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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2019

PRONOUNCED ON : 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1564 of 2004

S.Velayutham ...Appellant / Plaintiff

Vs.

1.Kali
2.K.R.S.Mani (died)
3.Kulasekaran
4.Angammal
5.S.Velu
6.K.Shanthi
7.G.Prema
8.M.Chandra
9.S.Elumalai

...Respondents / Defendants

RR 4 to 9 brought on record as Lrs. of the deceased
R2 vide order of court dated 18.03.2019 made
in CMP No.516 of 2019 in S.A.No.1564 of 2004

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.12.2002 in A.S.No.77 of 2002 on the file of V Additional Judge, City Civil Court, Madras, reversing the judgment and decree dated 20.12.2000 in O.S.No.4532 of 1996 on the file of V Assistant Judge, City Civil Court, Madras.

For Appellant : Mr.J.R.K.Bhavanandam
for M/s. P.B.Ramanujam

For Respondents : Mr.S.Balasubramanian

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 10.12.2002 passed in A.S.No.77 of 2002 on the file of V Additional Judge, City Civil Court, Madras, reversing the judgment and decree dated 20.12.2000 passed in O.S.No.4532 of 1996 on the file of V Assistant Judge, City Civil Court, Madras.



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

"1. Whether the appellant established title to the suit property through Exhibits A.1 to 30 and entitled to possession and mesne profits as decreed by trial Court?

2. Whether the lower appellate court is right in reversing the well considered findings of trial court based on oral and documentary evidence?

3. Whether the 2nd respondent is entitled to a relief of adverse possession against the appellant contrary to Exhibits A.1 To A.4 title deeds, patta and other revenue documents and without any piece of evidence to establish the 2nd respondent had been in continuous uninterrupted possession in the suit property over the prescribed period hostile to the true owner and perfected title by adverse possession?

4. Whether the findings of lower appellate court, contrary to the materials on records are sustainable in law and warrants interference from the Hon'ble Court under Section 100 C.P.C?

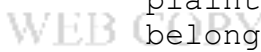
5. Whether the 2nd respondent being a person in occupation under leave and license is estopped from denying the title of the owner?

6. Whether the findings of the lower appellate court are perverse?

7. Whether the very heavy burden on the 2nd respondent to establish his claim of adverse possession has been discharged by the second respondent?

3. 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.

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



6. Shorn of unnecessary details, it is the claim of the plaintiff that the suit property, as described in the plaint, belongs to him and for the claim of title to the suit property, as described in the plaint, it is stated that same came to be acquired by the plaintiff by a deed of partition dated 30.12.1994 and it is further the case of the plaintiff that one Saranagapani, the father of the defendants 1 and 3 and father-in-law of the second defendant was granted the leave and license by the plaintiff's paternal uncle to run the tea stall in the suit property and after the demise of Sarangapani, the defendants succeeded to his interest and continue to run the tea stall in the suit property and inasmuch as the suit property is required for the plaintiff, accordingly, directing the defendants to hand over the possession, the plaintiff sent a notice and inasmuch as the defendants refused to accede to the demand made in the said notice, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

7. The defendants 1 and 2 resisted the plaintiff's case denying the case put forth by the plaintiff in toto and contending that they are running the tea stall in the premises, now in their occupation, for the past 26 years and accordingly, it is claimed by them that the superstructure and the land in which the same stands is in their possession and enjoyment and according to them, the second defendant occupied the same in the year 1970 and put up the construction and obtained service connection and carrying on the business in the said premises after obtaining license from the corporation and therefore, the defendants are not in the possession and enjoyment of the abovesaid property based on the leave and license said to have been granted by the plaintiff's paternal uncle as put forth in the plaint and accordingly contended that they are not liable to deliver the vacant possession of the portion in their occupation and not liable to pay any mesne profits to the plaintiff and thereby sought for the dismissal of the plaintiff's suit.

