

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2018

PRONOUNCED ON: 11.01.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1265 of 2003

and

C.M.P.No.10864 of 2003

1.Chinnasettu

2.Samraj

3.P.Govindaraj

4.Kannammal

5.Raja @ Rajendaran

6.Venkatesan

7.Sathiya @ Alamelu

8.Minor Lakshmi

Minor rep. by her mother and
next friend and guardian

4th respondent

... Appellants/Respondents/
Defendants

Vs.

1.P.K.Selvam

2.P.Annamalai

3.Padavattu @ Elangovan

सत्यमेव जयते

... Respondents/Appellants/
Plaintiffs

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.30 of 2002 on the file of Additional District & Sessions Judge (FTC) Tirupattur dated 20.12.2002 in reversing the judgment and decree in O.S.No.1817 of 1981 on the file of District Munsif, Tirupattur dated 25.04.1997.

For Appellants : Mr.V.Raghavachari

For Respondents : No appearance

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 20.12.2002 passed in A.S.No.30 of 2002, on the file of the Additional District & Sessions Judge, (FTC), Tirupattur reversing the judgment and decree dated 25.04.1997 passed in O.S.No.1817 of 1981 on the file of District Munsif court, Tirupattur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4. The case of the plaintiff in brief is that the suit property belongs to the plaintiffs' absolutely and that they had purchased the same from their vendor Thirupathy, as per the sale deed dated 27.01.1981 and their vendor Thirupathy had purchased the same from the vendor K.Kannan, as per the sale deed dated 06.10.1971 and the said K.Kannan obtained the patta from the settlement Tahsildar and prior to the purchase, the plaintiffs' vendor measured the land and gave possession of 0.92 cents in the suit survey number and accordingly the plaintiffs are in possession and enjoyment of the suit property of an extent of 0.92 cents and since the date of patta granted to the plaintiffs' predecessor in interest, the plaintiffs had been in possession and enjoyment of the suit property for more than the statutory period and the defendants have no right or interest over the suit property and their attempts to purchase the suit property having failed, the defendants attempted to interfere with the plaintiffs' possession and enjoyment of the suit property to which they are entitled to and hence the suit for appropriate relief.

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 plaintiffs have absolute title to the suit property by way of the purchase from their vendor Thirupathy as per the sale deed dated 27.01.1981 and it is false to state that Thirupathy had purchased the suit property from K.Kannan as per the sale deed dated 06.10.1971 and that Kannan obtained patta from the settlement Tahsildar and the alleged patta is false and not binding on the defendants. The defendants 1 and 5 are the original owners and in the enjoyment of the Survey No.34/1 for very long time to the knowledge of the plaintiffs and the plaintiffs had never been in possession and enjoyment of an extent of 0.92 cents in Survey No.34/1 and the defendants 1 and 5 have got the suit property and other lands as Dharkast from the Government and hence, it is false to state that the defendants attempted to interfere with the plaintiffs'

possession and enjoyment of the suit property as claimed in the plaint. Inasmuch as the plaintiffs gave troubles to the defendants 1 and 5, they had preferred the suit for declaration and permanent injunction in O.S.No.1934 of 1981 and obtained injunction order and hence the plaintiffs have no title, possession and enjoyment in respect of 0.17 cents in the suit survey number and the plaintiffs at the most would be entitled to claim right only to 0.75 cents and hence the suit without any cause of action is liable to be dismissed.

7. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. Exs.A1 to A9 were marked. On the side of the defendants, D.Ws.1 to 3 were examined. Exs.D1 to D9 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the relief sought for by the plaintiffs only in respect of 75 cents in the suit survey number and aggrieved over the same, the plaintiffs preferred the first appeal and the first appellate court, on a re-appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiffs, decreed the suit as prayed for in entirety. Challenging 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.

(i) Whether the lower Appellate Court is right in applying the principle of boundary prevail over extent, when the evidence of DW3, the original title holder, clearly established that the vendor of the plaintiff was not in enjoyment of over 75 cents?

(ii) Whether the lower Appellate Court is right in presuming title in the plaintiff in the absence of legal evidence?

(iii) Whether the lower Appellate Court is right in reversing the judgment of the trial court without even rendering a finding as regards the area of error committed by the trial court?

10. The suit property is described as situated in Survey No.34/1 dry land, 0.92 cents bounded to the East of Oni, West of Govendaraji and paliammal's land, north of Tirupathy and others lands and south of Vilakuttai eri Poromboke. The

