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Pronounced on : 10.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.740 of 2008 &
M.P.No.1 of 2008

1. Mr.Byilvan @ Ramasamy
2. Mr.Balakrishnan
3. Mrs.Palaniammal
4. Mrs. Lakshmi (Deceased)
5. Ms.Anandhi
[5th appellant brought on record as
LR of the deceased
4th appellant vide Order of the
Court dated 01/03/2019
made in CMP.No.4971 of 2019 in
S.A.No.740 of 2008 NSKJ]

... Appellants/Appellants/plaintiffs

Vs

Mr.S.Mathiazhagan

... Respondent/Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree of the Additional District Judge (Fast Tract Court), Namakkal dated 31.01.2008 in A.S.No.56 of 2004 confirming the judgment and decree of the District Munsif cum Judicial Magistrate, Paramathy dated 28.11.2003 in O.S.No.203 of 1995.

For Appellants : Mr.P.Valliappan

For Respondent : No appearance



JUDGMENT

Aggrieved over the concurrent finding of the Courts below dismissing the suit filed by the plaintiff for declaration and permanent injunction, this Second Appeal has been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The suit property has been originally purchased by the first plaintiff. His property has been described as AFID in the plaint plan. The house of the plaintiff is shown as EFGH. The defendant without any right in the portion shown as FBCI has put up a pail and also erected fence RQPBC in the plaint plan. Hence, the suit for declaration and permanent injunction.

4. The defendant filed a written statement denying the entire allegation in the plaint. It is the contention of the defendant that the disputed property is in survey No.423/76 and the same belong to Sozhiya Vellalar Community and they are using the above land for their worship. The plaintiff was not in possession of the above property and the said pail was in existence from time immemorial and it has been used for their religious purpose. Hence, denied the contention of the plaintiff.

5. The trial Court framed the following issues for determination in the suit :

1. Whether the suit property belong to the plaintiffs?
2. Whether the suit property is in possession of the plaintiffs?
3. Whether the suit is bad for non joinder of necessary parties?
4. Whether the plaintiffs are entitled for declartion and injunction as prayed for?
5. To what relief the plaintiffs are entitled?



6. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.2 were marked. On the side of the defendant D.W.1 to D.W.3 were examined and Ex.B1 to B.5 were marked. The Commissioner Report has been marked as Ex.C.1 and Ex.C.2.

7. The trial Court has dismissed the suit. However, held that the plaintiff is entitled to 4 ft. right of way from their house to East West Street. The first appellate Court has also confirmed the finding of the trial Court. As against which the present second appeal has been filed.

8. The following substantial questions of law have been formulated in this Second Appeal :

1. Whether the Courts below are correct in law in holding that the appellants have not proved the plea of adverse possession, even without framing any issue regarding the same?

2. Whether the Courts below are correct in law in not rendering any finding regarding the possession of the suit property [FBCI portion] on the date of the suit?

3. Whether the Courts below are correct in law in eschewing Ex.C.1 to Ex.C.4 Commissioner's report and plan?

9. The learned counsel appearing for the appellants mainly contended that Ex.A.3, under which the suit property has been purchased by the plaintiff, the boundaries shown in the above document clearly show that the property absolutely belong to the plaintiff. Ex.A.1 also shows that the suit property belong to the purchasers in title. Hence, submitted that when the boundaries are tallied and extent is not mentioned, the boundaries will prevail over the extent and the plaintiff is entitled for declaration for the entire suit property.



10. There is no representation for the respondent.

11. The plaintiff is claiming right based on the sale deed Ex.A.2 and as well as on adverse possession. The disputed area is shown as FBCI in the plaint plan. There is no dispute with regard to the portion marked as ABIF and EHGH. The entire issue relate to the portion shown as FBCI. It is the contention of the plaintiff that the above properties also covered under Ex.A.2 purchased by them. Whereas, Ex.A.2, when carefully seen, except some boundaries shown in Ex.A.2, the measurement has not been shown in the document. Similarly, in Ex.A.1 also boundaries have not been given. Ex.A.1 infact shows that the plaintiffs' house entrance is towards south. But Ex.A.2 shows an extent of 1186 sq.ft. said to have been purchased by the plaintiff. East of Thangammal's house, South of East West Street, West of South North Street. Though two boundaries on the northern side and eastern side tally with the suit properties the other two boundaries have not been tallied.

12. It is the case of the defendant that the disputed area was used as a place of worship for Sozhiya Vellalar Community and the property has been ear marked as temple property. Further, it is the contention of the defendant that the above portion was used by the particular community and it was under the control of common temple. In particular, Sozhiya Vellalar Community was using the above place for religious purposes. The Commissioner Report Ex.C1 and Ex.C.2 also indicate that the above portion has been demarcated by a wooden fence and the construction was very much available. Ex.A.5 Adangal extract also clearly show that the above portion has been in possession of 'Kaman koil' and the same has been classified as common Koil poromboke. The trial Court has considered these documents and found that the above portion is in fact classified as a temple poromboke and used by the particular community. The trial Court and the first appellate Court have factually found these facts. However, the trial Court has considered the Commissioner's Report and has given 4 ft. right of way to the plaintiff to go to the northern side, i.e., East West Street. When the Courts below have factually, based on the above documents and particularly adangal extract, have found that the disputed property was never in possession of the plaintiff and it is used by a particular community for the religious purpose, certainly, the plaintiff is not entitled for any declaration, merely on the basis of east and north boundaries in her sale deed. Hence, I do not find any error or infirmity in the judgment of the trial Court and the substantial questions of law are answered against the appellants.



13. Accordingly, it is directed to include 4 ft. right of way from the plaintiff compound towards northern side to enter East West Street in the decree, so that the plaintiff can use that as a pathway without any hindrance. Except, the above modification, this Second Appeal is disposed of. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

vrc

To

1. The Additional District Judge,
FTC, Namakkal.

2. The District Munsif - cum - Judicial Magistrate,
Paramathy.

copy to
The Section Officer
VR Section
High Court, Madras-104

+1 cc to Mr.P.Valliappan Advocate sr35880

Second Appeal No.740 of 2008

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