8. Based on the materials placed on record, both oral and documentary, the trial court was pleased to decree the suit in favour of the plaintiff by holding that the plaintiff is entitled to obtain the possession of the extent of 600 sq. ft. in the suit property lying in the north eastern portion shown as ABCD in the plaint plan and accordingly also directed that they are liable to pay the damages to the plaintiff in a sum of Rs.300/- per month from the date of plaint till the date of delivery and accordingly disposed of the plaintiff's suit. Impugning the same, the defendants preferred the first appeal and the first appellate court, on an appreciation of the materials placed on record, was pleased to set aside the



judgment and decree of the trial court and resultantly, dismissed the plaintiff's suit. Challenging the same the second appeal has been preferred.

9. The suit has been laid by the plaintiff for the recovery of possession and mesne profits. The suit property has been described in the plaint as comprised in punja survey No.68, present T.S.No.71 of Block No.12, No.137, velacherry village, Mambalam, Guindy Taluk within the specific boundaries measuring on the north 39 feet, east 47 feet, south 94 feet and west 38 feet, in all, an extent of 3465 sq. ft., together with the thatched super structure bearing door No.2, Five Furlong Road, Maduvankarai, Madras 600 032 and the plaintiff has laid the suit for the recovery of a portion in the suit property under the occupation of the defendants. However, the plaintiff has not come forward with the clear case as to what extent of the property is in the occupation of the defendants in the abovesaid property described in the plaint i.e., the total extent of 3465 sq. ft. In the plaint plan, the suit property has been shown as ABCD lying in the north eastern portion and therein also no specific extent has been given as regards the portion comprised within ABCD and furthermore, even the linear measurements had also not been furnished as regards the portion comprised in ABCD.

10. Now, according to the defendants, in the property now in their occupation, they had been running the tea stall from 1970 onwards on their own by putting up the construction and by obtaining service connection, license, etc., with reference to the same and therefore, contended that they are not in the possession and enjoyment of the suit property under the leave and license arrangement put forth by the plaintiff.

11. The plaintiff would claim in the plaint that the defendants' predecessors in interest, namely, one Sarangapani had been granted the leave and license by his paternal uncle to run the tea stall in a portion of the suit property and accordingly, Sarangapani, and after his demise, the defendants are running the tea stall in the said portion and accordingly they are liable to hand over the said portion to the plaintiff.

12. As abovenoted, the plaintiff has not detailed in the plaint as to of the total extent of 3465 sq. ft, what is the extent in the occupation and enjoyment of the defendants. Further as above noted, even in the plaint plan, while showing the portion of the suit property in the occupation of the defendants as ABCD, the plaintiff has not come forward as to the extent of the abovesaid ABCD portion nor furnished the linear measurements of the same.

13. In the light of the defence set out by the defendants that they had been running the tea stall in the portion, now in their occupation, on their own and not on the basis of the leave and license arrangement put forth by the plaintiff and when



according to the plaintiff, the defendants are running the tea stall only in the portion of the property belonging to the plaintiff allotted to the plaintiff by way of the partition deed dated 30.12.1994, it is for the plaintiff to establish, at the foremost, that he is entitled to the extent of 3465 sq. ft and that the portion now in the occupation of the defendants lie within the abovesaid portion.

