

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2018

PRONOUNCED ON : 25.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.986 of 2003

1. Periammal
2. P.Pandian (Deceased)
3. Ramesh
4. Suresh
5. Sumathi
6. Sundarambal ... Appellants/Appellants/
(Appellants 3 to 6 brought on plaintiff
record as Lrs of the deceased
2nd appellant vide order of the
Court dated 10.12.2014 made
in CMP No.567/11)

Vs.

1. Gopal
2. Rajamanickam
3. Swaminathan ... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 26.11.2001 in A.S.No.2 of 2001 on the file of the III Additional District Judge, Salem, so far it relates to confirming the judgment and decree dated 20.10.2000 in O.S. No.529 of 1996 on the file of the Principal District Munsif, Salem.

For Appellants : Mr. V.Sekar

For Respondents : Mr. V.Bhiman

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 26.11.2001 passed in A.S.No.2 of 2001 on the file of the III Additional District Court, Salem, so far as it relates to confirming the judgment and decree dated 20.10.2000

in O.S. No.529 of 1996 on the file of the Principal District Munsif Court, Salem.

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 second plaintiff is the son of the first plaintiff and the suit property originally belonged to Ayyamperumal gounder, son of Sevi gounder. Ayyamperumal gounder sold the suit property in favour of Koilammal by way of a registered sale deed dated 12.11.59 and at the time of giving possession, he had given possession of the entire suit property to Koilammal and subsequently, on 30.03.1960, Koilammal alienated the suit property in favour of the first plaintiff and her husband and surrendered possession of the entire suit property, even though the above said sale deeds mention only 24 cents. The plaintiff's husband died five years back and except the second plaintiff, the first plaintiff has no other issue. The plaintiffs are in possession and enjoyment of the suit property from the date of purchase and the suit property is localised in survey number 91/9 under patta no.657. The patta stands in the name of the first plaintiff and the plaintiffs had been in the possession and enjoyment of the suit property as their own to the knowledge of one and all for the past several years, including the defendants and thus, the plaintiffs have also perfected their title in respect of the 16 cents by way of adverse possession, in case there is any defect in the plaintiff's title for the entire suit property. The defendants are the adjacent land owners and the defendants have no right, title or interest over the suit property and while so, the defendants attempted to trespass into the suit property staking a claim to the suit property and hence, the plaintiffs have been necessitated to lay 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 entire suit property consisting of 40 cents was given possession even though the sale deed mentions only 24 cents and Koilammal cannot sell any property to the first plaintiff and her husband which is not found in the sale deed and it is false to state that the patta for the entire suit property was issued in favour of the first plaintiff and that the plaintiffs are in possession and enjoyment of the suit property for more than 36 years to the knowledge of one and all as the full owners thereof. The plaintiffs themselves admit the defects in the title and there is no basis for the plaintiffs'

claim of 16 cents in the suit property by way of adverse possession and it is false to state that the defendants have no right, title or interest in the suit property. It is false to state that the defendants attempted to interfere with the plaintiffs' possession and enjoyment of the suit property. The defendants become entitled to 40 cents of lands by way of a registered sale deed dated 14.09.89 which consists of 21 cents in survey number 91/8 and 19 cents in survey number 91/9 with specific boundaries and the well in survey number 91/8 and the patta number is 813, which stands in the name of the defendants and the defendants are entitled to the above said lands as described in the written statement and the plaintiffs have no cause of action and hence the suit is liable to be dismissed.

6. In support of the plaintiffs' case PWs 1 to 3 were examined Exs.A1 to A5 were marked. On the side of the defendants DWs 1 to 3 were examined, Exs.B1 to B4 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 trial Court was pleased to dismiss the suit. On appeal preferred by the plaintiffs, the first appellate Court on an appreciation of the materials placed, concurred with the judgment and decree of the trial Court in most of the aspects and partly allowed the appeal preferred by the plaintiffs and granted the relief of declaration in respect of 19 cents in survey number 91/9 situated to the north of east-west pathway and the consequent relief of permanent injunction in respect of the above said extent of the suit property and accordingly, disposed of the appeal. Aggrieved over the same, the plaintiffs have preferred the present second appeal.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Are the Courts below correct in law in refusing to grant relief of declaration and consequential injunction in respect of the entire suit property of 40 cents of land?

2. Are the Courts below correct in law in refusing to grant the relief of declaration based upon adverse possession in respect of 16 cents of land?

