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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :15.04.2019
PRONOUNCED ON:03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.271 of 2003
and
C.M.P.No.1810 of 2019
&
C.M.P.No.1889 of 2009

1. Aasaikannu @ Muthusamy (Died)

2.Muthusamy

3.Chinnamuthu

S/o, Aasaikannu @ Muthusamy

[3rd appellant brought on record as
LR of the deceased 1st appellant
vide order of Court dated 27.09.2018
in C.M.P.No.15054 to 15056 of 2018]

... Appellants/2nd Respondent/
2nd Plaintiff/LRs of deceased
Appellant

Vs.

1. Ayyavoo

2.Chinnamuthu

S/o, Pachamuthu

...Respondents/Appellants/
Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.68 of 1998 dated 30.04.2002 on the file of the Subordinate Judge, Sankari reversing the judgment and decree made in O.S.No.125 of 1991 dated 25.06.1998 on the file of the District Munsif, Sankari.

For Appellants : Mr.M.V.Karunakaran

For Respondents : Mr.T.Murugamanickam, SC
for M/s. Zeenath Begam



J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 30.04.2002 passed in A.S.No.68 of 1998 on the file of the Subordinate Court, Sankari reversing the judgment and decree dated 25.06.1998 passed in O.S.No.125 of 1991 on the file of the District Munsif Court, Sankari.

2. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

3. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

4. The second appeal has been admitted on the following substantial questions of law.

1. Whether the lower appellate court has misconstrued the oral and documentary evidence before reversing the well considered judgment of the trial court?

2. Is it competent under law for the court to ignore the classical requirements of law of adverse possession when giving a finding that the respondents are in possession of the disputed portion in the suit properties?

3. Whether the court below is justified in law to permit respondents/defendants to adopt a case different from the one pleaded in the written statement?

5. Suffice to state that the suit has been laid by the plaintiffs against the defendants for the relief of permanent injunction.

6. Briefly stated according to the plaintiffs, the first plaintiff had purchased the item 1 of the plaint schedule properties under the registered sale deed dated 04.03.1983 and the second plaintiff had purchased the item 2 of the plaint schedule properties under the registered sale deed dated 04.03.1983 and accordingly it is put forth that the plaintiffs had been in the possession and enjoyment of the plaint schedule properties by obtaining patta, paying Kists etc., and also by mortgaging the plaint schedule properties and according to them, the defendants who are the owners of the land lying on the western side of the plaint schedule properties and further



stating that the lands of the defendants are situated at a higher level compared to the plaintiffs' lands and contended that on account of misunderstanding, the defendants attempted to encroach into the suit properties belonging to the plaintiffs by shifting the bund on the eastern side to which they are not entitled and hence according to the plaintiffs, they have been necessitated to lay the suit for appropriate reliefs.

7. The defendants resisted the plaintiffs' suit in toto and challenged the claim of the plaintiffs that they had acquired the plaint schedule properties by way of the sale deeds as putforth in the plaint and also disputed the claim of the plaintiffs that they are in the possession and enjoyment of the suit properties as described in the plaint and admitted that the lands on the western side of the suit properties belonged to the defendants and also admitted that the defendants' lands are at a higher level compared to the plaintiffs' lands and according to the defendants, the plaintiffs' predecessors in title fixed the boundaries of survey Nos.646/2 and 646/3 by building a stone revetment in north-south direction and cultivating the properties lying on the eastern side of the said stone revetment and the defendants and their predecessors in title had been in the possession and enjoyment of 30 cents of land in survey No.646/2 and 646/3 and enjoying the same in one block along with defendants' lands lying in survey No.651 from time immemorial and accordingly it is putforth that the defendants have prescribed title to the abovesaid 30 cents of land by way of adverse possession, and the abovesaid 30 cents of land is situated on the eastern side of survey No.651 and the defendants' predecessors in title had planted palmyra trees, coconut trees in the abovesaid 30 cents of land and the height of each Palmyra tree is about 50 ft and as on ground 50 Palmyra trees and 4 coconut trees are available in the abovesaid 30 cents of land and it is only the defendants and their predecessors in interest who had been enjoying the usufructs the abovesaid palmyra trees and coconut trees and the predecessors in interest of the plaintiffs as well the plaintiffs had never been in the possession and enjoyment of 30 cents of land as abovestated and the tress lying thereon and the stone revetment forms the western boundary line of the plaintiffs' lands and the plaintiffs are not in the possession and enjoyment of the 30 cents of land and hence the plaintiffs cannot be allowed to maintain the suit for the relief of permanent injunction and accordingly contended that the suit laid by the plaintiffs is liable to be dismissed as devoid of merits and cause of action .

