

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 16.08.2017

Judgment Pronounced on : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.378 of 2011

and

M.P.No.1 of 2011

1.Kuppammal (Deceased)

2.Moorthy

(2nd appellant viz., Moorthy as the
L.Rs. of the deceased first appellant
Vide this Court by Order dated

13.07.2017 made in C.M.P.No.

10905 of 2016 in SA.No.378/2011) ... Appellants/Defendants

Vs.

1.Pitchai Saliq Mohammed 1st respondent/plaintiff

2.Manonmani

3.Minor Suganaya

4.Minor Venkataraman

(Minor Respondents 3 and 4 rep.

by their Mother, the 2nd respondent

Manonmani) ... Respondents 2 to 4/

Defendants 4 to 6

This second appeal is filed under Section 100 of CPC, against the judgment and decree dated 11.08.2010 passed by the learned Principal Sub Judge, Mayiladuthurai, in A.S.No.25 of 2010, confirming the Judgment and Decree dated 31.12.2008 passed by the learned District Munsiff, Sirkali in O.S.No.329 of 1995.

For Appellants : Mr.Sounthar

For Respondents : M/s.M.V.Venkateshan for R-1

R2 to R4-N.A

JUDGMENT

The above second appeal arises out of the Judgment and Decree dated 11.08.2010 passed by the learned Principal Sub Judge, Mayiladuthurai, in A.S.No.25 of 2010, confirming the Judgment and Decree dated 31.12.2008 passed by the learned District Munsiff, Sirkali in O.S.No.329 of 1995.

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

According to the plaintiff, the suit property was originally belonged to one Sahul Hameed Maraikkaiar through registered sale deed dated 02.02.1917. From the date of purchase, he was in possession and enjoyment of the same. The plaintiff is none other than the grandson of the said Sahul Hameed Maraikkaiar. The plaintiff and his forefathers are in possession and enjoyment of the suit property by paying the tax payable to the Government. On the western side of the suit property, the plaintiff and his forefathers constructed a thatched houses and was residing. On the eastern side of that houses, there is vacant space measuring 88' x 29' and the same is used by the plaintiff as manure pit and haystack storing yard. Further, he put up a small thatched house and there are three coconut trees and out of which one has fallen down due to heavy wind. The defendants are residing on the eastern side of the vacant site of the plaintiff's property. Gradually over the last two years, the defendants encroached upon the portion of the suit property and denied the title of the plaintiff. On 07.08.1997 the defendant removed the fencing and occupied the suit property. Hence, the plaintiff has come forward with the suit for declaration and recovery of possession of suit property.

3.The case of the defendants is that their property is situated to the east of the plaintiff's house and they purchased the same on 20.10.1965. The defendants are enjoying the house purchased along with the vacant place on the east of their house as their own and fence was in existence before and after their purchase. The defendants have also planted 10 coconut trees after purchase and out of which, one tree was fell down in the heavy storm wind and the remaining coconut trees are in possession and enjoyment of the defendants. There is no trees in R.S.33/19 of the plaintiff. The plaint mentioned property is situated in R.S.No.34/6. The allegation of the plaintiff for getting cause of action is totally false. The defendants and their forefathers are in possession and enjoyment of the land measuring 68' x 110' for more than 12 years. Hence the defendants prescribed title by adverse possession. Further, the suit is barred by limitation. Thus the defendants seek dismissal of the suit.

4.Before the trial Court, on the side of the plaintiff, P.W.1 was examined and Ex.A1 to Ex.A21 were produced and on the side of the defendant D.W.1 to D.W.3 were examined and documents Ex.B1 to Ex.B5 were produced. After considering the evidence on record, the trial court decreed the suit. Aggrieved upon that the defendants preferred the appeal before the lower appellate

court. After contest, the lower appellate Court dismissed the appeal. Aggrieved upon that the unsuccessful defendants preferred this second appeal.

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

(1) Whether the courts below erred in granting decree for possession on the ground that the defendant failed to prove his title over suit property? Is it the duty of plaintiff to prove his title in a suit for declaration and possession?

(2) Whether the judgments of courts below are vitiate in its misleading the title documents of appellant herein and that of the respondent?

6. The learned counsel appearing for the appellant would submit that the plaintiff sought for the relief of declaration and possession of the property. The defendants denied the claim of the plaintiff on the ground that the defendants are entitled to the suit property by prescribing title by adverse possession and also on the ground of the suit is barred by limitation. But the courts below failed to consider the defence of the defendants and gave a finding that the defendants failed to prove their case. The findings of the Courts below are against law and hence it has to be set aside.

7. The learned counsel appearing for the first respondent/plaintiff would submit that both the Courts below have elaborately considered and discussed both oral and documentary evidences and came to a correct conclusion and there is no infirmity in the findings of the Courts below. Furthermore, the defendants claimed title to the suit property by way of adverse possession. Since the defendants failed to prove their defence, the Courts below upheld the title of the plaintiff and decreed the suit and there is no infirmity in the findings of the Courts below. Therefore, 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. On perusal of records, the plaintiff claimed title to the suit property through Ex.A1 sale deed and the suit property is situate in R.S.No.33/19. On the east of the suit property the defendants property is situate in R.S.No.34/6 and defendants claimed titled to their property through Ex.B1 to Ex.B3. It is undisputed facts. The specific case of the plaintiff is that the defendants encroached upon the suit property. The specific

defence of the defendants is that before they purchased the suit property and after purchase of the same, the suit property is part and parcel of the defendants property and the fence was in existence. The defendants put forth rival claim of title to the suit property by way of adverse possession also. After contest, both the Courts below gave concurrent finding that the plaintiff is entitled to the suit property. Now, the defendants have come forward with this second appeal and raised the question of law that the plaintiff seeking the relief of declaration ought to have proved his title, but the Courts below granted decree for plaintiff on the ground that the defendants failed to prove his title over the suit property. How far the claim of the defendants is correct and accepted to be analysed.

