

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2018

PRONOUNCED ON : 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1622 of 2003

1. Kullan
2. K.Govindaraj
3. Malli

...
Vs.

Appellants

Govindasamy

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 20.11.2002 passed in A.S.No.2 of 2000 on the file of the Sub Court, Dharmapuri, confirming the Judgment and Decree dated 29.11.1999 passed in O.S.No.610 of 1995 on the file of the District Munsif cum Judicial Magistrate Court, Palacode.

For Appellants : Mr.S.Saravana Kumar

For Respondent : Mr.J.Hariharan
for Mr.V.Nicholas

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 20.11.2002 passed in A.S.No.2 of 2000 on the file of the Sub Court, Dharmapuri, confirming the Judgment and Decree dated 29.11.1999 passed in O.S.No.610 of 1995 on the file of the District Munsif cum Judicial Magisterate Court, Palacode.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property was purchased by the plaintiff from Venkatesan and others by way of a registered sale deed dated 14.10.1982 and pursuant to the same, it is only the plaintiff, who has been enjoying the suit property by digging a Well and cultivating the same and the defendants have no right and title in the suit property and the suit property has been enjoyed by the plaintiff by paying kist and also obtaining patta and while so, the defendants, without any authority, attempted to interfere with his possession and enjoyment of the suit property 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 suit property belongs to the plaintiff by way of a registered sale deed dated 14.10.1982 executed by Venkatesan and others and that, the plaintiff is in possession and enjoyment of the suit property following the same by digging a Well, cultivating the same, obtaining patta, paying kist etc., the plaintiff has no cause of action to lay the suit against the defendants. The

first defendant purchased an extent of 19 cents of land for a valid consideration from Chinnathayee @ Thulasiammal and his vendor was an illiterate lady and the suit property and other properties were in the possession of the vendor and others and accordingly, the first defendant had acquired an extent of 19 cents from his vendor by way of a sale deed dated 10.07.1989 and accordingly, it is only the first defendant, who had renovated the dilapidated Well in the said extent and cultivating the same and taking advantage of the defects in the sale deed of the first defendant, the plaintiff attempted to grab the suit property in entirety and it is false to state that the plaintiff has title to the suit property as claimed and on the other hand, the defendants, on account of their long and continuous enjoyment of the suit property, had prescribed title to the suit property by way of adverse possession and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, Pws 1 to 3 were examined and Exs.A1 to A14 were marked. On the side of the defendants', Dws 1 to 5 were examined and Exs.B1 to B19 were marked. Exs.C1 & C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and granted the decree

as prayed for. Aggrieved over the same, the present second appeal has been preferred.

8. 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 was right in holding that suit for injunction would lie in the absence of a finding that the plaintiff is in absolute possession of the suit property?

(ii) Whether the judgement of the lower appellate Court is one within the meaning of Order 41 Rule 31 of CPC more so when no proper point for determination has been framed? and

(iii) Whether the lower Appellate Court was not right in considering the material evidence in the form of Commissioner report?"

9. The plaintiff claims title to the suit property by way of purchase under a registered sale deed dated 14.10.1982 and the said sale deed has been marked as Ex.A1. It is the case of the plaintiff that pursuant to the above said sale deed, it is he, who had been in possession and

enjoyment of the suit property by paying kist and obtaining patta and to evidence the same, the plaintiff has also produced the kist receipts as Exs.A2 to A5, A10, A11 & A14 and from the above said documents, it is found that it is only the plaintiff, who has been in possession and enjoyment of the suit property pursuant to Ex.A1 sale deed. To evidence that the plaintiff is engaged in the cultivation of the suit property, the plaintiff has also marked the Adangal extract as Ex.A9 and also the Chitta extract as Ex.A8 and from the above said documents, it is clearly established by the plaintiff that it is he, who has been in possession and enjoyment of the suit property as described in the plaint and therefore, it is found that the Courts below had rightly placed reliance upon the above said documents to uphold the plaintiff's claim of title, possession and enjoyment of the suit property.

10. The defendants, in particular, the first defendant has not thrown the challenge disputing the plaintiff's title to the entire suit property and on the other hand, according to the defendants, an extent of 19 cents in the suit survey number belonged to Chinnathayee @ Thulasiammal and it is stated that the first defendant had purchased the said extent of 19 cents from the Chinnathayee @ Thulasiammal on 10.07.1989, which document has come to be marked as Ex.B1 and therefore, it is contended that following Ex.B1, it is only the first defendant, who has been in possession and enjoyment of the suit

property by paying kist, obtaining patta etc., and therefore, the case of the plaintiff, as regards the above said extent of land, should not be countenanced.

