IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 23.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.226 of 2004

1.S.Amirthavalli
2.Selvi
3.Indira
4.Dhanalakshmi ... Appellants/respondents/ Plaintiffs

Vs.

1.Abirami
2.Kaliamoorthy
3.Muthukumar ... Respondents/Appellants/ Defendants

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 27.03.2003 passed in A.S.No.102 of 2002 on the file of the Additional District Court (Fast Track Court No.2), Cuddalore, reversing the judgement and decree dated 20.01.2000 passed in O.S.No.701 of 1995 on the file of the Additional District Munsif's Court, Cuddalore.

For Appellants: Ms.A.Nilapher for Mr.R.Meenal

For Respondents: Ms.G.Sumitra for Mr.I.Abrar Mohammed Abdullah R1 & R3
R2-Given up

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 27.03.2003 passed in A.S.No.102 of 2002 on the file of the Additional District Judge/ Fast Track Court No.2, Cuddalore, reversing the judgement and decree dated 20.01.2000 passed in O.S.No.701 of 1995 on the file of the Additional District Munsif Court, Cuddalore.

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

> "(i).Whether in law the lower appellate Court was right in receiving additional documents at the appellate stage without seeking that the mandatory provisions of Order 41 Rule 21 were not complied with?
>
> (ii).Whether in law the lower appellate Court is right in failing to see that the respondents were only in permissive possession especially since there was no documentary evidence for long possession or for showing ancestral nature of the properties?"

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.

5.Suffice to state that the plaintiffs have laid the suit against the defendants seeking for the reliefs of declaration, possession and permanent injunction.

6.The plaintiffs claim title to the suit properties by virtue of the sale deeds dated 15.11.1965, 19.11.1965 and 23.09.1982 and in fact, it is seen that the sale deed dated 19.11.1965 has been executed in favour of Subramania padayachi, the husband of the first plaintiff and the father of the plaintiffs 2 to 5 by Kuppusamy Padayachi, who is the father of the defendants 2 & 3 and father-in-law of the first defendant. Thus, on the basis of the abovesaid sale deeds marked as Exs.A1, A3 & A5, the plaintiffs claim title to the suit properties. Further, the case of the plaintiffs is that Subramania Padayachi, while shifting his family to Kurinjipady Village along with his family members, at the request of the first defendant's husband Murugan, orally permitted him and his family members, to reside in the suit properties and in that capacity, the defendants are occupying the suit properties and however, quite contrary to the permission granted to them, taking advantage of the absence of Subramania Padayachi and his family members, it is stated that the defendants attempted to put up construction in the suit properties without any entitlement and accordingly, it is the case of the plaintiffs that they had revoked the permission granted to the defendants by way of a legal notice and despite the same, inasmuch as the defendants had not surrendered the possession of the suit properties and on the other hand, put forth the false claim of title to the suit properties, it is thus stated that the plaintiffs had been necessitated to lay the suit for appropriate reliefs.

7.Per contra, the case of the defendants is that they had denied the claim of title to the suit properties on the part of the plaintiffs as put forth in the plaint and also denied the alleged oral permission said to have been granted to them by Kuppusamy Padayachi to occupy the suit properties and according to them, the suit properties are the ancestral properties of the defendants and accordingly, they had been in the possession and enjoyment of the suit properties from the days of their ancestors by putting up construction thereon etc., paying house tax and other charges and accordingly, it is put forth that inasmuch as the suit properties are in the possession and enjoyment of the defendants for more than three generations from the days of their ancestors and also pleaded that they had prescribed title to the suit properties by way of adverse possession and hence, contended that the plaintiffs are not entitled to obtain the reliefs prayed for in the suit and prayed for dismissal of the plaintiffs' suit.

8.In support of the plaintiffs' case, PWs1 & 2 were examined and Exs.A1 to A14 were marked. On the side of the defendants, DWs1 to 3 were examined and Exs.B1 to B20 were marked. Exs.C1 & C2 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 grant the reliefs in favour of the plaintiffs as prayed for. In the first appellate Court, the defendants had marked two documents in support of their case by way of additional evidence, which documents have come to be marked as Exs.B21 & B22 and 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 thereby, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been laid.



10.As could be seen from the materials placed on record, both oral and documentary, it is found that as pleaded by the plaintiffs, Subramania Padayachi had purchased the three items of the suit properties by virtue of the sale deeds dated 15.11.1965, 19.11.1965 and 23.09.1982, which documents have come to be marked as Exs.A1, A3 & A5. In fact, it is found that Ex.A3 sale deed had come to be executed by the father of the defendants 2 & 3 and father-in-law of the first defendant in favour of Subramania Padayachi and accordingly, it is found that prior to the purchase of the suit properties by Subramania Padayachi, the defendants' predecessor in interest had been in the possession and enjoyment of the suit properties one way or the other. In fact, on a perusal of the description of the suit properties, it is found that the defendants and their predecessor in interest had been occupying the properties adjacent to the suit properties and accordingly, the boundaries described to the suit properties would go to show that the defendants and their predecessor in interest owned the properties adjacent to the suit properties. The plaintiffs have also examined the vendor, who had executed Ex.A5 sale deed, as PW2 and PW2 has also tendered evidence about the purchase of the property from him by Subramania Padayachi and the enjoyment of the same on the part of the plaintiffs with reference to the same. Considering Exs.A1, A3 & A5 in toto, it is evident that it is only Subramania Padayachi, who had acquired valid title to the suit properties and been in the possession and enjoyment of the same.

