2 settlement deed and thus, it is seen that it is only the plaintiff, who has title to the suit property.

10. In this matter, the Commissioner had been appointed and he has inspected the suit property with the help of a surveyor and from the report and plan of the advocate commissioner, it is found that the measurements of the defendants' property as noted by the commissioner tally with the measurements given in the defendants' sale deed marked as Ex.B1 and accordingly, it is found that the commissioner had also noted the encroachment made by the defendants into the suit property and thus, it is found that as alleged by the plaintiff, during the pendency of the suit, the defendants has encroached a portion of the suit property and put up illegal construction on the same. Thus, when it is found that it is only the plaintiff, who has title to the suit property and further, when it is noted that the defendants have not purchased the suit property by way of the title deeds projected by them and on the other hand, their properties are shown to be situated only to the west of the suit property and the Odai, as rightly determined by the Courts below and also noted

by the advocate commissioner, the defendants, without any legal authority, had encroached into the portion of the suit property and put up the legal construction and hence, when the defendants have failed to establish that they have legal title to the suit property and on the other hand, when the plaintiff has established that she has a valid title to the suit property and when it is further noted that the original title to the suit property vesting with the plaintiff's father not being disputed by the parties concerned and accordingly, the plaintiff having been conveyed the suit property by her father by way of Ex.A2 settlement deed, no infirmity could be attached to the determination of the Courts below that it is only the plaintiff, who has title to the suit property. The defendants appear to have taken advantage of the absence of the plaintiff and accordingly, illegal encroached into the suit property pending the lis and put up the unlawful construction on the same and accordingly, it is found that the Courts below had rightly decreed the suit as prayed for. I do not find any substantial question of law involved in this second appeal as such.

11. A plea has been taken by the defendants that they had prescribed title to the suit property by way of adverse possession on account of their long and continuous enjoyment. However, the materials projected by the defendants do not advance their case with reference to the same and therefore, it is found that the defendants cannot be allowed to plead that they had prescribed title to the suit property by way of

adverse possession sans any acceptable and reliable materials pointing to the same. In such view of the matter, the further case of the defendants that the suit laid by the plaintiff is barred by time also cannot be countenanced. On the other hand, as rightly determined by the Courts below, it is only the defendants, who, pending the suit, had illegally trespassed into the suit property and as such liable to handover the possession of the suit property after the demolition of the illegal construction put up by them. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendants.

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

09.02.2018

Index : Yes / No

Internet : Yes / No

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To

1.The III Additional District Court, Salem.

2. The II Additional District Munsif Court, Salem.

T.RAVINDRAN, J.

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Pre-Delivery Judgment made in
S.A.No.1036 of 2003

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