14. The plaintiff has not come forward in the plaint in a clear manner as to how the parties to the partition deed dated 30.12.1994 marked as Ex.A2 had chosen to include the suit property measuring an extent of 3465 sq. ft., as the subject matter of the said partition deed. In this connection, as could be seen from the materials put forth by the plaintiff, it is found that the plaintiff would adduce evidence that his paternal under and his children had alienated their share in the ancestral property by way of a sale deed dated 12.10.1970, which document has been marked as Ex.A1 and on a perusal of the same, it is found that the plaintiff's paternal uncle one Danapal and his children had alienated 1/3 share in the extent of the property measuring 64 feet x 44 feet i.e. of an extent of 935 sq. ft. Therefore, from the abovesaid sale deed marked as Ex.A1, at the most, we could gather that the plaintiff's ancestors had owned the extent of 64 feet x 44 feet area in the suit survey number and out of the same, Danapal and his legal heirs had conveyed 1/3 share in favour of the plaintiff's father Subramani and his brother Darmalingam. Strictly speaking, considering the extent covered under Ex.A1 sale deed, they being only 64 feet x 44 feet, which would come to 2816 sq. ft., however, the said property, when dealt with under Ex.A2 partition deed, is shown to be measuring an extent of 3465 sq. ft. How the property measuring an extent of 64 feet x 44 feet had enlarged into an extent of 3465 sq. ft., under Ex.A2 partition deed, absolutely there is no explanation forth coming on the part of the plaintiff. With reference to the difference in the extent found in Ex.A1 and A2 and as to how the plaintiff had acquired the said excess extent so as to seek the entitlement of the suit property of an extent of 3465 sq. ft, there is no proof placed on the part of the plaintiff. Other than Ex.A2 partition deed, there is no material at all placed on the part of the plaintiff to conclude or determine that his fore fathers had been owning and enjoying the extent of 3465 sq. ft in the suit survey number. When the available document anterior to Ex.A2 partition deed, namely, Ex.A1 depicts that the fore fathers of the plaintiff had owned only an extent of 64 feet x 44 feet amounting to 2816 sq. ft., to say that, following the same, the plaintiff's father and his brother had divided their properties including the extent of 3465 sq. ft., i.e, the suit property, as such, cannot be accepted. Therefore, other than Ex.A2 partition deed, there is no proof to hold safely that the plaintiff and



his fore fathers had the entitlement of 3465 sq. ft. The pattas marked as Ex.A3 and Ex.A4 do not correlate with the extent available in Ex.A2 partition deed and on the other hand, as per the trial court, they are found to be depicting more extent than to which the plaintiff is entitled to. Be that as it may, the pattas marked as Exs.A3 and A4, would not, in any manner, serve the case of the plaintiff for holding that the plaintiff is validly entitled to the suit property of an extent of 3465 sq.ft as the patta documents cannot be construed as the documents of title. Therefore, in the absence of any proof that the plaintiff's fore fathers or ancestors owned the suit property measuring an extent of 3465 sq. ft., the claim of the plaintiff that he had acquired title to the suit property measuring an extent of 3465 sq. ft., by way of Ex.A2 partition deed, cannot be readily accepted and therefore, the abovesaid trace of title to the suit property by the plaintiff based on Ex.A2 partition deed ipso facto is to be accepted only with the pinch of salt.

15.The plaintiff would plead that the defendants' predecessors in interest i.e. Sarangapani had been granted the leave and license to run the tea stall in a portion of the suit property by his paternal uncle and according to the plaintiff, after the demise of Sarangapani, the defendants continued to occupy the said portion and running the tea stall. The abovesaid claim projected by the plaintiff is being seriously challenged by the defendants. According to the defendants, they are running the tea stall in the portion on their own and no leave and license had been granted to them by the plaintiff's paternal uncle with reference to the same as put forth by the plaintiff. In such view of the matter, the plaintiff has to establish that the defendants, i.e., their predecessor in interest had been granted the leave and license by his paternal uncle to run the tea stall in a portion of the suit property. When the plaintiff has miserably failed to establish that he validly owns the extent of 3465 sq. ft., in the suit survey number, as described in the plaint, to say that in a portion of the suit property, the defendants and their predecessors in interest had been running the tea stall on the leave and licence granted to them, as such, cannot be readily countenanced. In this connection, the plaintiff examined as P.W.1 would completely plead ignorance about the leave and license arrangement pleaded in the plaint. He would admit that he does not know from which date and year onwards Sarangapani had been running the tea stall in the portion of the suit property and on what terms Sarangapani had been granted the leave and license to run the tea stall and according to him, only his father knew about the same. In the plaint, the plaintiff would plead that the leave and license arrangement is fixed at the rate of Rs.50/- per month. Even the abovesaid arrangement is admitted to be not known to P.W.1. When according to P.W.1, only his father knew about the said



arrangement, as rightly determined by the first appellate court, the plaintiff should have endeavoured to examine his father to sustain his case of leave and license arrangement. However, for the reasons best known to the plaintiff, he has not chosen to examine his father with reference to the same.

