

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:03.10.2018
Delivered on:08.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1944 of 2003
&
C.M.P.17753 of 2003

P.Subramani

...Appellant

Vs

Chinnasami

....Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.9 of 2002 on the file of the Principal Sub Judge, Erode dated 09.07.2003 reversing the Judgement and decree passed in O.S.No.5 of 1999 on the file of the Principal District Munsif Court, Erode dated 14.12.2001.

For Appellant : Mr.V.Anandhamurthy

For Respondent : Mr.M.Guruprasad

JUDGEMENT

The plaintiff is the appellant before this Court. The Second Appeal is filed challenging the Judgement and Decree in A.S.No.9 of 2002, on the file of the Principal Subordinate Judge, Erode, in and by which the learned subordinate Judge had reversed the Judgement and Decree of the Principal District Munsif, Erode, in O.S.No.5 of 1999.

2.The suit O.S.No.5 of 1999 was filed for a perpetual injunction restraining the defendant, his men and agents from interfering with the plaintiff's right of access for his vehicles, cattle and men from Kongu Engineering College road in the west to and from RSF.No.297/4 of Veppampalayam Village in the east through RSF.No.297/7 of the same village. The property comprised in RSF No.297/4 was described as the A-Schedule and the property comprised in RSF.No.297/7 was described as the B-Schedule to the suit property. For the sake of easy

understanding the parties are referred to in the same litigative status as in the suit O.S.No.5 of 1999.

3.Plaintiff's Case:

3.1.The case of the plaintiff is that one Chellammal was in occupation of the plot in RSF.No.216 (Which is now subdivided into RSF.No.297/4) of Veppampalayam Village. The subdivision was effected in the last Natham Land Revenue Settlement in the year 1992 and the patta was issued in respect of Survey No.297/4. On 27.08.1993, Chellammal sold the suit property to the Plaintiff under a registered sale deed. The plot of land also included a dilapidated building which is also sold to the plaintiff. The access for vehicles, cattle and men to and from the north-south Kongu Engineering College road in the west to the plaintiff's land in RSF.No.297/4 in the east was through 15 links wide east-west-strip of land comprised in RSF.No.297/7 which is the subdivision made in the last Natham Land Revenue Settlement.

3.2.It is the further case of the plaintiff that the defendant was in occupation of the land comprised in RSF.No.297/8 which is situated immediately to the south of RSF.No.297/7 and west of RSF.No.297/4. The plaintiff also contended that the defendant is now trying to encroach into RSF.No.297/7 by putting up construction and infact on 30.12.1998 the defendant had constructed north-south wall across RSF.No.297/7 thereby, denying the plaintiff's access to his lands in RSF.No.297/4 from the Kongu Engineering College. The plaintiff demolished the wall which has been built across RSF.No.297/7 and a police complaint was launched by the defendant and it is the case of the plaintiff that the police are conniving with the defendant therefore left with no other alternative the plaintiff is before this Court.

4.Defendant's Case:

4.1.The primary defense which has been put forward by the defendant was that no notice had been given to them prior to the Natham Land Revenue Settlement and therefore any order passed therein will not be binding on the defendant. In all other respects the defendant denied the allegations that have been contained in the plaint.

4.2.The defendant would contend that a plot measuring east-west 18 feet east-west on the north and south, north-south 32 feet on both sides within the following boundaries namely:

- i)North : by site belonging to one Kolandasamy
- ii)South : by East-West pathway leading to the house of Chellappagounder
- iii)East : by the land belonging to V.Chennimalai Gounder
- iv)West : by Kongu Engineering College road belonged to one Nallammal.

4.3. On 08.05.1969, Karuppanagounder purchased the lands from said Nallammal and was in possession of the same along with his sons Periaswamy and Chinnaswamy. The defendant by a registered sale deed dated 03.11.1993 had purchased the same from the said Periaswamy and Chinnaswamy and from the date of the purchase he has been in exclusive possession and enjoyment of the said property. This property was never used as an access to the plaintiff's property and it was within the defendant's property.

4.4. The defendant would therefore contend that the plaintiff had an alternative pathway which was situated immediately to the east of his lands which runs south then turn west and proceeds towards right up to the Kongu Engineering College road. The defendant would contend that he had come to know about Natham Land Revenue Settlement only when the plaintiff had obstructed his construction and he therefore pleaded for dismissal of the suit. An additional written statement was also filed by the defendant reiterating the defendant's contention put forward in the written statement.