9. The suit property is described to be consisting of 40 cents within specific boundaries in survey number 91/9. The

plaintiffs are seeking reliefs of declaration and permanent injunction in respect of the above said suit property. However, even as per the case of the plaintiffs, the original owner Ayyamperumal gounder had sold only an extent of 24 cents in the above said survey number to Koilammal, by way of a registered sale deed dated 12.11.1959, marked as Ex.A1 and however, according to the plaintiffs, while handing over possession, the entire suit property consisting of 40 cents were entrusted to Koilammal by Ayyamperumal gounder and it is the further case of the plaintiffs that, Koilammal alienated the property purchased by her under Ex.A1, in favour of the first plaintiff and her husband by way of a sale deed dated 30.03.1960, marked as Ex.A2 and it is stated that the entire suit property consisting of 40 cents was handed over possession by Koilammal and it is the case of the plaintiffs that by way of Exs.A1 and A2, they have title, possession and enjoyment of the suit property as described in the plaint.

10. The above case of the plaintiffs is disputed by the defendants. The defendants claim to have purchased an extent of 19 cents in survey number 91/9 and another 19 cents in survey number 91/8, by way of a registered sale deed dated 14.09.89 and therefore, according to the defendants, the plaintiffs cannot lay any claim of right or title to the suit property as put forth by them and hence, according to them, the suit laid by the plaintiffs, without any cause of action, is liable to be dismissed.

11. From the materials placed and the evidence adduced in the matter, it is found that the defendants have admitted that the original owner of the property comprised in survey number 91/9 is Sevi gounder and it is found that Ayyamperumal gounder is the son of Sevi gounder, accordingly, it is found that the plaintiffs are tracing the title to the property purchased by them from Ayyamperumal gounder through Exs.A1 and A2. It is seen that as rightly determined by the first appellate Court, on the basis of the sale deeds marked as Exs.A1 and A2, it is found that the plaintiffs would be entitled to claim title only to the property comprised in the above said sale deeds. On a perusal of Exs.A1 and A2, it is found that only an extent of 24 cents within specific boundaries had been conveyed thereunder. However, as above seen, the suit property as described, consists of 40 cents. No doubt, the boundaries described in the plaint as well as the boundaries described in Exs.A1 and A2 are found to be the same. As rightly determined by the first appellate Court, when there is no material to hold that within the specific boundaries above stated, an extent of 40 cents lies, it is seen that the plaintiffs cannot be allowed to claim title to more extent than what had been conveyed to them under Exs.A1 and A2. The Advocate Commissioner who had been appointed in the

matter, though had inspected the suit property with the aid of a surveyor, has not found that within the boundaries described in the plaint, an extent of 40 cents is comprised. It is found that therefore the report of the Advocate Commissioner is of no assistance to buttress the plaintiffs' case that the suit property actually comprises of 40 cents as putforth by them. When a specific extent of 24 cents of lands only had been conveyed under Exs.A1 and A2 and when there is no material to hold that within the boundaries disclosed in Exs.A1 and A2 an extent of 40 cents lie, it is found that the plaintiffs cannot seek title or interest in respect of the 40 cents as described in the plaint by way of Exs.A1 and A2. Accordingly, finding that there are defects in their title itself, the plaintiffs had laid the claim to the remaining 16 cents in the suit survey number by way of adverse possession. According to the plaintiffs, even though the sale deeds marked as Exs.A1 and A2 recites that only 24 cents had been conveyed thereunder, it is their case that an extent of 40 cents had been handed over possession at the time of the above said sale deeds respectively and thus, it is contended that the entire suit property had been conveyed under the above said sale deeds and the entire suit property is in their possession and enjoyment right from the days of their predecessors in interest. However, when it is seen that there is no material to hold that within the specific boundaries described in the above said sale deeds, an extent of 40 cents lie and when the Commissioner's report and plan Exs.C1 and C2 do not advance the above case of the plaintiffs, merely from the patta and adangal extracts produced by the plaintiffs, it cannot be stated that within above said boundaries, an extent of 40 cents lie and the said 40 cents had been conveyed under Exs.A1 and A2. Accordingly, it is found that the plaintiffs also being aware of the said position did not endeavour to take appropriate steps to identify the actual extent available in the suit survey number within the boundaries described in Exs.A1 and A2 or as described in the plaint. Though it is now contended that the Commissioner's report and plan did not reflect the actual position and on ground, it is admitted that the plaintiffs had not putforth any objections to the report and plan of the Advocate Commissioner. It is thus found that the plaintiffs having admitting Exs.C1 and C2 entirely, cannot now blame the same, as if the Commissioner had failed to localise the actual extent available within the boundaries described in the plaint. Further, as rightly putforth by the defendants' counsel, the plaintiffs had not given linear measurements of the suit property so as to arrive at the actual extent comprised within the boundaries specified in the documents Exs.A1 and A2. In such view of the matter, in the absence of any material to indicate that within the boundaries described in Exs.A1 and A2 or as shown in the plaint schedule, an extent of 40 cents lie and when it is found that by way of Exs.A1 and A2, the