16. As regards the amount fixed at Rs.50/- towards the leave and license arrangement, absolutely there is no material to show that such amount had been paid by the defendants and their predecessors in interest to the plaintiff and his fore fathers. In this connection, the plaintiff would conveniently plead that the said amount of Rs.50/- per month had been adjusted by supplying eatables. When the terms of the leave and license arrangement itself had not been established by the plaintiff and when P.W.1 pleads complete ignorance with reference to the same and the only witness who knew about the same, namely, the plaintiff's father, having not been examined and when the defendants have seriously challenged the said leave and license arrangement and been contending that they are in the occupation of the property in their possession on their own, in such view of the matter, it is seen that absolutely there is no material to hold that the defendants and their predecessors in interest are in the occupation of the portion of the suit property on the basis of the leave and license arrangement as projected by the plaintiff.

17. Quite inconsistent to the case pleaded in the plaint, P.W.1, during the course of evidence, would put forth the case that it is his father Subramani who had obtained the license for running the tea stall in the portion of the suit property and the same had been given to Sarangapani and therefore, the defendants continued to run the tea stall on the said license. However, when no such plea has been projected with reference to the same in the plaint, the abovesaid case put forth for the first time, during the course of evidence on the part of the plaintiff, in toto, cannot be countenanced, when it is found that it is only the defendants who had been running the tea stall in the property in their occupation by obtaining license, service connection, etc., and the plaintiff's father has no nexus with reference to the said endeavours in any manner and it is found that taking advantage of the similarity in the names of the plaintiff's father and the second defendant, one way or the other, an attempt has been made by the plaintiff during the course of evidence that only his father had obtained the license and on that basis the defendants and their predecessors in interest had been carrying on the tea stall in the portion of the property. The abovesaid case put forth by the plaintiff had been assessed by the first appellate court in detail and on the appreciation of the materials projected by the respective parties and on a detailed analysis of the same, found that it is only the second defendant who had, on his own, obtained the



license, service connection, etc., for running the tea stall and carrying on the same and not running the tea stall, with the aid of the license said to have been obtained by the plaintiff's father. Even to sustain the abovesaid case, the plaintiff has not endeavoured to examine his father and in such view of the matter, the case projected by the plaintiff that his father had obtained the license for running the tea stall, as such, cannot be countenanced in any manner.

18.As abovenoted, P.W.1 has pleaded complete ignorance as to when from Sarangapani had been running the tea stall in a portion of the suit property on leave and license arrangement. As could be seen from the materials available on record, Sarangapani is found to have died in the year 1977, which could be gathered from the death extract marked as Ex.B39. On the other hand, when from the documents projected by the defendants, it is seen that the second defendant had been running the tea stall right from the year 1970 onwards and the documents projected on the defendants side support the same and to say that the defendants had been continuing to run the tea stall on the demise of Sarangapani in a portion of the suit property completely falls to the ground and cannot be believed. As abovenoted, the defendants had pleaded that they are running the tea stall in the property in their occupation on their own and without any leave and license granted on the part of the plaintiff or his fore fathers. When the leave and license arrangement pleaded by the plaintiff has not been established by the plaintiff, as above pointed out, when it is found that even prior to the death of Sarangapani, the second defendant is found to be running the tea stall in the portion of the suit property, in such view of the matter, the claim of the plaintiff that the defendants are running the tea stall in the portion of the suit property following the death of Sarangapani, who is said to have been granted the leave and license to run the tea stall completely goes out and accordingly, it is found that as put forth by the defendants they are in the occupation of the property on their own and running the tea stall by obtaining the license, service connection, etc., and in such view of the matter, the claim of the plaintiff that the defendants are liable to hand over the portion in their occupation to the plaintiff, as such, cannot be accepted.