5. Trial Court:

5.1. The learned Trial Judge had framed two primary issues and eight additional issues for consideration in the above suit. The plaintiff had examined himself as P.W.1 and had marked Ex.A.1 to Ex.A.4. The defendant in turn examined two witnesses D.W.1 and D.W.2 and marked Ex.B.1 to Ex.B.4. Apart from the above the Court Documents were also marked namely Court Document No.1 and 2. After elaborately considering the evidence on record both oral and documentary the learned Trial Judge came to the conclusion that the Survey No.297/7 had been reclassified as pathway in the resurvey scheme.

5.2. The Trial Court had also opined that the defendant had not produced a shred of evidence to show how his predecessors namely Periaswamy and Chinnaswamy had got right to the property. Therefore in the absence of such proof the Trial Court had decreed the suit as prayed for.

6. Appellate Court:

Challenging the Judgement and Decree of the learned Principal District Munsif Court, Erode in O.S.No.5 of 1999, the defendant had preferred A.S.No.9 of 2002 on the file of the Principal Subordinate Judge, Erode. The learned Judge set aside the Judgement and Decree of the Trial Court on the ground that under the provisions of Tamil Nadu Survey and Boundaries Act, 1923, contemplates the service of notice on the land owners, calling them for an enquiry recording evidence and thereafter passing orders. The Act also contemplated the service of the order on the land owners. This procedure has not been followed in the instant case. The learned Judge had also held that

alternative pathway was available and with this observations he had proceeded to allow the appeal.

7. Second Appeal:

Aggrieved by the same the plaintiff is before this court. While admitting the above Second Appeal this Court was pleased to frame the following Substantial Questions of law:

i) Whether the Lower Appellate Court is right in giving a finding that the suit pathway as shown in Ex.B.2 cannot be accepted?

ii) Whether the Lower Appellate Court is right in holding that patta granted in favour of the plaintiff in the Grama Natham Land Revenue Settlement proceedings is not binding on the defendant since no notice was served on the defendant?

iii) Whether the Lower Appellate Court is right in holding that though the defendant or his predecessor in title name is entered in the village accounts, the settlement Officer, while granting patta sub-divided the suit pathway as R.S.No.297/7 ought to have given notice under the provisions of the Tamil Nadu Survey and Boundaries Act?

iv) Whether the finding of the Lower Appellate Court that the plaintiff is not entitled to the relief of declaration and permanent injunction in respect of 'B' Schedule property is correct?

v) Whether the Lower Appellate Court is right in finding that the defendant or his predecessors were not given any notice during the proceedings taken for sub-division under the Natham Land Revenue Settlement and that the same is not binding on the defendant?"

8. Submissions:

8.1. Heard the arguments of Mr.V.Anandhamurthy, learned counsel for the appellant and Mr.M.Guruprasad, learned counsel for the respondent. The learned counsel for the plaintiff/appellant would rest his entire case on the fact that all procedure had been followed as per the Act and the respondent's predecessors in title did not choose to question the subdivision. He would further contend under the Natham Land Revenue Settlement Scheme the suit property has been described as a pathway. He would further argue that the re-survey has been done as early as in the year 1992 whereas the defendant has purchased the property only in the year 1993.

8.2. He would further argue that the rectification deed

Ex.B.3 based upon which the defendant was claiming right was executed seven years after the purchase by the defendant and that too just prior to the filing of the suit by the plaintiff. The counsel for the plaintiff would submit that the remedy of the defendant was only to file an appeal if he is aggrieved by an order passed under Section 9 and 10 of the Tamil Nadu Survey and Boundaries Act, 1923, hereinafter called as the act, the defendant ought to have file an appeal before the Appellate Authority. He would further argue that the appeal could have been preferred since the Proviso to Section 12 gives right to the Appellate Authority to entertain the appeal after the period of expiry if sufficient cause was given.

8.3.Percontra, Mr.Guruprasad, learned counsel arguing on behalf of the defendant would submit that the plaintiff has not pleaded the character of his possession of the suit B-Schedule property. That apart there is an alternative pathway in existence which is clear from the evidence of P.W.1 and further the other owner of the property abutting Survey No.297/7 has not been impleaded. The plaintiff has not stated whether he was claiming right to the pathway on the basis of a proprietary right or on the basis of the easement right. He would further contend that there was no necessity to challenge the order passed in the Natham Land Revenue Settlement since no notice had been served on him.