plaintiffs had been conveyed only a specific extent of 24 cents, the plaintiffs cannot take advantage of the principle that the boundaries prevail over the extent and therefore, they should be granted the relief of declaration as prayed in respect of the entire extent of 40 cents as shown in the plaint schedule. At the most, it is found that the plaintiffs would be entitled to derive title only to the extent of 24 cents in the suit survey number, by way of Exs.A1 and A2, as determined by the first appellate Court.

12. From the materials placed and also seen from the admission of the parties concerned, it is found that a pathway of an extent of 5 cents is running in the 24 cents purchased by the plaintiffs and their predecessors in interest by way of Exs.A1 and A2. Accordingly, the first appellate Court, on the basis of the above position, holding that the pathway is existing in the suit property of an extent of 5 cents and further holding that only, excluding the same, the plaintiffs are found to be in possession and enjoyment of only 19 cents, on that footing, proceeded to grant the relief of declaration and permanent injunction in favour of the plaintiffs. However, as rightly argued by the plaintiffs' counsel, when it is the determination of the first appellate Court that by way of Exs.A1 and A2 the plaintiffs have established that they had purchased an extent of 24 cents in the suit survey number within the specific boundaries and the mere existence of the pathway in the same by itself would not disentitle the plaintiffs to claim right or title to the 24 cents purchased by them under the above said documents and when there is no claim made by any one with reference to the said pathway and when it is found that the defendants claim of title of an extent of 19 cents in the suit survey number 91/9 had been negated by the Courts below, as against which the defendants have not preferred any appeal or cross objections whatsoever, it is seen that the first appellate Court should have granted the relief of declaration and permanent injunction in respect of the actual extent which had been acquired by the plaintiffs under Exs.A1 and A2. Therefore, it is seen that the first appellate Court has committed an error in restricting the reliefs of declaration and permanent injunction only to 19 cents instead of 24 cents to which the plaintiffs are entitled to as per Exs.A1 and A2.

13. As regards the case of the plaintiffs that they have perfected their title to an extent of 16 cents in the suit survey number by way of adverse possession, other than Exs.A1 to A5, there is no acceptable and reliable material placed by the plaintiffs to show that they had been in possession and enjoyment of the said extent of 16 cents continuously, uninterruptedly to the knowledge of one and all, exhibiting

hostile attitude beyond the statutory period and when it is found that the documents marked as Exs.A3 and A5 are pertaining to the year 1996, as rightly determined, the above said documents would not be sufficient to uphold the case of the plaintiffs as regards their plea of adverse possession with reference to the 16 cents in suit survey number. Therefore, the determination of the first appellate Court that the plaintiffs have failed to establish their case of adverse possession as regards the 16 cents in the suit survey number does not warrant any interference.

14. Though the defendants had set up a title to the extent of 19 cents in the suit survey number by way of sale deed dated 14.9.89, as above stated, the defendants have failed to established the title of their vendors to the above said extent by placing acceptable and reliable materials and when the sale deed marked as Exs.B1 as well as the power of attorney deed marked as Ex.B2 do not show any indication that their vendors had title to the above said extent lawfully and when it is admitted by the defendants that the property comprised in survey number 91/9 originally belonged to Sevi gounder, it is seen that as rightly determined and found by the Courts below, the defendants cannot be allowed to claim title in respect of 19 cents in

the suit survey number and the same had been rightly negatived by the Courts below. Accordingly, it is seen that when there is no challenge made by the defendants to the same, the said findings of the Courts below had become final and therefore, there is no scope for the defendants challenging the same by way of this second appeal.