19.The tax receipts projected by the plaintiff would not sustain the plaintiff's case for holding his claim of title to the suit property as described in the plaint. As could be seen from the lie of the suit property, the suit property bears two door numbers as lying in the junction of the two roads and in such view of the matter, when the plaintiff has failed to establish that he has entitlement to the extent of 3465 sq. ft., in such view of the matter, the documents projected by the plaintiff cannot be held to be relating to the entire extent and

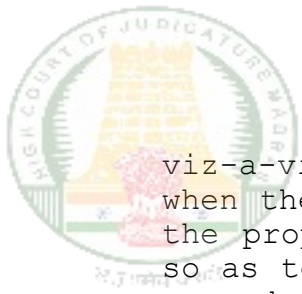


on the other hand, the documents could only construed, as determined by the first appellate court, as pertaining to the portion of the suit property in his occupation and not to the entire suit property and therefore, the abovesaid case put forth by the plaintiff by placing reliance upon his tax receipts has been rightly considered and discountenance by the first appellate court.

20. As above noted, the plaintiff has not come forward in the plaint clearly as to the extent of the property in the occupation of the defendants of the entire extent of the suit property. Very vaguely the plaintiff has stated that the defendants are in the occupation of the portion of the suit property. When the plaintiff has failed to establish his claim of title to the entire extent of 3465 s. ft., and when the report and plan of the Advocate Commissioner marked in the proceedings, would not be helpful to hold that the property in the occupation of the defendants, also form part of the property, to which the plaintiff is lawfully entitled to and in such view of the matter, when even in the plaint plan, the plaintiff has not come forward with the extent of the property in the occupation of the defendants, as rightly found by the first appellate court, merely on the basis of the evidence of D.W.1 that he is in the occupation of the extent of 20 feet x 30 feet, one could not state affirmatively that the property in the occupation of the defendant is not in doubt or not unascertainable in conjunction with the plaint plan. Per contra, P.W.1, during the course of evidence, would state that the defendants are in the occupation of a portion of 25 feet x 12 feet. Therefore, when the parties, themselves, are not in agreement as to the extent of the portion in the occupation of the defendants and when the same has not been clearly projected in the plaint nor depicted in the plaint plan, as rightly found by the first appellate court, the trial court has completely erred in holding that the identity of the property in the occupation of the defendants is not doubtful or unascertainable.

Therefore, the abovesaid facts, in toto, would go to expose that inasmuch as the property in the occupation of the defendants do not form part of the property lawfully belonging to the plaintiff, it is seen that the plaintiff is unable to project a fine picture by giving the extent and the linear measurements of the portion in the occupation of the defendants either in the plaint or in the plaint plan and even during the course of evidence in clear terms.

21. In the light of the abovesaid discussions, as rightly determined by the first appellate court, the plaintiff has, at the foremost, miserably failed to establish that he is entitled to the suit property, as described in the plaint, of an extent of 3465 sq. ft., and the plaintiff has miserably failed to establish the leave and license arrangement put forth by him



viz-a-viz the occupation of the property by the defendants and when the plaintiff has not even come forward as to the extent of the property in the occupation of the defendants in clear terms so as to identify the same and when from the materials placed on record, it is found that the defendants, on their own, are in the occupation of the property in their possession and enjoyment and running the tea stall in their own endeavours, without any reference to either the plaintiff or the plaintiff's fore fathers, in such view of the matter, the plaintiff having miserably failed to establish his claim of title to the property in the occupation of the defendants, as such, I do not find any reason to interfere with the judgment and decree of the first appellate court in rejecting the plaintiff's case. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

22.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bga

To

1. The V Additional Judge, City Civil Court, Madras
2. The V Assistant Judge, City Civil Court, Madras.

Copy to

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

+1 cc to Mr.P.B.Ramanujam, Advocate, S.R.No.38039

+1 cc to M/s.S.Balasubramanian, Advocate, S.R.No.38131

S.A.No.1564 of 2004

PA(CO)
SSM(18/09/2019)