plaintiffs' claim title, possession and enjoyment of the above said described suit property in the plaint. For the same, the plaintiffs rely upon the two sale deeds namely Exs.A1 and A2. According to the plaintiffs that they had purchased the suit property as above stated, from their vendor Thirupathy as per the sale deed dated 27.01.1981 marked as Ex.A2 and further according to them, their vendor Thirupathy had purchased the suit property as above stated from his vendor Kannan as per sale deed dated 06.10.1971, marked as Ex.A1 and as rightly found by the trial court, on a perusal of Exs.A1 and A2, it is found that under the same in the suit survey number, within specific boundaries, only a specific extent of 0.75 cents have been purchased and therefore to state that an extent of 0.92 cents had been purchased under the above said sale deeds by the respective parties as such cannot be accepted in any manner. According to the plaintiffs, their vendor derived the title to the suit property under Ex.A1 from Kannan who has been examined as D.W.3. Further, according to the plaintiffs, Kannan had been granted patta by the settlement Tahsildar in respect of the suit property. On the other hand, Kannan examined as D.W.3 had stated that he has been granted patta only in respect of 75 cents in the suit survey number and not 92 cents and accordingly he had alienated only the above said extent to Thirupathy by way Ex.A1 and despite, cross examination nothing has been culled out from him to dis-believe his above said version. Therefore, as per the version of the plaintiffs' predecessor in title D.W.3, it is seen that only 75 cents in the said suit survey number had been allotted to him and therefore to say that the plaintiffs and their vendor had derived title to the extent of 92 cents in the suit survey number from D.W.3 as such cannot be readily accepted. Further, the patta said to have been issued in favour of D.W3 in respect of the suit property has not been filed. No reason is forthcoming with reference to the same. That apart a reading of Exs.A1 and A2 would go to show that only a specific extent comprised within the specific boundaries mentioned therein is stated and not a rough extent and on the other hand the extent comprised within the specific boundaries is stated to be in particular as only 75 cents. Despite the above position, no steps have been taken by the plaintiffs to measure the suit property though a Commission with the aid of a surveyor to evidence as to the actual extent available on ground within the boundaries described in the plaint schedule. For the same, no plausible explanation is forthcoming on the part of the plaintiffs. The Kist receipts marked on behalf of the plaintiffs do not in any manner advance their case, as by way of the same, it cannot be determined that they correspond to an extent of 92 cents in the said survey number. The other documents projected by the plaintiffs for upholding their case as Adangal extracts marked as Exs.A4 and A8, as rightly found by the trial court, a perusal of Ex.A4 Adangal Extract would go

to show that the plaintiffs' predecessor in interest is shown to be in possession and enjoyment of only 70 cents or thereabouts in the suit survey number and not 92 cents as claimed by the plaintiffs. Such being the position, it does not stand to reason as how come in Ex.A8 Adangal extract the plaintiffs' predecessor in interest, is shown to be in enjoyment of 92 cents in the suit survey number. Further, as seen from the evidence adduced on behalf of the plaintiffs, it is found that only after the institution of the suit, the plaintiffs had acquired Ex.A8 Adangal extract and therefore such being the position, no safe credence could be attached to Ex.A8 for upholding their case that they and their predecessors in interest had been in possession and enjoyment of 92 cents in the suit survey number. It is found that the trial court, on a proper appreciation of the materials placed on record in the correct perceptive and sound reasonings, has come to the conclusion that the Adangal extracts marked by the plaintiffs are found to be not reliable and convincing. Since the entries incorporated therein are not shown to be reflecting the true state of affairs, accordingly it is seen that by way Ex.A8 alone, we cannot safely come to the conclusion that the plaintiffs and their predecessors in interest had been in possession and enjoyment of 92 cents as put forth by them.

12.No doubt, the defendants have laid a claim to be the owners of 17 cents in the suit survey number and enjoying the same by retaining in their possession. However, the Courts below did not find acceptance to the defence version as the same has not been supported by the documents placed by them. Even then, as rightly argued, the mere failure on the part of the defendants to establish their version, by itself, would not lead to the conclusion that the plaintiffs case is genuine and true.

13.In so far as this case is concerned, when the extent comprised within the boundaries described in the plaint schedule has been firmly mentioned in the documents marked as Ex.A1 and A2 and the Adangal extracts produced by the plaintiffs do not advance the case of their possession and enjoyment of 92 cents as put forth by them and as the plaintiffs had not endeavoured to identify the actual extent available on ground within the specific boundaries described in the plaint as above discussed, it is found that the reasonings of the first appellate court that inasmuch as the defendants had failed to establish their case, the plaintiffs' case should be accepted as such, cannot be sustained in the eyes of law. Similarly the reasonings of the first appellate court that the boundaries would prevail over the extent, as such, would not be applicable to the facts and circumstances of the present case as the plaintiffs have miserably failed to establish the actual extent available within

the specific boundaries described in the plaint schedule comprise of 92 cents and not 75 cents as depicted in their sale deeds.

14. In the light of the above discussions, it is found that the first appellate court has erred in applying the principle that the boundaries would prevail over the extent, when there is no material to hold that within the specific boundaries, the extent of 92 cents is available on ground and in particular, when the plaintiffs' predecessor in title had clearly deposed that he had acquired title only to an extent of 75 cents in the suit survey number and only enjoying the said extent. Accordingly, it is seen that the plaintiffs' right to the suit property as described in the plaint cannot be countenanced sans acceptable and convincing legal evidence. Accordingly, it is seen that the first appellate court has committed a manifest error in the eyes of law, in setting aside the well considered judgment and decree of the trial court without projecting sound reasonings for setting aside the same. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

15. In conclusion, the judgment and decree passed in A.S.No.30 of 2002 on the file of Additional District & Sessions Judge (FTC) Tirupattur are set aside and the judgment and decree passed in O.S.No.1817 of 1981 on the file of District Munsif Court, Tirupattur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

mfa

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District & Sessions Judge (FTC), Tirupattur.
- 2.The District Munsif , Tirupattur.
3. The Section Officer,
VR Section, High Court, Madras(2 copies)

+1cc to Mr.V.Raghavachari, Advocate Sr.no.2235

EV(CO)

sm:5.2.2018

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