

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.08.2018

PRONOUNCED ON : 07.08.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.2140 of 2001

Ganesan

...Appellant/plaintiff

Vs

The Cuddalore Municipality
represented by its Commissioner
Having its Office at Cuddalore.

... Respondent/defendant

PRAYER:Second Appeal filed under Section 100 of C.P.C, against the judgment and decree dated 05.07.2001 passed in A.S.No.72 of 2000 on the file of the learned Principal District Judge, Cuddalore, confirming the Judgment and Decree dated 14.06.2000 passed in O.S.No.277 of 1998 on the file of the learned Principal District Munsif, Cuddalore.

For Appellant : M/s.S.K.Rakhunathan

For Respondent : Set exparte dated 02/07/2018

JUDGMENT

This Second Appeal has been filed by the appellant against the judgment and decree passed by the Principal District Judge, Cuddalore, in A.S.No.72 of 2000 dated 05.07.2001 confirming the judgment and decree passed by the Principal District Munsif, Cuddalore, in O.S.No.277 of 1998 dated 14.06.2000.

2. The appellant herein has filed a suit in O.S.No.277 of 1998 on the file of the Principal District Munsif, Cuddalore, to declare his title to the suit property and to restrain the defendant by means of permanent injunction from interfering with his peaceful possession and enjoyment of the suit property. The learned District Munsif by the judgment and decree dated 14.06.2000 has dismissed the said suit. Aggrieved by the same, the plaintiff has filed an appeal in A.S.No.72 of 2000 on the

file of the Principal District Judge, Cuddalore. The learned Principal District Judge, Cuddalore, by the judgment and decree dated 05.07.2001 has dismissed the said appeal confirming the judgment and decree passed by the trial court. Feeling aggrieved, the plaintiff has filed the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3. The averments made in the plaint are, in brief, as follows:

The plaintiff has filed the above suit on behalf of his family. The house is the ancestral property of the plaintiff and his family. The house is a terraced and storeyed building which is more than 60 years old. The assessment of the building of the house stands in the name of the plaintiff's father. The electricity service connection stands in the name of his paternal uncle Dhandapani Chettiar. The plaintiff has a telephone connection which has been obtained in the name of his brother Ravisankar. There is a cattle shed in the backyard of the plaintiff's family house measuring about 38 ft x 18 ft = 576 sq.ft. There is another thatched roof in the backyard meant to store hay stock and cow dung. Around the cattle shed, there is a fence made up of iron-grills with a door. The aforesaid shed are in existence ever since the house was constructed. Whatever tax is collected for the building includes the backyard also, which is the subject matter of the dispute and the same has been shown as the suit property. There has been no disturbance to the possession of the plaintiff all these 60 years. While so, on 01.07.1998, the defendant has issued a notice to the plaintiff stating that the plaintiff has encroached the suit property and directing the plaintiff to vacate the premises within three days. The plaintiff has perfected title to the suit property by adverse possession. Hence, the plaintiff has filed the above said suit for declaration of title and for permanent injunction.

4. The averments made in the written statement are, in brief, as follows:

The plaintiff has got his property only in T.S.No.119. The house tax is assessed for Door.No.38 and 39 in assessment No.19465. The building has got access only through Subbaraya Chetty street. It is false to state that the cattle shed was in existence for a long time. It is equally false to state that the house tax was collected for the plaintiff's house including cattle shed. The tax collected is only for Door.Nos.38 & 39, Subbaraya Chetty street, comprised in T.S.No.1119. The plaintiff has no right over the property situated in T.S.No.1260/1. The plaintiff has put up the cattle shed with a light roof to the extent of 32 ft x 18 ft encroaching the children playground situated in T.S.No.1260/1 which is the backyard of the

plaintiff's house. He also put up a thatched shed measuring about 21 ft x 12 ft encroaching the aforesaid survey number for storing the cattle feed. A lay out was approved in LPH No.2/70 by the Director of Town and Country Planning for T.S.No.1260/1 comprising 28 house sites, one shop and one children playground. The said children playground was used for that purpose and it was under the control of Municipality for the past 25 years. The plaintiff has now encroached a portion for the cattle shed purpose by trespassing in the land in T.S.No.1260/1 through the backyard of the building. As soon as the encroachment was noticed, on 30.06.1998, the defendant has issued notice u/s.162 of the Tamil Nadu District Municipalities Act, calling upon the plaintiff to remove the encroachment. The plaintiff, instead of complying with the said notice, has filed the above vexatious suit. Therefore, the defendant prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned District Munsif, has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff has examined himself as PW1 and also examined one more witness as PW2. He has marked Exs.A1 to A12 as exhibits. On the side of the defendants, one witness was examined as DW1 and the defendant has marked one document as Ex.B1.