8. In support of the plaintiffs' case, P.Ws.1 and 2 were examined. Exs.A1 to A5 were marked. On the side of the defendants, D.W.1 was examined. No document was marked. Exs.C1 to C3 were also marked.



9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for by the plaintiffs. On appeal by the defendants, the first appellate court on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been preferred.

10. The plaintiffs claim title to the plaint schedule properties based on the sale deeds dated 04.03.1983, the certified copies of which sale deeds had been marked as Exs.A1 and A2. Accordingly, it is the case of the plaintiffs that they and their predecessors in interest had been in the possession and enjoyment of the plaint schedule properties and the defendants have no right, title, possession and enjoyment of the plaint schedule properties and further according to them, the defendants' lands are lying on the western side of the plaint schedule properties and without any entitlement and on account of misunderstanding, the defendants attempted to shift the bund of their lands further on the eastern side and thereby attempted to encroach into the lands belonging to the plaintiffs and therefore they had been necessitated to lay the suit for appropriate relief of permanent injunction.

11. The defendants resisted the plaintiffs' suit mainly contending that the 30 cents of land lying in survey Nos.646/2 and 646/3 on the western side is in the possession and enjoyment of the defendants and their predecessors in title and according to the defendants, they had been enjoying the abovesaid 30 cents of land along with their lands lying in survey No.651 on the western side and it is put forth on their part that they had planted palmyra trees and coconut trees in the abovesaid 30 cents of land and enjoying the same along with the lands in survey No.651 and it is further stated that the plaintiffs are in the possession and enjoyment of the properties only lying to the east of the stone revetment put up by them and accordingly contended that the plaintiffs are not entitled to claim the relief of permanent injunction as regards the abovesaid 30 cents of land and according to them, the plaintiffs have never been in the possession and enjoyment of the 30 cents of land at any point of time and hence sought for the dismissal of the plaintiffs' suit.

12. The suit having been laid by the plaintiffs for the bare relief of permanent injunction, at the foremost, the plaintiffs



should establish that the suit properties as described in the plaint are in their possession and enjoyment and that the defendants are attempting to disturb their possession and enjoyment without any entitlement. Apart from the sale deeds marked as Exs.A1 and A2, the plaintiffs have marked the Kists receipts as Exs.A3 and A4 and the plaint plan is marked as Ex.A5. Apart from the abovesaid documents, there is no material placed on the part of the plaintiffs to evidence that the suit properties as described in the plaint are in their possession and enjoyment. From the Kist receipts marked as Exs.A3 and A4, we cannot infer that the suit properties as described in the plaint plan are in the possession and enjoyment of the plaintiffs as claimed by them. The dispute between the parties is only as regards the 30 cents of land lying in survey No.646/2 and 646/3. It is admitted that the defendants' lands lying in survey No.651 are located to the west of survey No.646/2 and 646/3.

13. It is the specific case of the defendants that they and their predecessors in title had been in the possession and enjoyment of the 30 cents of land in survey No.646/2 and 646/3 by planting palmyra trees and coconut trees etc., and accordingly it is only they, who had been enjoying the usufructs of the abovesaid trees and therefore the plaintiffs are not entitled to seek the relief of permanent injunction with reference to the said extent of land. The defendants would also plead adverse title in respect of the abovesaid 30 cents of land.

