

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2018

PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1406 of 2004

Arul Mighu angala
Parameshwari Amman Koil,
rep.by its Trustees
1.A.Munusamy Nattar
2.A.Kanagasabai Nattar
3.G.Jeganathan Nattar
4.R.Vijayan

...

Appellants

Vs.

R.Sivanandham

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 23.01.2004 passed in A.S.No.69 of 1998 on the file of the Subordinate Court, Arani, confirming the Judgment and Decree dated 02.08.1994 passed in O.S.No.1021 of 1988 on the file of the Principal District Munsif Court, Arani.

For Appellant : Mr.S.Subbiah

for Mr.P.Kumanan

For Respondents : Mr.G.Suryanarayanan

for Mr.G.Mohanakrishnan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 23.01.2004 passed in A.S.No.69 of 1998 on the file of the Subordinate Court, Arani, confirming the Judgment and Decree dated 02.08.1994 passed in O.S.No.1021 of 1988 on the file of the Principal District Munsif Court, Arani.

2. The second appeal has been admitted on the following

substantial questions of law:

" When the trial Court rendered a finding that the plaintiff was in possession and enjoyment of the disputed survey number but when the part alone was decreed, is not the appellate Court, in the absence of any appeal from the aggrieved party on such issue, can go into the question of the very same title in the appeal preferred by the plaintiff?"

3. The suit has been laid by the plaintiffs for declaration and permanent injunction in respect of the suit property stated to be measuring 90' north-south and 220' east-west within the specific boundaries in Gandhi road at Arani Town. This is how the plaintiffs have described the suit property. Thus, it is found that the plaintiffs have not described the suit property by giving any survey number as such. Further, in the plaint also, the plaintiffs have not clearly averred as to how it traces its title to the suit property as described in the plaint. All that, the plaintiffs would state is that the suit property was assigned in favour of the plaintiffs and thereby, the plaintiffs had put up the construction of the temple in the year 1882 by way of the proceedings of the Thasildar of Arani Jagirdar and the abovesaid proceeding has come to be marked as Ex.A2. However, Ex.A2, as determined by the Courts below, does not bear any survey number to point out the suit property as such had been the subject matter of the said proceedings. At this juncture, it is to be noted that the defendant is disputing the claim of

title, possession and enjoyment of the suit property as projected by the plaintiffs. Though it is found that the defendant has claimed title in respect of T.S.No.62 involved in the matter, from the commissioner's report and plain marked in the proceedings, it is found that there are four survey numbers located within the boundaries described in the plaint schedule, which are T.S.Nos.60, 61, 62 and 65. The issues or controversy in between the parties is only with reference to T.S.No.62. As regards the other T.S.numbers, the defendant has not raised any issue as such. Accordingly, the plaintiffs claiming title to the suit property, which comprises also T.S.No.62, in which, the defendant lays a claim of title, it is for the plaintiffs to establish that T.S.No.62 also forms part of the property owned and enjoyed by the plaintiffs. As above seen, the document marked as Ex.A2 not bearing any survey number as such, particularly, T.S.No.62, the above document would be of no use to sustain the plaintiffs' case.

4. The rental agreements marked as Exs.A3, A10 and A30 also would not serve the case of the plaintiffs as there is no reference about any survey number in the said documents, particularly, T.S.No.62. It is thus found that the abovesaid documents have been rightly not considered by the Courts below. Even in the pre-suit notice issued by the plaintiffs marked as Ex.A32, there is no reference about the survey number in respect of which the plaintiffs claim title to the suit property.

Thus, it is found that absolutely there is no valid document projected by

the plaintiffs as such for claiming title to the suit property. In particular, the plaintiffs claim title to the suit property by way of the assignment, however, the said document has not seen the light of the day and in such view of the matter, in view of the nature of the abovesaid documents as discussed, the same could not be safely relied upon for accepting the plaintiffs' claim of title to the suit property. The assignment document has not been produced by the plaintiffs. Further, as discussed and pointed out by the Courts below, the Paimash number in respect of the suit property has also not been adverted to and that apart, the plaintiffs have also not endeavoured to co-relate the present suit survey numbers located in the suit property with the Paimash number of the suit property in existence at the time of the assignment.