6. The learned District Munsif after considering the materials placed before her found that the plaintiff has failed to prove adverse possession. Accordingly, she dismissed the suit. Feeling aggrieved, the plaintiff has filed an appeal in A.S.No.72 of 2000 on the file of the Principal District Judge, Cuddalore. The learned Principal District Judge has dismissed the said appeal confirming the judgment and decree passed by the trial court. As against the same, the plaintiff has filed the present second appeal.

7. At the time of admitting the second appeal, this court has formulated the following substantial questions of law:

"(a) Whether the appellant has acquired title to the suit property by adverse possession, the suit property being part and parcel of his house bearing Door No.38 and 39 of Subbarayan st; Cuddalore comprised in T.S.No.1119 and the appellant being in open, continuous and uninterrupted possession for more than the statutory period?

(b) Is not the respondent precluded from interfering with the possession of the appellant especially when the respondent failed to establish title to the property?"

8. When this case came up for hearing on 02.07.2018,

there was no representation for the respondent/defendant. Hence, the respondent was called absent and set *ex parte*. After hearing the arguments of the learned counsel for the appellant and after perusing the judgments of the court below and material records, the judgment is being passed in this second appeal.

9. Q. Nos. 1 and 2:

Learned counsel for the appellant has submitted that the plaintiff's suit property is situated on the backyard of the plaintiff's house. He further submitted that the plaintiff's house was constructed 60 years ago and at that time itself, cattle shed and another shed for storing cattle feed were constructed in the suit property. He further submitted that all along the plaintiff was enjoying the suit property as part and parcel of his house for the past 60 years and thereby, he perfected title by adverse possession. He further submitted that the defendant has not produced any documentary evidence to show that the plaintiff has encroached the suit property only recently and in the absence of any such evidence, it has to be presumed that the plaintiff has occupied the suit property 60 years ago and he has been in possession and enjoyment of the same, and thereby he perfected the title over the suit property. He further submitted that the courts below failed to consider the aforesaid facts in a proper perspective and dismissed the plaintiff's suit and therefore, he prayed to allow the second appeal and decree the suit as prayed for.

10. In paragraph No.6 of the plaint, the plaintiff has stated that the plaintiff alone entitled to the suit property and by being in open, hostile and continuous possession for well over the statutory period and thereby, he perfected a title to the suit property by adverse possession. So, it is clear that the plaintiff has admitted that the owner of the suit property is the defendant. Only by way of adverse possession, the plaintiff is claiming title over the suit property. So, the burden is upon the plaintiff to prove that from which date, his possession has become adverse to the real owner (defendant). He has not stated in his plaint that from which date the possession of the suit property has become adverse to the defendant. On the contrary, he has vaguely pleaded that he is in possession of the suit property for more than 60 years.

11. Admittedly, the plaintiff's house is bearing Door Nos.38 and 39 and the said house is situated in T.S.No.1119. Whereas the suit property is situated in T.S.No.1260/1. The house tax receipts and the telephone bills and Electricity bills which were produced by the plaintiff related to the house bearing Door Nos.38 and 39. Even the said documents are only recent documents i.e., from the year 1996 only. From the said documents, it cannot be said that the plaintiff has been in possession of the suit property for more than statutory

period.

12. Except the oral evidence of Pws1 and 2, no other evidence is available to show that the plaintiff is in possession of the suit property for more than statutory period within the knowledge of the defendant. Therefore, in the concurrent findings of the courts below that the plaintiff has failed to prove that he has perfected title by adverse possession cannot be interfered by this court.

13. The learned counsel for the appellant has submitted that since the defendant has admitted in his written statement that the plaintiff is in possession of the suit property, he can be evicted only by due process of law and hence he prayed to grant injunction not to evict the plaintiff except under due process of law. The plaintiff himself has stated in his plaint that the defendant has issued a notice dated 01.07.1998 directing him to vacate the suit premises within three days. So, it appears that the defendant after coming to know about the encroachment made by the plaintiff has issued notice directing him to vacate the suit premises. The aforesaid act of the defendant would show that it has taken steps to remove the encroachment through process of law. Under the said circumstances, the suit is not maintainable. This court is of the view that the courts below have rightly dismissed the plaintiff's suit after considering the materials produced by both the parties. In the said concurrent factual findings, this court cannot interfere. Therefore, the second appeal is liable to be dismissed. Accordingly, the substantial questions of law are answered against the plaintiff .

14. In the result, the second appeal dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Principal District Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.54681
+1cc to Mr.P.Srinivas, Advocate, S.R.No. 54690

S.A.No.2140 of 2001

VG I(CO)
GN(30/10/2018)



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