

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.1115 of 2000
and
C.M.P.No.10368 of 2000

1. Sami Reddy (deceased)
2. Padmavathi Ammal
3. Vijaya
4. Rajalakshmi
5. S.Kothandan
6. Kala

(Appellants 3 to 6 brought on record as
LRs of the deceased First Appellant
viz Sami Reddy vide Order of this Court
dated 11.08.2017 made in
CMP.No.11117 to 11119 of 2017 in
S.A.No.1115 of 2000)

... Appellants

Vs.

1. Shanmugam @ Munusamy
2. Munusamy
3. Pichandi
4. Ganesa Gounder

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the judgment and decree passed in AS.49 of 1997 on the
file of the Subordinate Judge, Vellore dated 21.09.99 reversing
the judgment and decree passed in OS No.410/92 on the file of
the District Munsif, Ranipet dated 13.09.1996.

For Appellants

: Mr.G.Suriya Narayanan

For Respondents

: Mr.K.Thangavelu for R1 and R2
R3-Dismissed

: R4- Set exparte

JUDGMENT

This Second appeal has been filed by the plaintiffs against the judgment and decree passed by the Sub Judge, Vellore in A.S.No.49 of 1997 dated 21.09.1999 reversing the Judgment and decree passed by the District Munsif, Ranipet in O.S.410 of 1992 dated 13.09.1996.

2. The appellants herein have filed a suit in O.S.No.410 of 1992 on the file of the District Munsif, Ranipet to restrain the defendants and their men by means of permanent injunction from interfering with their peaceful possession and enjoyment of the suit "B" schedule property. The learned District Munsif, Ranipet, by the judgment dated 13.09.1996 had decreed the suit as prayed for. Aggrieved by the same, the defendants 2 to 4 had filed an appeal in AS.No.49 of 1997 on the file of the Sub Judge, Ranipet. The learned Sub Judge, Ranipet by the Judgment dated 21.09.1999 had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit. However, he directed the parties to bear their respective cost. Feeling aggrieved, the plaintiffs have filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the Trial Court.

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

The Suit " A " schedule property was purchased by one Chinnammal and her sister Salammal under a registered sale deed dated 22.05.1932. The said Chinnammal died issue less and the first plaintiff is the son of another sister Salammal and the second plaintiff is the wife of the first plaintiff. After the death of Chinnammal and Salammal, the first plaintiff succeeded to the suit property along with his brother one Krishnan who is also no more. His sons have conveyed the half share of the property to the second plaintiff under the registered document dated 12.10.1982 and from that date onwards, the plaintiffs are in possession and enjoyment of the suit " A " schedule property as absolute owners. On the north of the suit " A " schedule property, there is a lane by name Narasam Lane and the same has been shown as " B " schedule property in the plaint schedule. Further, to show the said lane, a rough plan also enclosed with the plaint. The plaintiffs have been in exclusive possession and enjoyment of the said lane for more than 60 years and thereby perfected title by adverse possession. On the east of aforesaid lane, the property of the first defendant is situated and the other defendants having house properties in the north and west of the aforesaid lane and they are not having any right over the said lane. On 10.08.1992, the

defendants tried to interfere with the peaceful possession and enjoyment of the " B " schedule property (lane) and hence the plaintiffs were constrained to file the above suit for the relief of permanent injunction.

5. The first defendant remained exparte. The defendants 2 to 4 alone contested the suit by filing written statement.

6. The averments made in the written statement filed by the second defendant and adopted by the defendants 3 and 4 are in brief as follows:

It is incorrect to state that the suit " A " schedule property was purchased by Chinnammal and Salammal and after the death of Chinnammal, the first plaintiff and his brother Krishnan, succeeded to the property and subsequently, the said Krishnan's sons had sold half share of the property in favour of the second plaintiff on 12.10.1982. The said Narasam lane is a common property of the villagers and that it is a common way for all the villagers for going to their fields on the southern side of the village and hence the said lane does not conform part of the suit " A " schedule property. The suit is bad for misjoinder and non joinder of parties and therefore the defendants 2 to 4 prayed to dismiss the above suit.

7. Based on the aforesaid pleadings, the learned District Munsif, Ranipet had framed necessary issues and tried the suit. During Trial on the side of the plaintiffs, the first plaintiff was examined as P.W.1 and the second plaintiff was examined as P.W.2. They have marked Exs.A1 to A3 as exhibits. On the side of the defendants, the second defendant was examined as D.W.1 and the third defendant was examined as D.W.2 and they also examined two more witnesses as D.W.3 and D.W.4. However, they have not marked any exhibits on their side.