11. The suit property, as above seen, is shown to be situated in Survey No.246/1 measuring 0.22.5 Hectares of land within the specific boundaries in new patta No.199. The document of title projected by the defendants marked as Ex.B1 is found to be not pertaining to the suit survey number as such and therefore, the claim of the first defendant that he had purchased an extent of 19 cents in the suit survey number from Chinnathayee @ Thulasiammal as such cannot be accepted in any manner. Similarly, no material has been placed by the defendants to evidence that Chinnathayee @ Thulasiammal had title to the extent of 19 cents in the suit survey number and further, there is no material placed to show that Chinnathayee @ Thulasiammal had been in possession and enjoyment of the said extent of 19 cents in the suit survey number. The parent title deed of the defendants has not been exhibited. Similarly, it is found that the patta projected by the defendants and marked as Ex.B2 is found to be standing in the name of Nagan Boyan and from the same, it is not co-related as to how Chinnathayee @ Thulasiammal had acquired title to the said extent as projected by the defendants. It is however stated that Nagan Boyan had two sons viz., Ramasamy and Venkatesan and accordingly, they had partitioned the properties belonging to them

and in the said partition, an extent 36 cents was allotted to Venkatean, and 19 cents of land was allotted to Ramasamy and accordingly, it is the case of the defendants that their vendor had acquired title from Ramasamy and further stated that Ramasamy, who has been examined as DW2, has detailed about the title of the defendants' vendor and therefore, on that plea, the defendants claim of title should be upheld. However, as rightly determined by the Courts below with reference to the above source of title, there is no clear averments set out in the written statement. That apart, in the sale deed projected by the defendants marked as Ex.B1, it is stated that the properties comprised therein had been acquired by the vendor by way of the sale transaction of the year 1963 and by way of the new patta. However, the said documents are not forthcoming to establish that the vendor had a valid title to the suit property and the reasons for the same are also not established. Further, it is admitted by the first defendant that Chinnathayee @ Thulasiammal is alive. If that be so, nothing prevented the defendants from examining their vendor to uphold their claim of title to the suit property. When it is found on the face of it that there is no mention or reference about the suit survey number in Ex.B1 and when there is no evidence to show worth acceptance that following Ex.B1, it is only the first defendant or the defendants as the case may be is in possession and enjoyment of the said extent of 19 cents and when the defendants have failed to establish the title of their predecessor in interest or her possession and enjoyment and

when the source of title projected during the course of evidence has also not been clearly established to accept the same as such and further, when it is seen that as per the evidence adduced, there has been a sale agreement entered into prior to ExB1 sale transaction and the said sale agreement has also not been projected as such, it is found that there is absolutely no material placed on the part of the defendants to hold that they are in possession and enjoyment of 19 cents of land in the suit survey number by acquiring a valid title to the same. The oral evidence has been adduced by both the parties to their respective claims of digging the Well in the suit property, the same had been assessed by the Courts below in the right perspective for accepting the plaintiff's case and accordingly, it is found by the Courts below rightly that the defendants have failed to establish their plea of title, possession and enjoyment of the extent of 19 cents in the suit property as claimed.

12. It is however argued by the defendants' counsel that the materials are placed through the commissioner's report and plan that the defendants are in possession of the suit property and that, the oil Engine had been installed in the Well located in the suit property and the receipt for the oil engine has also come to be marked on the part of the defendants as Ex.B9 and therefore, considering the above materials, the Court should uphold the defendants' claim of title, possession and enjoyment of 19 cents of land. However, as rightly argued, the

Commissioner's report and plan cannot be the basis for determining the possession of a particular party in the subject matter of the suit. Similarly, it is found that merely from the receipt, the document marked as Ex.B9 for the purchase of oil Engine and the evidence of the mechanic examined as DW5, we cannot conclude safely that it is intended only for installing in the Well located in the suit property. It is therefore found that the Courts below had rightly not acceded to the above said materials placed on record for upholding the claim of the defendants to be in possession and enjoyment of the disputed 19 cents of land and for the reasons afore stated, no interference with regard to the same is called for.

13. It is further contended that the first defendant has laid a suit against Ramasamy and Venkatesan in O.S.No.159 of 1996 and obtained a decree against them and on the basis of the same, it is contended that the defendants claim of title and the possession and enjoyment of the said extent of 19 cents should be accepted. Even prior to the institution of the said suit, as rightly found by the Courts below, the plaintiff had purchased the suit property from Venkatesan and others by way of Ex.A1. In such view of the matter, the obtainment of the exparte decree by the first defendant in O.S.No.159 of 1996 against the vendors of the plaintiff without adding the plaintiff as a party in the suit proceedings, as rightly determined by the Courts below, the decree obtained by the first

defendant in the said suit would not in any manner bind the plaintiff as such. Therefore, it is found that the decree copy marked as Ex.B10 would not in any manner be useful to sustain the case of the defendants.