14.The suit having been laid by the plaintiffs simplicitor for permanent injunction, in my considered opinion, the question of title cannot be gone into in detail in the abovesaid suit. In such view of the matter, as rightly determined by the first appellate court, the trial court is found to have erred in going into the question of title as regards the property in dispute between the contesting parties and erred in framing the issue as to whether the defendants have prescribed title to the extent of 30 cents of land in survey No.646/2 and 646/3 by way of adverse possession. The said issue does not arise for consideration in the suit laid for the bare relief of permanent injunction.

15. Therefore, the only point that arises for consideration is as to whether the plaintiffs had established their claim of possession and enjoyment of the 30 cents of land in dispute between the parties. From the Commissioner's report and plan marked in the proceedings, it is found that there is a Odai running to the west of the suit properties and the Odai is bounded by bunds on the two sides i.e., the western side and eastern side. Further, it is seen that the various palmyra trees and coconut trees are lying in the Odai portion and in the bund portion abutting the Odai and according to the defendants, the 30 cents of land of which the Odai portion forms part of is



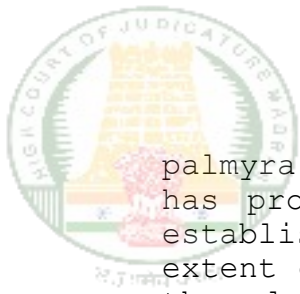
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in their possession and enjoyment and it is only they, who are enjoying the Palmyra trees and the coconut trees put up thereon and the plaintiffs are enjoying the fields only lying to the east of the eastern bund of the Odai and not in the possession and enjoyment of the Odai portion or any land lying to the west of the eastern bund of the Odai portion. In this connection, as rightly determined by the first appellate court, on a perusal of the evidence of the first plaintiff examined as P.W.1, though he would state in the chief examination that he and his predecessors in interest had been enjoying the portions lying between the two bunds of the Odai and the trees put up thereon, however, P.W.1 during the course of cross examination, has testified that they had not measured the suit properties at the time of the purchase of the same and also further admitted that they have not assessed as to how many trees are available in the Odai portion and also not counted the palmyra trees and coconut trees in the abovesaid portion and further according to him inclusive of the trees, they had acquired the suit properties under Exs.A1 and A2 and also clearly admitted that the suit has been laid only for the Odai portion and also further admitted that the lands of the defendants are lying at a higher level than the plaintiffs' lands and also further admitted that it is only the plaintiffs, who are in the possession and enjoyment of the lands lying to the west of the bunds of the Odai and also admitted that they are cultivating the lands only to the east of bund and during the course further cross examination, he has also admitted that he is aware that it is only the defendants who are in the possession and enjoyment of 30 cents of land even prior to the inspection of the suit properties by the Advocate Commissioner and also admitted that the defendants are in the possession and enjoyment of the lands prior to their purchase under Exs.A1 and A2 and further admitted that the defendants' lands are lying about 3 feet higher than their lands and also further admitted that when he measured his properties, he came to understand that it is only the defendants who are in the possession and enjoyment of 30 cents of land and also stated that he does not know whether the 30 cents of land lying to the west of bund has been in the possession and enjoyment of the defendants from the days of their ancestors and also would plead ignorance as to whether the defendants' properties would be about 40 ft in height and during the re-examination, he has also testified that at the time of purchase of the properties, he was aware of the western boundary and when he was confronted with the admission as to the defendants' possession and enjoyment of 30 cents of land even prior to the inspection of the properties by the Advocate Commissioner, he would state that the defendants had already encroached into their lands to a width of 4 ft throughout the portion on the western side Odai and the trial court has also recorded that P.W.1 has admitted that the possession and enjoyment of the defendants as regards the 30