5. However, as seen from the documents projected by the plaintiffs, the property to be in the enjoyment of the plaintiffs is shown to be located to the north-south of vacant site belonging to Kutti Nainar and the channel of the Municipality. The said Kutti Nainar is the predecessor in title of the defendant and according to the defendant, he has purchased the property comprised in T.S.No.62 from Nainar by way of a sale transaction dated 27.08.1987 marked as Ex.B2, following the agreement dated 12.06.1987 marked as Ex.B1. To show the title of his predecessor in title, the defendant has marked the partition deed dated 07.06.1949, which document has been marked as Ex.B19. Therefore, from the abovesaid documents, it is thus found that T.S.No.62 has been

dealt with by the family of Nainar and accordingly, the defendant's predecessor in title has alienated the same in favour of the defendant by way of Ex.B2 sale transaction. That apart, the FMB sketch marked as Exs.B3 & B4 as well as Ex.B6, the settlement register extract marked as Ex.B5, also throw light that the defendant's predecessor in title has title, possession and enjoyment of T.S.No.62 and in addition to that, the defendant has also marked the kist receipts in the name of his predecessor in title as Exs.B8 to B11 and the kist receipts in the name of the defendant marked as Exs.B12 and B13.

6. The controversy between the parties lying in respect of T.S.No.62 and the plaintiffs having laid the suit claiming the reliefs of declaration and permanent injunction in respect of the suit property, which also comprises of T.S.No.62, it is found that it is for the plaintiffs to establish its claim of title to the suit property for the grant of the reliefs sought for. However, when the documents projected by the plaintiffs do not lend credence to the plaintiffs' claim of title to the suit property and the suit property, in particular, has not been described by giving the survey numbers comprised therein and further, as rightly noted by the Courts below, the plaintiffs, in particular, not endeavouring to place any document including the FMB sketch in respect of T.S.No.62, it is seen that absolutely, there is no material worth acceptance to hold that the plaintiffs have title to the suit property, particularly, T.S.No.62 as projected.

7. Knowing fully well that the plaintiffs have no title to the suit property, in particular, to T.S.No.62, it is found that the plaintiffs have also taken the plea in the plaint that on account of its long and continuous enjoyment of the suit property, it has prescribed title to the suit property by way of adverse possession. In other words, it is contended by the plaintiffs' counsel that inasmuch as T.S.No.62 also lies adjacent to the plaintiffs' temple as such, the same should have also been only the plaintiffs' property and in the plaintiffs' possession and enjoyment for a long time and thereby, the Court should accept the plaintiffs' plea of adverse possession.

8. The trial Court, to some extent, accepting the case of the plaintiffs that the plaintiffs' temple would require land on all the sides of the sanctum Sanctorum for enabling the worshippers to go around the temple and finding that the plaintiffs' own lands on 3 sides, accordingly, on the basis that worshippers would require some extent of land in T.S.No.62 also, by virtue of the said reasoning, granted the reliefs in favour of the plaintiffs' temple to an extent of 10' in T.S.No.62 and accordingly, disposed of the suit in favour of the plaintiffs. Thus, it is found that the trial Court merely on the premise that some extent in T.S.No.62 would also be required by the worshippers for going around the temple to perform rituals etc., accordingly, seem to have granted the reliefs in respect of 10' north – south in T.S.No.62. However, as rightly

putforth by the defendant's counsel, it is seen that for coming to the abovesaid conclusion, the trial Court has not referred to any acceptable materials projected by the plaintiffs as such.

9. Be that as it may, insofar as the judgment and decree of the trial Court granting the reliefs in favour of the plaintiffs' temple to an extent of 10' north – south in T.S.No.62, the defendant has not preferred any challenge to the same by filing a separate appeal or cross objection in the first appeal preferred by the plaintiffs. Be that as it may, the plaintiffs' temple by taking the plea of adverse possession, as rightly putforth, has impliedly admitted the defendant's claim of title to T.S.No.62 and accordingly, it is for the plaintiffs to establish the said plea of adverse possession. However, on the basis of the materials placed on record by the plaintiffs, it has to be held that the plaintiffs have miserably failed to establish its claim of adverse possession in respect of T.S.No.62 and the abovesaid view has also been taken by the Courts below rightly.

10. That apart, as rightly putforth by the defendant's counsel, the plea of title and the plea of adverse possession taken by the plaintiffs in respect of the property in dispute seems to be mutually inconsistent to each other and the above factor would only go to disclose that inasmuch as the plaintiffs have no independent title to the disputed property as such accordingly, unable to project a clear case in respect of the same, been taking inconsistent pleas with reference to the same.

11. Insofar as this case is concerned, the only point that has been urged by the plaintiffs' temple is that the defendant, though, would claim title to T.S.No.62, in view of the topography of the survey numbers involved in this matter, according to him, the defendant has no access to his property other than by entering into the plaintiffs' land. Accordingly, it is the contention of the plaintiffs' counsel that the Court should hold that the entire extent in T.S.No.62 also forms part of the plaintiffs' property. However, when the defendant has thrown a challenge to the plaintiffs' claim of title to the suit property, particularly, T.S.No.62 and when the documents projected by the plaintiffs themselves go to show that the plaintiffs' property is situated to the north of Nainar's property as above discussed and when the defendant is able to show that Nainar's family had dealt with the disputed property in T.S.No.62 right from the year 1949 onwards and the defendant acquired title to the same by way of Ex.B2, it is found that the plaintiffs' cannot be allowed to lay any claim of title to the suit property as such in respect of T.S.No.62. However, insofar as the grant of reliefs in favour of the plaintiffs by the trial Court in respect of an extent of 10' north – south in T.S.No.62 having become final, this Court by way of this second appeal is not inclined to interfere with the same, particularly, the defendant having failed to challenge the same by way of an independent appeal or cross appeal as such.

