



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.374 of 2017

and

C.M.P.(MD)No.7950 of 2017

Ayyadurai

... Appellant/Appellant/Plaintiff

-Vs-

1.Chinna Gurusamy

2.Gurusamy

... Respondents/ Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.36 of 2013 on the file of the Sub-Court, Kovilpatti, dated 02.07.2015, confirming the judgment and decree passed in O.S.No.217 of 2008 on the file of the District Munsif Court, Kovilpatti, dated 06.10.2012.

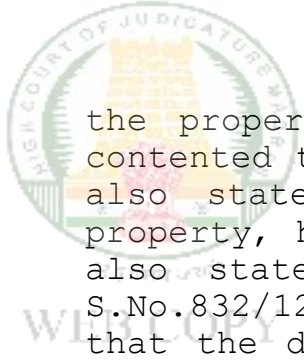
For Appellant :Mr.T.Selvan

JUDGMENT

This appeal has been filed against the judgment and decree passed in A.S.No.36 of 2013 on the file of the Sub-Court, Kovilpatti, dated 02.07.2015, confirming the judgment and decree passed in O.S.No.217 of 2008, on the file of the District Munsif Court, Kovilpatti, dated 06.10.2012.

2.The plaintiff in O.S.No.217 of 2008, on the file of the District Munsif Court, Kovilpatti, is the appellant in this appeal. The case of the plaintiff is that he purchased the suit 1st schedule under a document of sale dated 04.09.2006 from one Karuthapandian and Pitchaiah, who are the sons of one Chellaiah Thevar. It is stated that the suit property was the ancestral property of his vendors. It is the further case of the plaintiff that he is a daily wager and used to stay away from the native village. It is further stated in the plaint that the plaintiff was absent from 10.05.2007 from his native village and that the defendants have encroached into a portion of the plaintiff's property, which is described as suit second schedule property, measuring an extent of 5 x 28.50 feet. Stating that the defendants have no manner of right in respect of the suit property, the appellant states that he was constrained to file the suit.

3.In the written statement filed by the defendants, the title of the plaintiff is specifically denied. The nature and character of



the property was also disputed by the defendants. It is further contented that the vendors of the plaintiff have no right and it is also stated that the plaintiff with an intention to grab the property, has obtained a sale deed, showing wrong boundaries. It is also stated that the defendants are in enjoyment of land in S.No.832/12 and the adjacent lands. It is the case of defendants that the disputed property, which is claimed by the plaintiff, is situated in S.No.832/10, measuring 8 ft x 60 ft, which is a Government vacant land as per revenue records and that the same is enjoyed by public as a common path way. It is the further case of the defendants that the plaintiff has made an attempt to put up a compound wall and that the suit has been filed when his illegal attempt was quelled.

4.The plaintiff has produced Ex-A1, the sale deed, under which he claims title. The plaintiff examined himself as PW1 and examined two other witnesses. On the side of first defendant, three witnesses were examined and the second defendant has examined himself as PW-2. The defendants have marked 12 documents. An Advocate Commissioner was also appointed and he submitted his report along with plan. The trial Court after finding that the property in S.No.832/10 was originally shown as a vacant land and that it was not registered in the name of the plaintiff's predecessor-in-interest, held that the plaintiff has not proved his title to the disputed property. The trial Court found that the plaintiff himself has admitted that he purchased the property covered by streets on the northern side and south side. From the evidence of PW-1 himself, the trial Court has recorded a finding that the plaintiff's case is not acceptable and that the case of the defendants that Ex-A1 has been obtained by the plaintiff fraudulently by showing wrong boundaries. After considering the Advocate Commissioner's report and plan, the trial Court specifically held that the plaintiff's predecessor-in-interest had no right in respect of the suit property and that the plaintiff has not produced any other documents to prove the title of his predecessor-in-interest and the suit was ultimately dismissed, on the basis of findings recorded by the trial Court.

5.Aggrrieved by the judgment and decree of the trial Court, the plaintiff has preferred an appeal in A.S.No.36 of 2013 on the file of the Sub-Court, Kovilpatti. The lower appellate Court also after considering the evidence and the points raised by the plaintiff / appellant in detail, dismissed the appeal by judgment and decree dated 02.07.2015. Aggrrieved by the same, this second appeal has been preferred by the plaintiff. In the memorandum of grounds, the learned Counsel for the appellant has raised the following substantial questions of law:

(a)Whether the findings of the Court below are vitiated by its failure to consider the admission of DW1?

(b)Whether the Courts below are correct in dismissing the suit without properly analyzing the Ex-A1 and B1 whether any path way is situated or not?



(c) Whether the Courts below are correct in dismissing the suit without properly appreciating the oral and documentary evidence and commissioner's report and plan in a report and perspective manner?

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(d) Whether the Courts below are correct in dismissing the suit when the pathway is not proved by the respondents through cogent oral and documentary evidences since the burden of proof shifts on the respondents/defendants?

(e) Whether the Courts below are correct in dismissing the suit when the plaintiff proved his case through cogent oral and documentary evidence?

6. It is well settled that this Court in a second appeal, cannot re-appreciate the evidence. The learned Counsel for the appellant though submitted that the trial Court has failed to advert to some of the admission of DW-1, he has not made any attempt to show what is that that admission of DW-1 and how that would vitiate the judgment and decree of Courts below. It is further submitted by the appellant that the appellate Court, on the basis of Ex-B1 accepted the defendants' case that there is pathway in the suit property. The learned Counsel for the appellant has not demonstrated before this Court as to how the judgment and decree of the Courts below are erroneous or unsustainable. It is well settled that the plaintiff in the suit has to prove his case. The appellant has prayed for declaration of title and for other reliefs based on assertion of title. He produced the document Ex-A1. Courts below have categorically held that the plaintiff's predecessor-in-interest have no title to the property. Hence, merely on the basis of EX-A1, the plaintiff cannot succeed. However, an attempt was made by the plaintiff before the lower Courts by pointing out that the defendants have not proved their case. It is to be noted that the defendants have stated that the suit property is a vacant land, belongs to the Government. Having regard to the physical features of the property noted down by the Advocate Commissioner and the boundaries located with reference to S.No.832/10, this Court is unable to find any error or infirmity or irregularity in the judgment and decree of the Courts below. Since the Courts below have concurrently held that the plaintiff has failed to prove his title, the plaintiff can succeed in the second appeal, only if there is any substantial questions of law to be decided in this second appeal. Inasmuch as the findings of the Courts below are concurrent, they are not suffering from any illegality or perversity, this Court find no reason to interfere. The questions of law raised are not appropriate and hence answered against the appellant. Hence, the second appeal is devoid of merits and liable to be dismissed. As a result, this second appeal is dismissed and the judgment and decree passed in A.S.No.36 of 2013 on the file of the Sub-Court, Kovilpatti, dated 02.07.2015, confirming the judgment and decree passed in O.S.No.217 of 2008 on the file of the District Munsif



Court, Kovilpatti, dated 06.10.2012 is affirmed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1.The Subordinate Judge, Kovilpatti.

2.The District Munsif, Kovilpatti.

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The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai (2 copies)

+1CC to Mr.T.Selvan, Advocate, SR.No. 52469

Judgment made in
S.A. (MD) No.374 of 2017
02.03.2018

cmr

AM/KK/SAR 4/26.04.2018/4P/6C