

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2019

PRONOUNCED ON : 20.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.729 of 2001
and
CMP.No.7650 of 2001

Dhanapal ... Appellant/1st Respondent

Vs.

1.Seetharaman
2.Pachaiappan
4.Ariputhiri Gounder
Respondents

Memo is Recorded dt-19/03/18 R3 is unnecessary party vide court order dt-19/3/18 in SA.No.729/01(MDIJ)

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 25.07.2000 and made in A.S.No.28 of 1999 on the file of the Principal Subordinate Judge, Tindivanam reversing the judgment and decree dated 25.03.1999 and made in O.S.No.234 of 1994 on the file of the Principal District Munsif, Tindivanam.

For Appellant : M/s.V. Raghavachari
M/s. V. Srimathi

For Respondents : R1, R2 and R4 Set exparte
R3 unnecessary party

JUDGMENT

This second appeal has been filed by the first defendant against the judgment and decree passed by the Principal Sub-Judge, Tindivanam, in A.S.No.28 of 1999 dated 25.07.2000 reversing the judgment and decree passed by the Principal District Munsif, Tindivanam, in O.S.No.234 of 1994 dated 25.03.1999.

2. The respondent herein had filed a suit in O.S.No.234 of 1994 on the file of the Principal District Munsif, Tindivanam, to declare that he is the absolute owner of the suit property and for permanent injunction to restrain the defendants, their men, agents, etc., from interfering with his peaceful possession and enjoyment of the suit property. The learned Principal District Munsif, Tindivanam by the

judgment dated 25.03.1999 had dismissed the suit with costs. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.28 of 1999 on the file of the Principal Sub-Judge, Dindivanam. The learned Principal Sub-Judge, Tindivanam by the judgment dated 25.07.2000 had allowed the said appeal with costs and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. Feeling aggrieved, the first defendant had 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 property originally belonged to one Ramasamy Gounder and his sons. On 16.09.1932, one Ramasamy Iyer had purchased the suit property from the said Ramasamy Gounder and his sons along with other properties. The said Ramasamy Iyer was in peaceful possession and enjoyment of the suit property by storing manure, hay stock and also by putting up a thatched shed in the suit property. On 29.06.1942, the plaintiff's father Nataraja Gounder had purchased the suit property from the sons of Ramasamy Iyer under a registered sale deed. Though the plaintiff's father had purchased the property measuring East-West 15 yards and North-South 13 yards in the suit survey field, the plaintiff and his family has been enjoying the property measuring North-South 44 feet and East-West 40 feet. At the time of family partition, the suit property was allotted to the share of the plaintiff. Since the plaintiff and his predecessor-in-title have been in possession and enjoyment of the suit property for over 60 years, the plaintiff got title over the suit property by prescription also. The first defendant is having property on the western side of the suit property. The first defendant has no right or title over the suit property. The first defendant colluded with the other defendants,

attempted to trespass into the suit property denying the title of the plaintiff. Hence, the plaintiff was constrained to file the above suit for the relief of declaration and permanent injunction.

5. The averments made in the written statement filed by the first defendant and adopted by the fourth defendant are in brief as follows:

The allegation that one Ramasamy Iyer had purchased the suit property is not correct. It is also incorrect to say that the plaintiff's father Nataraja Gounder had purchased 15 yards East-West and 13 yards North-South from the said Ramasamy Iyer on 29.06.1942. In respect of the suit property, there was a suit between one Thayammal and Ramasamy Gounder. The said Ramasamy Gounder is the alleged vendor of Ramasamy Iyer. The said suit was filed by Thayammal before the District

Munsif, Gingee in O.S.No.607 of 1923. In the said suit, the said Thayammal and the said Ramasamy Gounder entered into a compromise and as per the said compromise, Ramasamy Gounder was entitled to 25 feet East-West and 33 feet North-South in the suit property and the remaining western portion was allotted to Thayammal. Accordingly, the compromise decree was passed. Therefore, the said Ramasamy Gounder was not entitled to execute a sale deed in respect of the property in which he did not have title. Hence, the alleged vendor of the plaintiff's father would not derive title in respect of the suit property which was allotted in favour of Thayammal. Since the plaintiff's father had purchased excessive property than his vendor's right, the plaintiff is not entitled to claim right over the same. The alleged possession by the plaintiff is totally false. Even in the year 1923, it was admitted that Thayammal alone was in possession of the remaining property which lies on the western side of the portion allotted to the said Ramasamy Gounder. Even if Ramasamy Gounder executed any sale deed in respect of the property in which neither he had title nor possession, the same is not binding upon anyone. Since the plaintiff claimed title through the said Ramasamy Gounder, he is not having any right over the suit property. Therefore, the plaintiff is estopped from saying that the predecessor-in-title was in possession of the suit property. The plaintiff was never in possession of the property which was allotted to Thayammal. The fourth defendant's father had purchased the suit property from the said Thayammal under a registered sale deed dated 14.05.1926. From the fourth defendant, the first defendant had purchased the suit property under a registered sale deed dated 28.06.1983. Since the first defendant and his predecessors-in-title have been in continuous possession, they perfected title by prescription also. Therefore, the defendants 1 and 4 prayed to dismiss the suit.