11.According to the plaintiffs, on the oral permission granted by Subramania Padayachi, the defendants are in the occupation of the suit properties. The abovesaid plea put forth by the plaintiffs has been disputed by the defendants. Per contra, according to the defendants, the suit properties are their ancestral properties and accordingly, they had been in the possession and enjoyment of the suit properties from the days of their ancestors for more than three generations together and in such view of the matter, it is also put forth by them that they had prescribed title to the suit properties by way of adverse possession.

12.As regards the claim of the defendants that the suit properties are their ancestral properties absolutely, there is no proof evidencing the same and the defendants have not put forth any specific case as to from which ancestors, they had been claiming title to the suit properties and how the so-called ancestors had derived title to the suit properties. Furthermore, to establish that their ancestors had been in the possession and enjoyment of the suit properties absolutely, there is no acceptable and convincing materials placed on their part. In such view of the matter, it is evident that the claim of the defendants that the suit properties are their ancestral properties had been rightly negatived by the trial Court and even by the first appellate Court.

13.Therefore, the claim of the defendants that the suit properties are their ancestral properties, not having been established, it is evident that the only plea of claiming title to the suit properties on the part of the defendants is adverse possession. By taking the abovesaid plea, as rightly put forth by the plaintiffs' counsel, the defendants thereby had impliedly admitted the claim of title of the plaintiffs to the suit properties. In such view of the matter, when the defendants have taken the plea of adverse title, it is for them to establish the abvoesaid claim by placing acceptable and reliable materials. In this connection, the defendants would project certain tax receipts on their side marked as Exs.A1 to 6 and 8 and the other tax receipts projected by the defendants are found to have emanated after the institution of the suit. However, as rightly determined by the trial Court, when the defendants are found to be in the enjoyment of the other properties adjacent to the suit properties, as could be seen from the boundary recitals of the suit properties given in the plaint and furthermore, when the defendants' predecessor in interest viz., Kuppusamy was in the enjoyment of the suit properties before alienating the same to Subramania Padayachi by way of Ex.A3 sale deed., in such view of the matter, when the tax receipts projected by the defendants are challenged by the plaintiffs in toto by contending that they are created by the defendants and not relating to the suit properties, as such, in such view of the matter, it is for the defendants to establish that the tax receipts projected by them point or relate to the superstructure lying in the suit properties, as such. However the defendants had miserably failed to establish that the tax receipts projected by them relate to the superstructure lying in the suit properties and said to have been constructed by them. In such view of the matter, the tax receipts projected by them would be of no use to sustain the claim of adverse title projected by the defendants. The defendants have also projected certain kist receipts in respect of the suit properties, however, as rightly determined by the trial Court, the defendants have failed to establish that the patta in respect of the suit properties had been issued in their favour or in favour of their predecessor in interest. Furthermore, the defendants, without placing the patta documents in respect of the suit properties, in such view of the matter, as rightly determined by the trial Court, the kist receipts projected by them cannot be held to be related to the suit properties, as such, particularly, when as abovenoted, the defendants own the other properties adjacent to the suit properties and when there is nothing in the kist receipts projected by them to indicate that they relate to the suit properties, as such. In all, it is seen that the kist receipts projected by the defendants would not serve any purpose to sustain the claim of adverse title put forth by them in respect of the suit properties. Of the kist receipts projected by them, only a few are found to be prior to the institution of the suit and the other receipts are found to be after the institution of the suit. Equally, the survey notice said to have been issued to Kupusamy marked as Ex.A20 would also not serve any purpose to sustain the claim of adverse title to the suit properties put forth by the defendants as the same is found to be issued after the institution of the suit.

