

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2019

Pronounced on :21.01.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.134 of 2000

1.Venugopal
2.Ramachandran
3.Kalyani

... Appellants/Respondents/defendant

Vs

1.Ponnusamy (Deceased)
2.AGP Sakunthala Ammal
3.AGP Senthamizh Selvi
4.AGP Muthukumaran
5.AGP Shanthi
6.AGP Sivakumar

... Respondents/ 2 to 6 LRS of deceased Plaintiff

RR2 - 6 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 14/12/2018 made in C.M.P.No.6 to 8 of 2009 in S.A.No.134 of 2000.

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Principal District Court, Cuddalore in A.S.No.34 of 1999 dated 17.09.1999 allowing the appeal preferred against the judgment and decree of the District Munsif Court, Cuddalore, in O.S.No.78 of 1998 dated 30.11.1998.

For Appellants : Mr.T.Ramakrishnan

For R1 : Died

For RR2-6 : Mrs.Radha Gopalan

JUDGEMENT

The defendants in O.S.No.78 of 1998 on the file of the District Munsif Court, Cuddalore, are the appellants herein. O.S.No.78 of 1998 (The District Munsif Court, Cuddalore):-

2.O.S.No.78 of 1998 had been filed by the plaintiff

Ponnusamy against three defendants namely, Venugopal, Ramachandran and Kalyani. The suit was originally filed as O.S.No.99 of 1994 before the Subordinate Court, Cuddalore and thereafter, it had been transferred to the District Munsif Court, Cuddalore and renumbered as O.S.No.78 of 1998.

3.The suit had been filed seeking a judgment and decree for declaration of the plaintiff's title to the B-schedule property in the plaint and for recovery of possession after removing the superstructure and for permanent injunction restraining the defendants from putting up any further construction. The B-schedule property was a portion in the North-West side of the A-schedule property. A-schedule property measured 12911 sq.ft in T.S.No.418/3, Ward No.14, Cuddalore.

4.According to the plaintiff, A-schedule property originally belonged to Mahalingam Gounder and his brother Rajaram. They sold the property to the plaintiff on 21.11.1977. The property was a vacant site. There were encroachments by third parties. The plaintiff filed O.S.No.679 of 1981 on the District Munsif Court, Cuddalore against the encroachers for recovery of possession. The suit was decreed on 07.07.1982. An appeal filed in A.S.No.48 of 1983 was also dismissed. The Second Appeal to the High Court was not admitted.

5.The plaintiff took possession of the A-schedule property on 16.04.1984. He then put up houses and rented out the same. Srinivasan, father of the first and second defendants and the husband of the third defendant, owned property to the West of the suit property. He was not entitled to any interest in the property of the plaintiff. He filed O.S.No.455 of 1985 on the file of the District Munsif Court, Cuddalore, against the plaintiff alleging that he was encroaching an area of 3*48 feet. In the suit, it had been declared that Srinivasan was entitled to East-West 113 feet and North-South 48 feet. His property is situated in T.S.No.417. The property of the plaintiff is situated in T.S.No.418/3. After the death of Srinivasan, the defendants filed E.P.No.431 of 1993 in O.S.No.455 of 1985 and unlawfully committed trespass by encroaching the property of the plaintiff. It is under these circumstances, that the suit had been filed for declaration of title with respect to the encroached portion and for permanent injunction from putting up further construction and for recovery of possession.

6.The second defendant filed a written statement, which was adopted by the first and third defendants. In the written statement, it was stated that their father Srinivasan filed O.S.No.455 of 1985 on the file of the District Munsif Court, Cuddalore for declaration of injunction in respect of property measuring East-West 113 feet and South -North 48 feet. It had been stated that the defendants had not encroached any portion in T.S.No.418/3. It was also stated that if at all there was

encroachment, the defendants have prescribed title by adverse possession. It was sought that the suit should be dismissed.

7. On the basis of the above pleadings, the learned District Munsif, Cuddalore, framed the following issues:-

1. Whether the plaintiff is entitled to the B-schedule property?
2. Whether the plaintiff is entitled for recovery of possession?
3. Whether the plaintiff is entitled for permanent injunction?
4. Whether sale deed dated 21.11.1997 is a true and valid document?
5. Whether the defendants have prescribed title by adverse possession?
6. Whether the suit had been properly valued?
7. To what other relief the plaintiff is entitled to?

8. During trial, the plaintiff Ponnusamy examined himself as PW1 and another witness Balu was examined as PW2 and the Advocate Commissioner Ravindran was examined as PW3. The plaintiff marked Exs.A1-A9. Ex.A1 is the title deed for the property dated 21.11.1977. Ex.A2 is the judgment copy in O.S.No.679 of 1981 dated 07.07.1982. Ex.A3 is the certificate of delivery of possession granted to the plaintiff. Ex.A4 is the Town Survey plan for T.S.No.418/3. Ex.A5 is the judgment copy in O.S.No.455 of 1985 dated 27.01.1988. Ex.A6 is the judgment in A.S.No.47 of 1989 dated 15.09.1989. Exs.A8 and A9 are the judgment and decree copy in A.S.No.48 of 1983 dated 17.08.1983. The second defendant Ramachandran examined himself as DW1 and another witness Annamalai was examined as DW2. The defendants marked Exs.B1-B5. Exs.B1 and B2 were the pleadings in O.S.No.455 of 1985. Ex.B3 is the Commissioner's report and sketch in I.A.No.615 of 1987 in O.S.No.455 of 1985. Ex.B4 is the judgment copy in O.S.No.455 of 1985 dated 27.01.1989. The report of the Advocate Commissioner was marked as Ex.C1 and his sketch was marked as Ex.C2. The Surveyor plan was marked as Ex.C3.