12. The first appellate Court, on the basis of the materials placed on record, found that the plaintiffs have miserably failed to establish its

valid claim of title to the suit property, particularly, T.S.No.62 either by way of regular title or by way of adverse title as projected and finding that in the preponderance of probabilities, the defendant is having title to T.S.No.62 as such, accordingly, did not deem it fit to entertain the first appeal preferred by the plaintiffs challenging the judgment and decree of the trial Court. The first appellate Court is found to have analysed the materials placed on record in the right perspective both factually as well as legally and accordingly, rightly discountenanced the request of the plaintiffs to grant the reliefs in favour of the plaintiffs in respect of the entire suit property inclusive of T.S.No.62 as claimed by the plaintiffs. No reason is made out to interfere with the abovesaid reasonings and conclusions of the first appellate Court. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiffs and in favour of the defendant.

13. The counsel for the defendant, in support of his contention, placed reliance upon the decisions reported in **AIR 2001 SC 1273 (Kulwant Kaur and Ors. Vs. Gurdial Singh Mann (dead) by Lrs. And Ors. Etc.), 2014 II AD (S.C.) 364 (Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Anr.), ILR 2017 Karnataka 3505 (Narayan S.Kurdekar Vs. Dawal Sab and Ors) and the order of this Court dated 16.06.2011 in C.R.P.No.1320 of 2006 (V.K.Rajamanicka Mudaliar and S.Manivelu Vs. J.Kumar)**. The principles of law outlined in the abovesaid decisions are taken into

consideration and followed as applicable to the case at hand.

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

04.06.2018

Index : Yes / No

Internet : Yes / No

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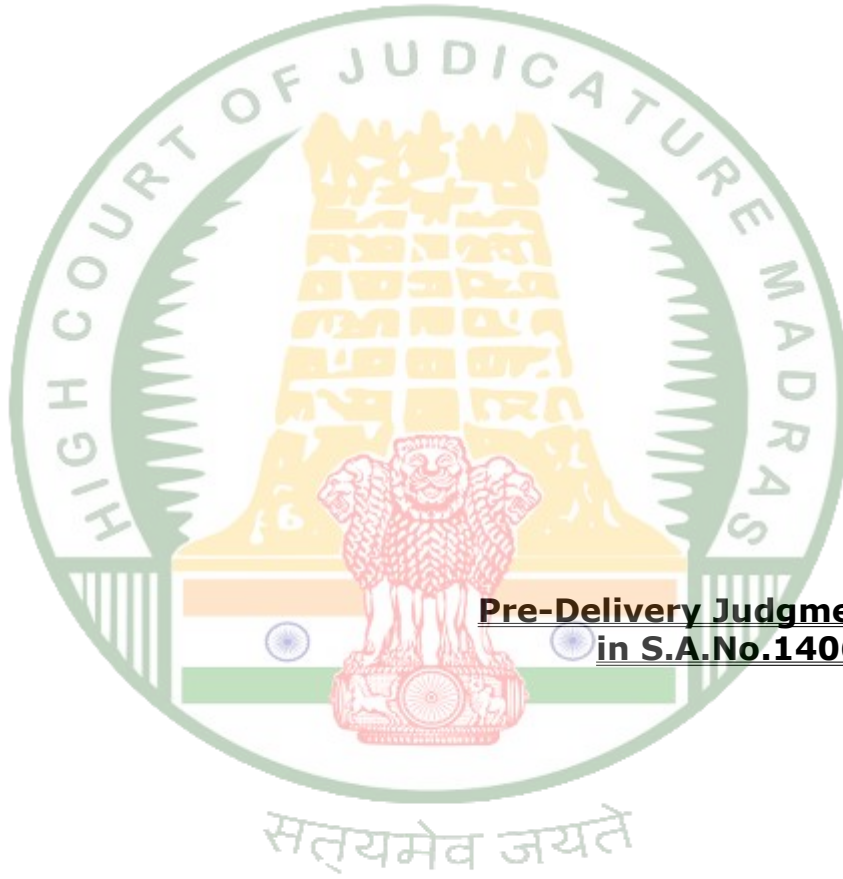
1. The Subordinate Court, Arani.
2. The Principal District Munsif Court, Arani.
3. The Section Officer, V.R. Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1406 of 2004**

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