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18. The trial court has also proceeded to hold that a portion of the 30 cents of land in dispute is only in the possession and enjoyment of the defendants by way of planting



palmyra trees and coconut trees etc., however, the trial court has proceeded that inasmuch as, the defendants have failed to establish their claim of possession and enjoyment of the entire extent of 30 cents of land, on that premise proceeded to uphold the plaintiffs' case. However, as rightly found by the first appellate court when the plaintiffs who had levied the suit claiming the discretionary and equitable relief of permanent injunction, on the footing that the suit properties inclusive of the 30 cents of land in dispute are in their possession and enjoyment, however the same has not been established by the plaintiffs in any manner and when the documents projected by them with reference to the same are not found to be pointing to the same and on the other hand, P.W.1 examined on behalf of the plaintiffs having clearly admitted that the 30 cents of land in dispute is only in the possession and enjoyment of the defendants even prior to the institution of the suit, in such view of the matter, as rightly determined by the first appellate court, the plaintiffs would not be entitled to seek the relief of permanent injunction as prayed for in the above suit. As rightly further held by the first appellate court, if at all, the plaintiffs have any title to the abovesaid 30 cents of lands in dispute as put forth by them, it is for the plaintiffs to seek appropriate remedies against the defendants for seeking the relief of possession of the said land in the manner known to law. Therefore, the determination of the first appellate court in holding that the plaintiffs have failed to establish their possession and enjoyment of the 30 cents of land in dispute and the consequent dismissal of the plaintiffs suit by the first appellate court do not warrant any interference as the first appellate court had considered the issues involved between the parties on a correct analysis of the materials available on record, particularly, the clear admission of the plaintiffs as regards the possession and enjoyment of the 30 cents of lands in dispute by the defendants.

19. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law involved in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

20. The counsel for the plaintiffs in support of his contentions placed reliance upon the decisions reported in 1999 (1) CTC 428 [Nagarajan Vs. Rajamani Aiyar and others] and 2002 (1) L.W.661 [Ammena Ammal Vs. Jahabar Nachiar and Others]. The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.



C.M.P.No.1810 of 2019 & C.M.P.No.1889 of 2009

21. The defendants have come forward with the application in C.M.P.No.1889 of 2009 for the reception of additional evidence contending that the plaintiffs have sold a portion of the suit properties to one Ramasamy and accordingly, putforth that, inasmuch as, the plaintiffs had already alienated the portion of the suit properties, are not entitled to maintain the suit, thereby sought for the reception of the abovesaid sale deed dated 05.07.2001 executed by the plaintiffs in favour of Ramasamy as additional evidence in the matter.

22. The plaintiffs resisted the abovesaid application contending that the sale deed dated 05.07.2001 is the outcome of fraudulent transaction and they had not alienated any property to Ramasamy as putforth by the defendants and further according to them in the suit laid by Ramasamy for partition in O.S.No.211 of 2002, the parties had compromised and accordingly it is only the plaintiffs who are still in the possession and enjoyment of the suit properties and accordingly sought for the dismissal of the abovesaid application preferred by the defendants and conversely have come forward with the application for the reception of the additional documents pointing to their abovesaid version by way of additional evidence on their side in C.M.P.No.1810 of 2009. The reception of additional evidence sought to be projected by the plaintiffs is being contested by the defendants.

23. Considering the fact that I had already upheld the determination of the first appellate court rejecting the plaintiffs' case, as above discussed, in such view of the matter, in my considered opinion, the additional evidence projected by the parties as putforth by them are not germane for considering the issues involved between the parties and in such view of the matter, it is seen that the applications are not entitled for acceptance and accordingly both the applications are dismissed.

24. In conclusion, the second appeal fails and is accordingly dismissed with costs. C.M.P.No.1810 of 2019 & C.M.P.No.1889 of 2009 are dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Sankari.

2. The District Munsif,
District Munsif Court,
Sankari.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1 cc to Mr. Lion M.V. Karunakaran Advocate sr44511

+1 cc to M/s. Zeenath Begum Advocate sr44530

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