15. The counsel for the defendants in respect of his contentions placed reliance upon the decisions reported in 2017-4-LW.611 (Selli Gounder (died) and others Vs. Masaiyappa Gounder and another), 2018-1-LW.62 (Manickammal (Deceased) and others Vs. R.Jayaraman (died) and others) and 2010 2 OLR (SC) 126 (Shanti Budhiya Vesta Patel and others Vs. Nirmala Jayprakash Tiwari and others), AIR 1972 Madras 154 (V 59 C 50) (V.A.Amiappa Nainar (died) and others Vs. N.Annamalai Chettiar (died) and others) and AIR 1999 Madras 377 (Sadhurajan Vs. Sriramulu Naidu and others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

16. In the light of the above discussions, it is found that the Courts below are perfect in refusing the reliefs of declaration and permanent injunction in favour of the plaintiffs as regards the entire suit property of an extent of 40 cents of lands and it is further found that the Courts below are perfect in refusing the grant of relief of declaration putforth by the plaintiffs in respect of the 16 cents of lands in the suit

survey number by way of adverse possession. However, when it has been established by the plaintiffs that they had acquired right, title and interest over the extent of specific 24 cents in the suit survey number by way of Exs.A1 and A2 and even though the pathway is found to be in existence in the above said cents and when the defendants have failed to establish their claim of title to the above said extent purchased by the plaintiffs inclusive of the pathway and when no other persons has projected any claim over the pathway said to be in existence in the above said 24 cents, it is found that the first appellate Court after coming to the conclusion that the plaintiffs had acquired title in respect of the 24 cents by way of Exs.A1 and A2, erred in restricting the relief of permanent injunction and declaration only to an extent of 19 cents instead of the actual extent of 24 cents established to be purchased by the plaintiffs without any ambiguity. It is thus found that the plaintiffs are entitled to the reliefs of declaration and permanent injunction in respect of the extent of 24 cents acquired by them by way of Exs.A1 and A2. The substantial questions of law formulated in this second appeal are accordingly answered.

17. In the light of the above discussions, the judgment and decree dated 26.11.2001 passed in A.S.No.2 of 2001, on the file of the III Additional District Court, Salem, are modified and the plaintiffs are granted the reliefs of declaration and permanent injunction in respect of the 24 cents of lands in survey number 91/9 situated to the north of east-west pathway acquired by them by way of Exs.A1 and A2 and accordingly, the second appeal is partly allowed. In other aspects, the judgment and decree of the first appellate Court are confirmed. There is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CCC)

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Salem.

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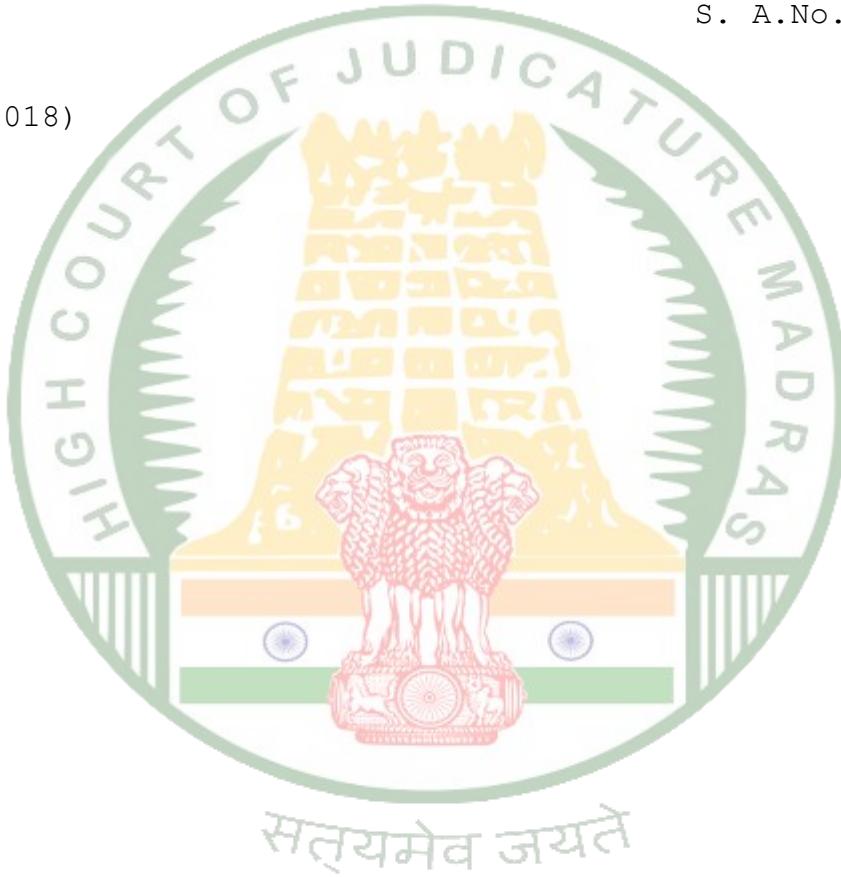
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Judgment in
S. A.No.986 of 2003

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