



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDARS.A.(MD)No.167 of 2017 and
C.M.P.(MD)No.2974 of 2017Govindan(Died)
S/o.Shanmugavel

1. G.Veeranan
2. G.Balamurugan
3. G.Mareeswaran

... Appellants 1 to 3/Appellants 2 to 4/
Defendants 2 to 4

4. G.Guruvaammal
5. G.Shanmugavel
6. M.Muthulakshmi
7. S.Samuthirakani
8. M.Palpackiam

... Appellants 4 to 8/
Not a party and LRs of 1st Appellant/
Not a party and LRs of 1st defendant*(Cause title is accepted, vide order, dated 12.01.2017,
made in C.M.P.(MD)No.203 of 2017)***Vs.**

R.Pandhuhasamy

... Respondent/Respondent/
Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and Decree, dated 19.01.2016 passed in A.S.No.41 of 2010 on the file of the Subordinate Court, Srivilliputhur, confirming the Judgment and Decree, dated 28.04.2010, passed in O.S.No.165 of 2002 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellants : Mr.A.Arumugam,
for Mr.K.Sudalaiyandi.
For respondent : Mr.K.Vamanan

JUDGMENT

This Second Appeal is filed against the Judgment and Decree passed by the learned Subordinate Judge, Srivilliputhur, in A.S.No.41 of 2010, dated 19.01.2016, confirming the Judgment and Decree in O.S.No.165 of 2002, dated 28.04.2010, on the file of the learned Additional District Munsif, Srivilliputhur.



2. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent.

3. Defendants 2 to 4 in O.S.No.165 of 2002 on the file of the learned Additional District Munsif, Srivilliputhur, are the appellants in this Second Appeal. The respondent in this Appeal as plaintiff filed the Suit in O.S.No.165 of 2002 for declaration of title and for recovery of possession in respect of suit 6th item of property and for other reliefs including the relief of mandatory injunction and for permanent injunction.

4. The suit properties are described in six items and the reliefs sought for are in respect of only the 6th item of the suit property which is only an extent of 30 feet x 35 feet in Survey No.1368/1, at Malli Village, Srivilliputhur Taluk, Virudhunagar District.

5. It is the case of the plaintiff that the suit items 1, 2 and 5 belonged to the plaintiff. The plaintiff claimed title to the 5th item of the suit property by virtue of a registered Sale Deed, dated 31.10.2001 executed by one Arumugam, son of Palanisamy Nadar. Similarly, it is also contended by the plaintiff that the suit items 1 and 2 were purchased from the legal heirs of the said Arumugam by a document, dated 09.01.2002.

6. It is the specific case of the plaintiff that the suit items 1, 2 and 5 belonged to the plaintiff and he is holding exclusive title in respect of these properties. It is contended that a portion of suit 2nd item and another portion of suit 5th item together constituted suit 6th item. Though suit 6th item belonged to the plaintiff, it is stated that a settlement deed had been executed by the first defendant in favour of defendants 2 to 4. It is further stated that on the strength of such fabricated documents, the defendants had cut and removed "Karuvelam" trees illegally from the suit properties. It is alleged further that the defendants made an attempt to dig foundation on 25.05.2002. It is stated that therefore the suit has been filed. It is to be noted that the plaintiff admitted the title in favour of the defendants in respect of item 4 of suit properties. In the plaint plan the first defendant's property is shown as lying on the north of the suit 6th item.

7. The Suit was contested by the first defendant mainly on the ground that originally the suit 6th item of the property was classified as Natham poramboke and vested with Government. It is further stated that the southern side and western side of the property purchased by the first defendant from one Gurusamy were also in his possession and enjoyment. It is further stated by the defendants that during "Natham" settlement, Patta was given in favour of the first defendant who in turn had given three Settlement Deeds, dated 17.09.2001 in favour of his three sons.



8. It is also the case of the defendants that they were in enjoyment of the suit property and the Revenue Authorities have recognized their title and enjoyment while granting Patta in favour of the defendants. Since the defendants were in enjoyment for a long number of years, even if the plaintiff has no title, it is contended by the defendants that they have prescribed title by adverse possession and that the claim of the plaintiff in respect of the suit 6th item is barred by acquiescence. The defendants also raised a specific defence denying the validity and genuineness of sale deeds under which the plaintiff claimed title. It is contended by the defendants that they have prescribed title by adverse possession.

9. The trial Court after framing necessary issues decreed the Suit as prayed for, holding that the plaintiff has established his title and enjoyment in respect of the suit property and that the defendants have encroached the suit 6th item of property which forms part of the portion of suit 2nd and 5th items of plaint schedule. The contention of the defendants that they have prescribed title by adverse possession has been specifically negated by the trial Court as the plaintiff has proved his title on the basis of documents. The trial Court also granted Decree for mandatory injunction, apart from granting decree for declaration and recovery of possession. Aggrieved by the findings of the trial Court, the defendants have preferred an Appeal in A.S.No.41 of 2010 on the file of Sub Court, Srivilliputhur.