10. The plaintiff claims title to the suit property through Ex.A1. The same is not disputed by the defendants. The defendants derived title to their property through Ex.B1 to Ex.B3 and it is also not disputed by the plaintiff. According to the plaintiff, the suit property is part and parcel of the property purchased by him through Ex.A1 and the same was encroached by the defendants gradually. However, the defendants claimed adverse possession. It is not the case of the defendants that the Courts below have not properly appreciated both the oral and documentary evidences. Regarding the factual appreciation of evidence is concerned the concurrent findings cannot be re-appreciated by the Court of second appeal.

11. According to the Courts below title to the suit property was proved by the plaintiff through Ex.A1. The defendants also admittedly not disputed Ex.A1. Both the plaintiff and defendants are not disputing title deeds of each other. In such situation only course open to the Court to resolve the dispute is measuring the properties of both parties on the basis of the documents relied upon by them. As such Advocate Commissioner was appointed and properties were measured with the help of surveyor and reports Ex.C1 to Ex.C4 were filed. However, as the defendants were not satisfied, the property was again measured and reports were filed as Ex.C5 and Ex.C6. On the basis of the Ex.C1 to Ex.C6, the Courts below found that the defendants have encroached upon the suit property.

12. The lower appellate Court discussed about the documents of the plaintiff and Ex.C5 and Ex.C6 in para No.13 of its judgment and concluded that at the instigation of the defendants only the surveyor again measured the properties of both parties on the basis of Ex.B1 and found that the suit property is within the boundary of R.S.No.33/19 and not within the boundary of R.S.No.34/6. Then the lower Court discussed in para 14 of its judgment regarding the defence of adverse possession claimed by

the defendant and stated the ingredients for adverse possession. Thereafter, the lower appellate Court considered the evidences of defendants in respect of adverse possession and came to the conclusion that the plea of adverse possession is neither pleaded nor proved by the defendants.

13.The documentary evidences produced by both parties and contents of Ex.C1 to Ex.C6 clearly reveal that the real dispute between the plaintiff and the defendants is only boundary dispute. It is also made clear through Ex.C1 to Ex.C6 and it is found that the suit property was encroached by the defendants. However, the defendants took the plea that even before they purchased the same, the suit property was in possession and enjoyment of their predecessor in title and subsequent to purchase, they are in possession. The case of the plaintiff is that the defendants encroached upon only in the year 1993 and the suit was filed in the year 1995 itself. However, the defendants pleaded that for more than 12 years the suit property is in possession and enjoyment and prior to that their vendor. However, the defendants have neither pleaded nor let in evidence to prove their claim. On the other hand, the plaintiff proved his title to the suit property through Ex.A1 and also proved that the suit property is situated within R.S.No.33/19 and not within R.S.N.34/6 through Ex.C1 to Ex.C6. Further within two years from the date of encroachment the plaintiff came forward with the suit for declaration and possession and also proved his case through oral evidence of PW1 and documentary evidence of Ex.A1 to Ex.A21 and proved encroachment through Ex.C1 to Ex.C6.

14.In such circumstances, the burden shifted to the defendants to prove their plea of adverse possession. On the side of the defendants to prove their defence DW1 to DW3 were examined and documents Ex.B1 to Ex.B5 were produced. While Ex.B2 and Ex.B3 are the parent documents for Ex.B1. Ex.B4 is the copy of FMB for R.S.No.34/6 and Ex.B5 is the copy of 'A' Register for R.S.No.34/6. The above said documents have not proved the possession of the suit property by the defendants. Further more Ex.C5 and Ex.C6 clearly reveal that as per Ex.B1, the defendants property consists in R.S.No.34/6 measuring 68' east west and 110' north south alone was purchased by them. Thus, as far as the suit property is concerned, the defendants have not produced any documentary evidences to prove their rival claim, but at the same time, the plaintiff proved their title to the suit property. Hence the lower appellate Court accepted the finding of the trial court and negated the claim of the defendants.

15.The lower appellate Court analysed the entire materials available on record both oral and documentary and arrived at the correct conclusion and there is no infirmity in the findings of the Courts below. Hence, this court is of the view that there is no substantial question of law involved in this second appeal as the Court below has answered them all in appropriate manner and this second appeal has no merits. Therefore, this Court comes to the conclusion that this second appeal deserves to be dismissed. The point is answered accordingly.

16.In the result, this Second Appeal is dismissed. No costs. The decree and judgment dated 11.08.2010 made in A.S.No.25 of 2010 passed by the learned Principal Sub Judge, Mayiladuthurai is hereby confirmed. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sub Judge,
Mayiladuthurai.

2.The District Munsif Court,
Sirkali

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

+1cc to Mr.Mr.Sounthar , Advocate, S.R.No.58514

+2cc to Mr.M/s.M.V.Venkateshan , Advocate, S.R.No.58071

rji(co)
nr 13/12/2018

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