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

The suit property was purchased by the first defendant with his own fund. In the said property, the defendants 2 and 3 are not having any right. The defendants 2 and 3 are unnecessary parties. Therefore, the defendants 2 and 3 prayed to dismiss the suit.

7. Based on the aforesaid pleadings, the Principal District Munsif, Tindivanam, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and also examined three more witnesses as PW2 to PW4. He had marked Exs.A1 to A8 as exhibits. On the side of the defendants, the first defendant examined himself as DW1 and also examined one more witness as DW2. They also marked Exs.B1 to B3 as exhibits on their side. The Advocate Commissioner's report and plan were marked as Exs.C1 and C2 respectively.

8. The learned District Munsif, after considering the materials placed before him, found that as per the compromise decree passed in O.S.No.607 of 1923 on the file of the District Munsif, Gingee, the suit property was allotted to one Thayammal and from the said Thayammal, the fourth defendant's father, Kuppusamy Gounder had purchased the same under Ex.B2 dated 14.05.1926. He further found that after the death of the said Kuppusamy Gounder, his son (fourth defendant) had sold the suit property to the first defendant under Ex.B3 sale deed dated 28.06.1993 and from that date onwards, the first defendant is in possession and enjoyment of the suit property. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.28 of 1999 on the file of the Principal Sub-Judge, Tindivanam. The learned Principal Sub-Judge, Tindivanam, had allowed the said appeal and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. Feeling aggrieved, the first defendant had filed the present second appeal.

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

"a) Whether the order of the Lower Appellate Court in holding that Ex.B1 is not binding on the plaintiff, is not erroneous?

b) Whether the Lower Appellate Court was right in ignoring the boundary recitals in Ex.B2, which is dated 14.05.1926 and which is prior to Ex.A1 and Ex.A2, which are dated 16.09.1932 and 29.06.1942?"

10. Even though notice was served on the respondents 1, 2 and 4 on 22.06.2001 and their names also printed in the cause-list, they have not appeared either in person or through counsel. Hence, the respondents 1, 2 and 4 called absent and set exparte. In so far as the third respondent is concerned, as per the order passed by this court dated 19.03.2018, he is an unnecessary party. Hence, after hearing the arguments of the learned counsel for the appellant and perusing the records, judgment is passed.

11. Substantial questions of law a and b:

The learned counsel for the appellant has submitted that the First Appellate Court erred in reversing the well considered Judgment of the trial court. She further submitted that Ex.B1 would show that in the year 1923, in respect of the suit property, one Thayammal had filed a suit in O.S.No.607 of 1923 on the file of the District Munsif, Gingee, against one Ramasamy Gounder and his two sons and in the said suit, a compromise was arrived at and as per the said compromise, the property measuring 20 feet East-West and 33 feet North-South alone was allotted to the share of the said Ramasamy Gounder

and his sons and the remaining properties were allotted to the said Thayammal. She further submitted that the plaintiff's predecessor-in-title viz., Ramasamy Iyer had purchased the property from the aforesaid Ramasamy Gounder and his sons and since the said Ramasamy Gounder and his sons got only 20 feet x 33 feet of the land as per Ex.B1 decree, the said Ramasamy Gounder and his sons could not have title more than 20 feet x 33 feet of the land but in Ex.A1, larger extent has been mentioned and the said sale deed will not have binding force beyond 20 feet x 33 feet of the land. She further submitted that the First Appellate Court ought not to have held that the property mentioned under Ex.B1 is not a suit property especially when the plaintiff has not specifically denied in his evidence that the suit in O.S.No.607 of 1923 not related to the present suit property. She further submitted that the First Appellate Court failed to consider that the plaintiff has not produced any documentary evidence to show his possession over the suit property and that the documents which were filed by the plaintiff are relating to the house which is situated adjacent to the suit property because admittedly the suit property is the vacant site of the plaintiff. She further submitted that the First Appellate Court failed to consider that PW1 in his evidence has admitted that he does not know what was the enjoyment made by the Ramasamy Gounder and his purchaser Ramasamy Iyer and therefore, she 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 and dismiss the suit.

12. As per the plaint schedule, the suit property is situated at Melperadikuppam village measuring East-West 15 yards, South-West 13 yards with the boundaries to the west of the street, to the north of the house of Kuppusamy and Kannamal and to the east of poramboke land and to the south of house of Thayammal, Gingee road in Natham Survey No.30/1, Melperadikuppam village, Tindivanam Taluk.

13. The plaintiff claims that his father Nataraja Gounder had purchased the suit property from one Ramasamy Iyer's sons under Ex.A6 sale deed dated 29.06.1942. His further case is that the said Ramasamy Iyer had purchased the said property from one Ramasamy Gounder and his sons under the original of Ex.A1 dated 16.09.1932.