9.Discussion:

9.1.Heard the counsels and perused the papers. The case of the plaintiff is that the property situate in Survey No.297/7 is the pathway through which the plaintiff could reach his lands situate in Survey No.297/4. The defendant has come forward with a contention that the property comprised in Survey No.297/7 belongs to the defendant and though under Ex.B.2 (the document under which the defendants purchased the property) the schedule of property is different from the schedule of property shown in Ex.B.1. This is evident from the perusal of Ex.A.2 FMB Sketch which has been prepared after the Natham Land Revenue Settlement. Ex.A.4 would also show that the lands situate in Survey No.297/7 has been described as a pathway. The predecessor in title to the defendant has not taken any steps what so ever to have the same rectified. As contended by the plaintiff the lands in Survey No.297/7 was indeed being used as pathway.

9.2.A perusal of Ex.B.1 which is the sale deed dated 08.05.1969 under which Nallammal sold the property to Karuppanagounder and the schedule shown in Ex.B.2 dated 03.11.1993 wherein the defendant had purchased the property from the sons of the Karuppanagounder would clearly show that the

schedule of property are totally different. In Ex.B.3 rectification deed dated 18.12.1997 the vendors of the defendant has pleaded that by an oversight they had wrongly described schedule of property. However, a close scrutiny of Ex.B.2 would show that in the description of property as shown in Ex.B.1 has been typed and then struck off and the description as shown in Ex.B.2 has been retained. Therefore, by no stretch of imagination can it be stated that a mistake had crept into the schedule by an oversight. Another factor that has to be taken note of is that Ex.B.1 does not contain a Survey Number

9.3. That apart, the defendant has purchased the property after the Natham Land Revenue Settlement and therefore he cannot plead that the subdivision was wrong as he should have perused the revenue records. Another factum which has to be taken into the fact that in his written statement the defendant has not made any mention about the rectification deed. On the contrary he has only based his claim on the basis of Ex.B.2 sale deed. Infact in his written statement the defendant would contend as follows:

"From the said Periaswamy and Chinnaswamy, this defendant purchased the said site on 03.11.1993 and ever since then, this defendant has been in exclusive possession and enjoyment of the same."

9.4. Therefore the plaintiff has based his claim on the sale deed 03.11.1993 which is Ex.B.2. The description of the property in Ex.B.2 does not match the suit schedule property. A perusal of Section 11 of the Act would show that any person affected by a decision made under Section 9 and 10 may appeal to the prescribed officer. Though time limit of one month is fixed under Section 12 for preferring an appeal against the order under Section 11, the proviso to Section 12 would clearly state that an appeal can be preferred after the expiry of the period to the appellate Authority being satisfied with the appellant was unable to prefer the appeal in time on account of the sufficient cause. In the explanation to the proviso it has been stated that the notice under Section 9 or 10 not being served personally on the appellant is deemed to be sufficient cause. Section 14 of the act also states that the person aggrieved can file a suit within a particular period of time. Viewed from the touchstone of the above provisions the defendant ought to have preferred the appeal against the order passed in the Natham Land Revenue Settlement subdividing the properties atleast after the suit and without filing the appeal the appellant cannot question the right of the plaintiff to use the said pathway.

9.5. The defendant has not taken steps even after coming to know about the same. The plaintiff had relied upon the Judgement in Ramayammal and others Vs. Arumugham (Deceased) and

others reported in CDJ 2017 MHC 7694 where this Court has dismissed the suit filed for declaration of their title on the ground that of the plaintiffs therein had failed to invoke the provisions Section 14 and 12 of the Act . Similarly, in the instant case the defendant who have not proceeded to challenge the subdivision cannot now question it.

The questions of law have been answered against the defendant and the Judgement and Decree of the learned Principal Subordinate Judge, Erode in A.S.No.9 of 2002 is set aside and the Judgement and Decree of the Principal District Munsif, Erode in O.S.No.5 of 1999 is confirmed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To,

- 1.The Principal Sub Judge,
Erode.
- 2.The Principal District Munsif Court,
Erode.

+lcc to Mr.V.Ananthamurthy, Advocate, S.R.No. 11494

+lcc to Mr.M.Guruprasad, Advocate, S.R.No. 12222

S.A.No.1944 of 2003 &
C.M.P.17753 of 2003

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