

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.02.2018
PRONOUNCED ON : 15.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.2015 of 2003

J.Janakan

...Appellant/Appellant/
Plaintiff

Vs.

Ranipet Municipality
rep. By its Commissioner,
Ranipet, Walaja Taluk,
Vellore District.

...Respondent/Respondent/
Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Sub court at Ranipet made in A.S.No.1 of 2003 dated 29.08.2003 confirming the judgment and decree of the District Munsif Court at Ranipet made in O.S. No.151 of 1999 dated 04.10.2002.

For Appellant : Mr.G.Rangarajan

For Respondent : No appearance/set ex-parte
Vide order dated 28.02.2018

JUDGMENT

This second appeal is directed against the judgment and decree dated 29.08.2003, passed in A.S.No.1 of 2003 on the file of the Sub court, Ranipet, confirming the judgment and decree dated 04.10.2002 passed in O.S. No.151 of 1999 on the file of the District Munsif Court, Ranipet.

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 plaintiff A schedule property and the vacant site situated on the east and northern side of the same was purchased by the plaintiff from one Shakunthala, by way of a sale deed dated 03.12.1986 and the aforesaid vendor and the plaintiff were in possession and enjoyment of the property for over a period of twenty years and accordingly, prescribed title to the suit property by adverse

possession and the plaintiff, by obtaining loan, had put up a house constructed in the A schedule property, also constructed a compound wall, a bathroom and a latrine in the space adjacent thereto and accordingly, the plaintiff is in possession and enjoyment of the area wherein a compound wall, a bathroom and latrine been constructed and described as B schedule property and the defendant has not raised any objections, while the aforesaid constructions were put up by the plaintiff and the enjoyment of the same by the plaintiff and his family members for several years and likewise, others have also put up construction in the neighbourhood areas and enjoying the same and the defendant has not questioned the same also and while so, the defendant without any authority is attempting to remove the construction put up by the plaintiff in the B schedule property in the guise of widening the road with some ulterior motive, to which, the defendant is not entitled to. Hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property and the adjacent vacant site had been acquired by the plaintiff by way of a sale deed dated 03.12.1986 and enjoying the same by putting up a house construction and a compound wall, a bathroom and latrine, more fully described in the B schedule property and it is false to state that the defendant has no right or title to the plaintiff schedule property, particularly, B schedule property and it is false to state that the plaintiff and his vendors, on account of their long enjoyment, had perfected title to the suit property by way of adverse possession and it is false to state that the defendant, under the guise of widening the road, is attempting to encroach into the B schedule property. On the other hand, the plaintiff had encroached into the road poramboke vested with the defendant and thereby preventing the defendant from widening the road and the plaintiff has no locus standi to lay the suit against the defendant and accordingly, the poramboke property being vested with the defendant by the Government, the defendant is entitled to remove the encroachment under due process of law by issuing notice and hence, the suit laid by the plaintiff is not maintainable and the case of the plaintiff that others have also encroached the same poramboke property is false and the plaintiff being the trespasser and encroacher of the suit property is not entitled for the reliefs sought for and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A14 were marked. On the side of the defendant DWs 1 to 3 were examined, Exs.B1 to B6 were marked. Exs.C1 and 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 dismiss the suit laid by the plaintiff. 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:

1. Even though the Courts below have mentioned in their impugned judgments regarding the maintainability of the original suit preferred by the appellant/plaintiff herein under Act 1 of 1996, there is no discussion or finding by both the Courts below in their impugned judgments on the said question of law.

2. The Courts below erred in rejecting the contention of the appellant/plaintiff herein that the proposed action of the respondent/ defendant hereinto remove the "B" schedule construction made by the appellant/plaintiff herein is highly discriminatory in nature since the respondent/defendant herein is not initiating any action against the neighbours who have also made similar constructions. The aforesaid contention of the appellant/plaintiff herein is a constitutional issue since the discriminatory treatment by the respondent/defendant Municipality is violative of Article 14 of the Constitution of India. However both the Courts below have simply rejected the aforesaid question of law without proper discussion.

9. The plaintiff has laid the suit seeking the reliefs of declaration and permanent injunction in respect of the plaint B schedule property. The only plea put forth by the plaintiff for claiming title to the B schedule property is adverse possession. According to the plaintiff, he had purchased the A schedule property from one Shakunthala by way of a sale deed dated 03.12.1986 and accordingly, enjoying the vacant space on the eastern and northern side of the property by putting up a compound wall, bathroom and latrine described as the B schedule property and inasmuch as the plaintiff had prescribed title to the B schedule property by way of adverse possession, the defendant is not entitled to interfere with the possession and enjoyment and on the other hand, the defendant in the guise of widening the road, attempted to interfere with the possession and enjoyment and it is thus stated that the plaintiff has been necessitated to institute the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that the claim of the defendant that he had perfected title to the B schedule property by way of adverse possession is false and on the other hand, the said property is a poramboke property vested with the defendant and the defendant is trying to remove the encroachment made by the plaintiff in the property and therefore, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

11. It is thus found that the plaintiff has levied the suit in respect of the B schedule property only on the plea of adverse possession. However, when the plea of adverse possession can only be taken as a shield and not as a sword and in the light of the decision of the Apex Court reported in (2014)1 SCC 669 (Gurdwara sahib Vs. Gram Panchayat Villae Sirthala and another), it is found that, as such, the suit laid by the plaintiff claiming title to the suit property is found to be not legally maintainable.

12. That apart, the plaintiff has failed to establish her plea of adverse possession. The documents placed by the plaintiff by themselves are not sufficient to uphold the plea of adverse possession as regards the B schedule property. Even assuming for the sake of arguments, that the plaintiff is entitled to lay claim of title to the same by way of adverse possession, the plaintiff has failed to establish that his vendors had been in possession and enjoyment of the B schedule property as the full owners thereof by asserting title to the same and equally, the plaintiff has failed to establish that he is in possession and enjoyment of the B schedule property openly, continuously, and uninterruptedly by asserting title on himself to the knowledge of one and all including the defendant beyond the statutory period. It is thus found that the plaintiff has, on facts, miserably failed to establish the plea of adverse possession as regards the plaint B schedule property.

13. The plaintiff having taken the plea of adverse possession as regards the plaint B schedule property, impliedly thereby, had admitted the title of the defendant in respect of the same. Accordingly, when it is found that the B schedule property is the Poramboke property vested with the defendant for the maintenance of the locality and it is thus found that the defendant being the owner of the same, is entitled to remove the encroachment, if any, made into the same and in such view of the matter, the plaintiff having failed to establish his legal claim of title, possession and enjoyment of the same, it is found that the plaintiff has no cause of action at all to institute the suit against the defendant.

14. For the reasons aforesaid, it is seen that the Courts below have rightly discountenanced the pleas put forth by the plaintiff for claiming title to the suit property against the

defendant and in my considered opinion, there is no question of law much less any substantial question of law involved in the second appeal and the substantial questions of law formulated in the second appeal are also not thus required to be answered. The second appeal is thus found to be devoid of merits and accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Sub court, Ranipet.

2. The District Munsif Court, Ranipet.

3. The Commissioner,
Ranipet Municipality.

4. The Section Officer,
V.R.Section,
High Court, Madras.(2 copies)

+1cc to Mr.G.Rangarajan, Advocate SR.No.20132

MR (CO)

sm:2.4.2018

S. A.No.2015 of 2003

सत्यमेव जयते

WEB COPY