14.Knowing fully well that the kist receipts and the house tax receipts projected by them are not pertaining to the suit properties, it is found that the defendants had endeavoured to produce certain additional evidence in the appellate Court viz., the chitta extract and adangal extract said to have been issued in favour of the predecessor in interest and it is seen that the said documents have been entertained by the first appellate Court, no doubt, on the application for the reception of the additional evidence. No doubt, the plaintiffs have not filed any counter tp the same. Be that as it may, merely because, the plaintiffs have not filed the counter that would not entitle or enable the defendants to project the additional evidence without establishing their entitlement to place the same as additional evidence in the first appellate Court as legally sustainable and well within the parameters outlined under Order 41 Rule 27 CPC. No explanation has been offered by the defendants as to why they had not endeavoured to place the additional evidence during the course of trial. It is not the case of the defendants that they are not aware of the said documents during the course of trial or unable to secure the said documents during the course of trial and mark the same before the trial Court. In such view of the matter, when the defendants have not placed any acceptable and convincing reason as to why the additional evidence projected by them had not been marked during the course of trial, the first appellate Court is found to have erred in accepting the same, merely, on the footing that the plaintiffs had not filed the counter to the application for the reception of additional evidence. On a perusal of the additional evidence projected by the defendants, they are found to have been issued on 30.12.2002 much after the institution of the suit and even after the institution of the first appeal. Therefore, when the abovesaid revenue records projected by the defendants have come to be issued in favour of the defendants much after the institution of the suit and after the institution of the first appeal, the endeavour of the first appellate Court in entertaining the said documents in support of the defence version cannot at all be countenanced in any manner and as abovenoted, when the defendants have failed to establish that they are legally entitled to place additional documents for consideration and that the reception of additional evidence fall within the purview of the provisions contained in Order 41 Rule 27 CPC, when the additional evidence have come to be issued after the institution of the suit, in my considered opinion, no reliance at all could be placed on the said documents and in such view of the matter, the first appellate Court had grossly erred in accepting the additional evidence, particularly, when the defendants have failed to establish that they are entitled to mark the additional evidence and had satisfied the ingredients of Order 41 Rule 27 CPC. The first appellate Court thereby on the footing that the kist receipts and the other documents projected by the defendants relate to the suit properties co-relating to the patta depicted in the additional documents, on that reasonings, accepted the plea of adverse title projected by the defendant. However, when the additional documents have come to be issued in favour of the defendants after the institution of the suit and when the said documents had not been established to be issued in favour of the defendants to the knowledge of the plaintiffs., in such view of the matter, no reliance at all could be placed upon the said documents for any consideration. Therefore, the additional evidence projected by the defendants should be eschewed out of consideration and in such view of the matter, it is found that the kist receipts and house tax receipts projected by the defendants not shown to be relating to the suit properties, as such, thus the said documents would not be sufficient or acceptable for sustaining the plea of adverse title projected by the defendants. Furthermore, the documents projected by the defendants are not shown to be continuous and to have been issued in their favour to the knowledge of the plaintiffs and in such view of the matter, when the adequate proof of adverse title viz., the long continuous and uninterrupted possession and enjoyment of the suit properties with animus possidendi having not been established by the defendants and when the documents projected by them do not advance the plea of adverse title as put forth by the defendants, in all, it is found that the defendants have miserably failed to establish the plea of adverse title put forth by them in respect of the suit properties and in such view of the matter, the first appellate Court is found to have grossly erred in accepting the plea of adverse title pleaded by the defendants for sustaining their claim of possession and enjoyment of the suit properties.

15.The first appellate Court seems to have accepted the plea of adverse title on the part of the defendants on the footing that the plaintiffs have failed to establish the plea of oral permission said to have been granted by Subramania Padayachi in favour of the defendants to occupy the suit properties. Even assuming for the sake of arguments that the plea of oral permission projected by the plaintiffs has not been established, that would not in any manner disentitle the plaintiffs to seek and obtain the reliefs prayed for in the suit properties. Once it is found that it is only the plaintiffs, who have title to the suit properties and the defendants having not established their claim of title to the suit properties as projected by them and when the defendants have failed to establish their claim of adverse title to the suit properties, in such view of the matter, the defendants are found to be in the unlawful possession and enjoyment of the suit properties without any authority and when the plaintiffs are found to be lawful owners of the suit properties, in all, it is found that the plaintiffs are entitled to obtain the reliefs prayed for in the suit as determined by the trial Court. The first appellate Court without appreciating the materials placed on record in the right perspective, on an erroneous understanding of the same and also without appreciating the principles of law governing the same, erred in accepting the defence version and thereby, further erred in dismissing the plaintiffs' suit. In such view of the matter, the judgment and decree of the first appellate Court are liable to be set aside. The substantial questions of law formulated in the second appeal are, accordingly, answered in favour of the plaintiffs and against the defendants.

16.The plaintiffs' counsel, in support of her contentions, placed reliance upon the decisions reported in (2006) 7 Supreme Court Cases 570 (T.Anjanappa and others Vs. Somalingappa and another) and (2007) 6 Supreme Court Cases 59 (P.T.Munichikkanna Reddy and others Vs.Revamma and others). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17.In conclusion, the Judgement and Decree dated 27.03.2003 passed in A.S.No.102 of 2002 on the file of the Additional District Judge/ Fast Track Court No.2, Cuddalore, are set aside and the judgement and decree dated 20.01.2000 passed in O.S.No.701 of 1995 on the file of the Additional District Munsif Court, Cuddalore are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar



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To

1.The Additional District Judge,
The Additional District Court,
(Fast Track Court No.2), Cuddalore.
2.The Additional District Munsif's Court, Cuddalore.

Copy to

The Section Officer,
V.R. Section, High Court,
Madras(+2 copies)

+1 cc to Ms.G.Sumitra Advocate sr38540
+1 cc to Mr.R.Subramanian Advocate sr39145

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