9. On the basis of the oral and documentary evidence, the learned District Munsif found that the plaintiff was entitled for a declaration of title over the B-schedule property. It was also found that the defendants have encroached into the suit property. Since the encroachment was not prevented, the plaintiff was declared entitled to receive the compensation amount from the defendants. It was specifically found that the plaintiff's property was in T.S.No.418/3 and the defendants' property was in T.S.No.417. In T.S.No.417, the defendants were

entitled to East-West 113 feet and North-South 48 feet. It was also found as a fact that the defendants had encroached into T.S.No.418/3. However, since this had not been objected by the plaintiff, it was held that though the plaintiff was entitled for declaration of title, he was entitled only for compensation for the area encroached by the defendants.

A.S.No.34 of 1999 (The Principal District Court, Cuddalore):-

10.Challenging the judgment, particularly with respect to the denial of grant of recovery of possession, the plaintiff filed A.S.No.34 of 1999 before the Principal District Court, Cuddalore. It is significant to point out that the defendants did not file any cross appeal against the grant of declaration of title in favour of the plaintiff.

11.A.S.No.34 of 1999 came up for consideration before the Principal District Judge, Cuddalore on 17.09.1999. The learned Principal District Judge, reappraised the evidence and framed points for consideration. The learned Principal District Judge, found that Ex.B5 is the certified copy of the plaint in O.S.No.455 of 1985 and the description of the property in that suit related to T.S.No.417. Ex.B4 was the copy of judgment. In Ex.B3, the report of the Commissioner in O.S.No.455 of 1985, the Town Survey number was not given. It was found that in the written statement, the defendants had stated that if there was any encroachment they had prescribed title by adverse possession. However, the learned Principal District Judge, rejected that contention of the defendants and stated that the plaintiff was entitled for declaration of title and was also entitled for recovery of possession. Consequently, the Appeal was allowed.

S.A.No.134 of 2000:

12.The defendants in the suit have filed the present Second Appeal. The Second Appeal had been admitted on 01.11.2000, on the following three substantial questions of law:

1.Whether the court below did not erred the finding that the previously instituted suit did not refer to the suit property by reference survey number only when the identity of the disputed property in both the suits was admitted to be the same with reference to the boundaries?

2.Whether the plaintiff was not barred by estoppel and acquiescence in not objecting to the alleged construction for nearly 10

years prior to the institution of the suit and hence not entitled to the discretionary relief of mandatory injunction?

3. Whether the defendants have not prescribed title to the suit property by adverse possession having regard to the specific contention that the construction over the suit property had been in existence from 1902 itself free of any obstruction either by the plaintiff or by his predecessors?

13. The suit had been filed by the plaintiff seeking declaration of title and recovery of possession and also for permanent injunction restraining further construction to be put up. The property involved is in T.S.No.418/3. The defendants' property is in T.S.No.417. The property of the defendants measured East-West 113 feet and North to South 48 feet. They are not entitled to anything more. They have been granted decree with respect to that property in O.S.No.455 of 1985 by the learned Principal District Munsif, Cuddalore. That was a suit filed by Srinivasan, the father of the first and second defendants and husband of the third defendant.

14. The present suit had been filed with respect to T.S.No.418/3. The learned District Munsif, Cuddalore, found that the plaintiff was entitled for declaration of title. This has not been challenged by the defendants by filing any appeal. Consequently, the finding of the learned District Munsif, that the plaintiffs are entitled for declaration of title has to be confirmed. With respect to recovery of possession, the learned District Munsif, found that the plaintiff had acquiesced the encroachment of the defendants when they put up construction. Both the Courts below have consistently found that the defendants had encroached into T.S.No.418/3 which is the property of the plaintiff. The learned District Munsif did not grant recovery of possession only on the ground that the plaintiff had acquiesced the construction of the defendants. This reasoning of the District Munsif, has been rejected by the First Appellate Court. I hold that there cannot be any acquiescence of an illegal act of encroachment.

15. In the written statement, the defendants have also stated that if there is any encroachment they have prescribed title by adverse possession. To claim adverse possession, hostility to the interest of the plaintiff over continuous period of time has to be established. By instituting the suit, the plaintiff has asserted his title. There have been earlier litigations between

both the parties for a number of years. They have challenged each others' title. The stand of the defendants has to be rejected. The declaration of title granted by the Principal District Munsif, in favour of the plaintiffs has not challenged by defendants themselves. Consequently, that aspect has to be upheld. With respect to the recovery of possession, as a fact, the First Appellate Court found that the defendants have encroached into the property of the plaintiff and consequently granted recovery of possession.

16.The first substantial question of law was with respect to the earlier suit in O.S.No.455 of 1985. That suit was with respect to T.S.No.417 and present suit is with respect to T.S.No.418/3. Consequently, the finding in that suit will not have any bearing on the issues raised in the present suit.

17.With respect to the second substantial question of law, I hold that there cannot be any acquiescence of an illegal act of encroachment. Acquiescence is a loose term used by the learned District Munsif, and this has been correctly rejected by the learned Principal District Judge.

18.The third substantial question of law was with respect to prescription of title by adverse possession. I hold that the plaintiff asserted his title continuously and consequently, there cannot be any claim for prescribing title by adverse possession.

19.In view of all these facts, I hold that the Second Appeal has to fail. Accordingly, the Second Appeal is dismissed, with costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Smv

To

- 1.The Principal District Court,
Cuddalore.
- 2.The District Munsif, Cuddalore.

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3.The Section Officer, VR Section,
Madras High Court.

+lcc to Mr.S.Radhagopalan, Advocate, S.R.No. 5225

S.A.No.134 of 2000

BS (CO)
GN(29/08/2019)



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