14. On a perusal of Ex.A1, it is found that the entire extent in the suit survey number had been alienated to the plaintiff by Ramasamy, Venkatesen and their minor children represented by their respective fathers and accordingly, when it is not in dispute that the suit property originally belonged to the sons of Nagan Boyan and when the sons of Nagan Boyan and their minor sons had already alienated the suit property in favour of the plaintiff under Ex.A1, the case of the defendants that an extent of 19 cents had been retained by Ramasamy and the same had been subsequently sold in their favour by Chinnathayee @ Thulasiammal as such cannot be accepted. When the defendants have failed to establish that Chinnathayee @ Thulasiammal had a valid title to convey the said extent in favour of the first defendant by way of Ex.B1 sale transaction, accordingly, it is found that the defendants are unable to place any material worth acceptance to show that Chinnathayee @ Thulasiammal had been in possession and enjoyment of the suit property as the full owner thereof and in such view of the matter, it is found that particularly, when Ex.B1 transaction is not found to be pertaining to the suit property and till date, the defendants also have not obtained any rectification deed with reference to the same for including the suit survey

number in the said document from their vendor through it is noted that their vendor is very much available, the Courts below had rightly discountenanced the defendants' plea that they have title, possession and enjoyment of 19 cents of land in the suit survey number and accordingly, accepted the plaintiff's case. I do not find any error or defect in the approach of the Courts below for accepting the plaintiff's case.

15. In the light of the above discussions, it is found that when the plaintiff has established his claim of title to the suit property by way of Ex.A1 and when the title of the plaintiff's vendors had not been shown to be under a cloud by the defendants and on the other hand, the defendants have failed to establish their claim of title of 19 cents in the suit survey number from their vendor Chinnathayee @ Thulasiammal, it is found that the Courts below were right in accepting the plaintiff's case by holding that the plaintiff has established his possession and enjoyment of the suit property as described in the plaint. The Commissioner's report not being the basis for determining the possession of the party of the subject matter, the Courts below were fully right in discarding the commissioner's report and plan projected for the aid of the defendants claim of possession and enjoyment of an extent of 19 cents in the suit survey number. Though the first appellate Court has not formulated various points for determination, having formulated the main point for determination and discussed the issues involved in the matter in detail

under the said point, on all aspects, it is found that by way of the same, there is no violation of the provisions of Order 41 Rule 31 C.P.C and further, the defendants have not established that a serious prejudice had been caused to them by the above said approach of the first appellate Court in determining the controversy between the parties in detail under the main point for determination. The substantial questions of law formulated in the 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.

Index : Yes / No
Internet : Yes / No
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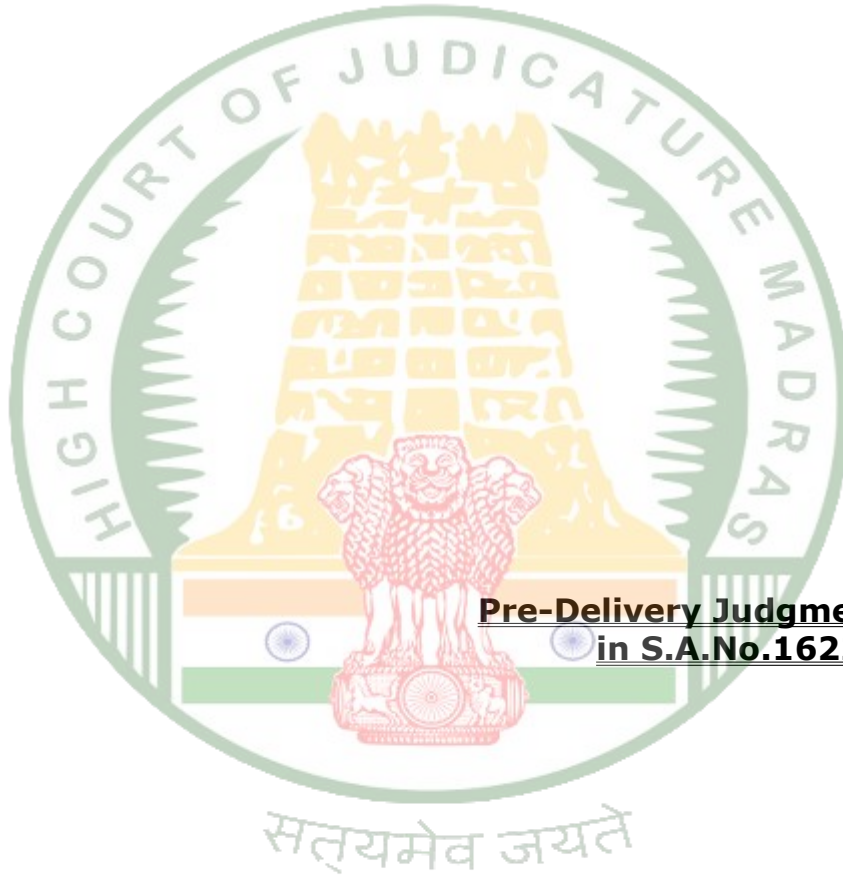
21.02.2018

To

1. The Subordinate Court, Dharmapuri.
2. The District Munsif cum Judicial Magistrate Court, Palacode.
3. The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1622 of 2003**

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Pre-delivery Judgment made

in S.A.No.1622 of 2003

To

The Hon'ble Mr.Justict T.RAVINDRAN

From

Most respectfully submitted

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P.A.to the Hon'ble Judges



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