10. The lower Appellate Court also found that the constructions in the suit 6th item of the property, came into existence only during the pendency of the Suit. Considering the documentary and oral evidence, the lower Appellate Court also found that the defendants have no title to the suit property and that they have not established their title by adverse possession. Since the lower Appellate Court also confirmed the Judgment and Decree of the trial Court, defendants 2 to 4 herein have preferred the above Second Appeal. Defendants 2 to 4 are the sons of the first defendant.

11. Learned counsel for the appellants submitted that the plaintiff claimed title in respect of suit 2nd item of property as self acquisition under Ex.A.6 and that this document is only in respect of an undivided half portion that is claimed by the plaintiff. It is further submitted that this document though refers to ownership over the remaining half portion as the plaintiff's own property, there was no attempt made by the plaintiff to substantiate his case. When there is no evidence to show that the other half of the suit 2nd item property belongs to the plaintiff as his ancestral property, it is submitted that the plaintiff is not entitled to the suit property.

12. After relying upon the evidence of P.W.4, by name, Arumugam, it was pointed out by the learned counsel for the appellants that the evidence given by P.W.4 (plaintiff witness) is contrary to the recitals in the document Ex.A.5 and that therefore,



the Courts below ought to have held that the plaintiff has no title to the suit property on the basis of the documents relied upon by the plaintiff. The learned counsel for the appellants further submitted that the plaintiff has to prove the case for getting a declaration and that the Courts below in this case have granted a decree in favour of plaintiff by pointing out the weakness in defendants' case. Finally, the learned counsel for the appellants submitted that the suit for recovery of possession and removal of encroachment ought to have been dismissed in view of the fact that the plaintiff has not come with a specific plea as to the portion in which the defendants had encroached.

13. Under Ex.A.6, the plaintiff has purchased 2507 Sq.Ft., which is described as suit 2nd item. The eastern boundary for the property purchased under Ex.A.6 is the property purchased under Ex.A.5 in respect of suit 5th item. The property purchased under Ex.A.6 is an undivided extent of 2507 sq.ft., out of 5014 sq.ft. The plaint plan clearly disclose the boundary and suit 6th item has been described with reference to measurements and boundary. Hence, the factual submissions of the learned counsel for the appellants cannot be countenanced. In this case, the defendants have purchased a small piece of land about 1 cent shown as suit item 4. Hence, the first defendant claimed title to the disputed property, namely, suit item 6 by adverse possession. First of all, there is no proper pleading. Defendants have produced documents of recent origin. The case of adverse possession is not proved.

14. The trial Court as well as the lower Appellate Court had considered the entire evidence on record. Admittedly, there is no record available to substantiate the case of the defendants. Having regard to the concurrent findings on facts, this Court is of the view that the plaintiff has established his case on the basis of documents. Peculiarly, in this case, the defendants claim that the suit properties are Government poramboke lands. On the other hand, the defendants also claim title by adverse possession. In view of the oral and documentary evidence adduced by the parties in this case, the Courts below have come to a conclusion upholding the title of the plaintiff and rejecting the case of the defendants. Since the defendants have not produced any documents of title deed and they have failed to establish their case of adverse possession, it is expected from the Courts below to hold that the plaintiff has established his title. Before this Court in the Second Appeal, it cannot be contended that the plaintiff has not explained the recitals and boundary descriptions in the documents under which he claim title. Considering the oral and documentary evidence, the Courts below have rightly granted the Decree as prayed for in favour of the plaintiff.

15. Having regard to the position that the scope of this Appeal <https://hcservices.ecourts.gov.in/hcservices/> has been circumscribed by Section 100, C.P.C., this Court find no reasons to go against the findings of the Courts below. Since



proper issues have been framed and the Courts below have decided the issues on the basis of appreciation of oral and documentary evidence, there is no illegality or infirmity found in the Judgment and Decree of the Courts below.

16. As a result, the Second Appeal deserves dismissal and accordingly, the same is dismissed and the Judgment and Decree passed by the learned Subordinate Judge, Srivilliputhur, in A.S.No.41 of 2010, dated 19.01.2016, confirming the Judgment and Decree in O.S.No.165 of 2002, dated 28.04.2010, on the file of the learned Additional District Munsif, Srivilliputhur, is affirmed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Srivilliputhur.
2. The Additional District Munsif,
Srivilliputhur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.K.VAMANAN, ADVOCATE IN SR No. 47633
+ 1 CC TO Mr.K.SUDALAIYANDI, ADVOCATE IN SR No. 47516

PMU
TE/KKR/SAR-2 : 16/03/2018 : 5P/7C

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