14. The case of the first defendant is that in respect of the suit property one Thayammal had filed a suit in O.S.No.607 of 1923 on the file of the District Munsif, Gingee against the original owners of the suit property viz., Ramasamy Gounder and his sons and in the said suit, a compromise was arrived at and in pursuance of the said compromise, a decree was passed on 07.10.1924 and as per the said compromise decree, the said Ramasamy Gounder and his two sons were allotted East-West 25 feet and North-South 33 feet land and the remaining lands were allotted to the said

Thayammal. In support of the said contentions, he filed a suit extract of O.S.No.607 of 1923 on the file of the District Munsif, Tindivanam and marked as Ex.B1. His further case is that the said Thayammal had sold the property which was obtained by her under Ex.B1 to the father of the fourth defendant viz., Kuppusamy Gounder under the original of Ex.B2 dated 14.05.1926. His further case is that after the death of the said Kuppusamy Gounder, his son (fourth defendant) had sold the suit property to him under Ex.B3 dated 28.06.1993.

15. Though in Ex.B1, the survey Number has not been mentioned, it cannot be disputed that there was a suit between Thayammal and Ramasamy Gounder and his sons in O.S.No.607 of 1923 on the file of the District Munsif, Gingee and in the said suit, a compromise decree was passed on 07.10.1924. In the said compromise decree, East-West 20 feet and North-South 33 feet on the eastern side was allotted and the remaining property which is situated on the western side was allotted to the said Thayammal.

16. In Ex.B2, the said Thayammal had specifically stated that the property which was sold under the said document is situated on the west of the property which was allotted to the said Ramasamy Gounder under the decree. As already pointed out that in Ex.B1, it has been stated that on the eastern side, Ramasamy Gounder and his sons were allotted and on the western side, Thayammal was allotted.

17. It is seen from the Ex.B1 and A1 that Ramasamy Gounder had two sons viz., i) Rajamanickam Gounder and ii) Nataraja Gounder. The first defendant is the son of the said Rajamanickam Gounder and the plaintiff is the son of the said Nataraja Gounder. In such a case, the plaintiff cannot take a plea that he does not know about the compromise decree passed in O.S.No.607 of 1923. Since the plaintiff's father and his grand father were the parties in O.S.No.607 of 1923, he would have had knowledge about Ex.B1, but it appears that he willfully took a plea that he does not know about the Ex.B1. It is not the case of the plaintiff that the Ex.B1 was passed relating to some other property. Therefore the findings of the first appellate court that Ex.B1 is relating to some other property is not correct. A combined reading of Ex.B1, B2 and Ex.A1 would lead to an inference that the suit in O.S.No.607 of 1923 was filed relating to the present suit property only and other adjacent properties.

18. The trial court had held that under Ex.B1, the entire suit property of the present suit was allotted to Thayammal and since the said Thayammal had sold the same to the father of the fourth defendant and the first defendant had purchased the same from the fourth defendant, the first defendant is the owner of the suit property. The said finding is incorrect, because the first defendant himself had admitted in his written statement that as per the compromise decree,

the plaintiff's predecessors in title viz., Ramasamy Gounder was entitled to 25 feet East-West and 33 feet North-South in the suit property. Since the first defendant had admitted in his written statement that the plaintiff's predecessor in title got right to 25 feet East-West and 33 feet North-South in the suit property, the trial court ought to have granted decree atleast to that extent, but it had dismissed the entire suit. The first appellat court, on the contrary, took a view that Ex.B1 is not related to the present suit property and the said view is also not correct. As already pointed out that the plaintiff has not specifically pleaded or adduced any evidence that Ex. B1 is not related to the suit property.

19. As already pointed out that Ex.B1 is certainly relating to the suit property and as per Ex.B1, the said Ramasamy Gounder and his sons were entitled to 20 feet East-West and 33 feet North-South land, but the first defendant himself had admitted in his written statement that the said Ramasamy Gounder was entitled to 25 feet East-West and 33 feet North-South in the suit property, and it shows that the said Ramasamy Gounder and his successors including the plaintiff have been in possession to the extent of 25 feet East-West and 33 feet of North-South in the suit property. Therefore, this court is of the view that the plaintiff is entitled to the decree to 25 feet East-West and 33 feet North-South in the suit property and in respect of the remaining extent, the suit has to be dismissed. Accordingly, the substantial questions of law are answered.

20. In the result, the second appeal is partly allowed. Consequently, connected miscellaneous petition is closed. The judgment and decrees passed by the courts below are set aside and the suit in O.S.No.234 of 1994 is partly decreed as follows:

i) that it is declared that the plaintiff is the absolute owner of the property measuring 25 feet East-West and 33 feet North-South in the suit property.

ii) that the defendants are restrained by means of permanent injunction from interfering with the plaintiff's peaceful possession and enjoyment of the aforesaid extent of the suit property.

iii) that the suit is dismissed in respect of the remaining extent in the suit property and

iv) that considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gv

To

1.The Principal Subordinate Judge,
Tindivanam.

2.The Principal District Munsif,
Tindivanam.

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.80915

S.A.No.729 Of 2001
and
CMP.No.7650 of 2001

RV(CO)
CB(27/07/2020)



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