8. The learned District Munsif, Ranipet after considering the materials placed before him found that the suit " B " schedule property (Narasam Lane) is in exclusive possession and enjoyment of the plaintiffs and accordingly, he decreed the suit as prayed for. Aggrieved by the same, the defendants 2 to 4 had filed an appeal in A.S.No.49 of 1997 and the learned Sub Judge, Ranipet had allowed the said appeal and set aside the judgment and decree passed by the Trial Court and dismissed the suit. Feeling aggrieved, the plaintiffs have filed the present second appeal.

9. This Court at the time of admitting the second appeal has formulated the following substantial question of law:

" Whether the judgment of the lower appellate court is vitiated on the ground of non consideration of the recitals in Ex.A17? "

10. During pendency of the second appeal, the first appellant died and his legal representatives have been impleaded as appellants 3 to 6.

11. Heard Mr.G.Suriya Narayanan, learned counsel for the appellants and Mr.K.Thangavelu, learned counsel for the first and second respondents.

12. Substantial Question of Law :

The learned counsel for the appellants has submitted that the first respondent remained exparte and the defendants 2 to 4 alone contested the case by filing written statement. He further submitted that in the written statement, the defendants 2 to 4 have not specifically denied the averments made in the plaint that the plaintiffs are in exclusive possession of the suit " B " schedule property. He further submitted that the PWs 1 and 2 have categorically deposed in their evidence that they are in exclusive possession and enjoyment of the suit " B " schedule property and during their cross examination, the aforesaid statements were not denied by the defendants 2 to 4. He further submitted that the defendants 2 to 4 have not proved that it is a common lane. He further submitted that the first appellate court gave a finding that it is neither separate property of the plaintiffs nor it is a common lane as contended by the defendants 2 to 4 and that being so, the first appellate court should not have reversed the findings of the Trial Court and therefore he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate Court and restore the judgment and decree passed by the Trial Court.

13. Per Contra, the learned counsel for the respondents 1 and 2 has submitted that the plaintiffs are claiming right over the suit "B " schedule property through Exs.A.1 and A.3 and in the said documents, it is clearly stated that the properties sold under the said documents were excluding Narasam lane and that being so, the plaintiffs cannot claim exclusive right over the said lane. He further submitted that in the plaint, the plaintiffs have pleaded that they are in exclusive possession of the suit " B " schedule property (Narasam Lane) for more than sixty years and perfected title by adverse possession and they have not produced any documentary evidence to prove the same. He further submitted that the Trial Court, without taking into consideration of all the aforesaid facts, has mechanically decreed the suit, but the first appellate court has rightly interfered in the findings of the Trial court and dismissed the suit. In the said factual findings, this Court cannot interfere and therefore he prayed to dismiss the second appeal.

14. A perusal of Ex.A.1 shows that the predecessors in title of the plaintiffs namely Chinnammal and Salammal had purchased the suit " A " schedule property alone. While describing the property, it is clearly stated that the suit properties situated on the west of Narasam lane. Therefore, it is clear that under Ex.A.1, the said Chinnammal and Salammal have purchased the property excluding the said narasam lane. The plaintiffs also have not claimed in the plaint that the said Chinnammal and Salammal had purchased the suit " B " schedule property also. It is their case that since they are in exclusive possession of the suit " B " schedule property for more than sixty years, they have perfected title by adverse possession to the " B " schedule property. Therefore, the burden is upon them to prove that they have perfected title by adverse possession. When the plaintiffs are claiming adverse possession, first, they have to say, who is the original owner of the said lane. In this case, the plaint is silent with regard to the said fact. The first appellate court after taking into consideration of oral and documentary evidence adduced by both parties has come to the conclusion that the said lane is neither a private lane nor common to both the parties. It has held that the said lane might have been belonging to local body and hence, the plaintiffs cannot claim exclusive right over the said lane and finally dismissed the plaintiffs' suit. In the said factual findings, this Court cannot interfere. Accordingly the substantial question of law is answered against the appellants.

15. In the result, the second appeal is dismissed confirming the judgment and decree passed by the first appellate court. Parties are directed to bear their respective costs. Consequently, connected miscellaneous appeal is closed.

Sd/-

Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

Vv

To

1. The District Munsif,
Ranipet.
2. The Subordinate Judge,
Vellore

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

+lcc to Mr.K.Thangavelu, Advocate SR.No.35660

S.A.No.1115 of 2000
and
C.M.P.No.10368 of 2000

RGN (CO)
GMY (09/09/2019)



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