



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.02.2019

PRONOUNCED ON : 04 .03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1197 of 2005

K.Kalyanam ...Appellant/3rd Defendant
Vs.
1. Gnanasoundari ..1st Respondent/Plaintiff
2. Malliga
3. Subramaniyan
4. Shantha Kumari
5. Girija ..Respondents 2 to 5/Defendants 1,2,4 & 6

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 19.06.2001 passed in A.S.No.123 of 2000 on the file of the Principal Subordinate Judge, mayiladuthurai, confirming the judgment and decree dated 11.10.2000 made in O.S.No.372 of 1990 passed by the District Munsif, Sirkazhi.

For Appellant : Mr.D.Balachandran
For Respondents : Mr.M.R.Jothimanian for R1

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 19.06.2001 passed in A.S.No.123 of 2000, on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 11.10.2000 passed in O.S.No.372 of 1990 on the file of the District Munsif Court, Sirkazhi.

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

"a) Whether the courts below have rightly appreciated the evidence placed before them in deciding the issues in contention?

b) Whether the courts below were right in deciding the issues arising in the case against the appellants?

c) Whether the courts below were right in accepting the commissioner's report in his



entirety in spite of the objections raised by the appellant?

WEB COPY

d) Whether the courts below could allow the suit in part after rejecting some of the vital issues raised by the plaintiff?

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. The suit has been laid by the plaintiff claiming the reliefs of permanent injunction as regards the plaint 'C' schedule property and the relief of possession as regards the plaint 'B' schedule property and also for future mesne profits.

6. Based on the materials placed by the respective parties, both oral and documentary, the courts below were pleased to hold that the plaintiff is entitled to recover the possession of the 'B' schedule property as detailed in Ex.C4 in red colour portion given in triangular shape and accordingly, for the abovesaid portion alone granted the relief of recovery of possession in favour of the plaintiff from the third defendant and also granted the relief of permanent injunction in favour of the plaintiff against the third defendant in respect of the plaint 'C' schedule property and as regards the claim of future mesne profits, relegated the matter to a separate proceeding and dismissed the suit of the plaintiff as against the remaining defendants. Impugning the same, the present second appeal has been laid.

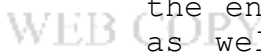
7. As rightly determined by the courts below, based on Ex.A1 sale deed, it is found that the plaintiff owns the plaint schedule property. Similarly based on Exs.B1 and B2 it is found that the defendant owns the property to the north of the plaintiff's property and thus it is seen that the plaintiff's property is comprised in survey No.99/1B. It is alleged by the plaintiff that the defendant had encroached into his property and accordingly prayed for the recovery of the possession of the same. Considering the materials placed on record, particularly, the surveyor's report and plan marked as Exs.C3 and C4, it is found that the third defendant had encroached into a portion of the plaintiff's property shown in red colour and triangular in shape as depicted in Ex.C4 plan and accordingly when the third defendant has not shown any entitlement as per his records



Exs.B1 and B2 that he has title to the abovesaid encroached portion and furthermore, when the third defendant has not putforth any reliable and convincing objections to the surveyor's report and plan marked as Exs.C3 and C4 and also not placed any material to disbelieve the surveyor's report and plan marked as Ex.C3 and C4, particularly, the encroachment made by the defendant as depicted in Ex.C4 in respect of the plaintiff's property, in such view of the matter, the courts below are found to have rightly confirmed that the third defendant, without any authority or entitlement, had encroached into the plaintiff's property shown in red colour and triangular shape with measurements in Ex.C4 and accordingly it is found that the courts below are fully justified in granting the relief of the recovery of possession of the abovesaid encroachment made by the third defendant of the plaintiff property, in favour of the plaintiff.

8. However, resisting the abovesaid claim putforth by the plaintiff, the defendant would plead that he has been in the possession of the encroached portion noted by the surveyor in his report and plan, openly and continuously beyond the statutory period to the knowledge of the plaintiff and thereby prescribed title to the said portion by way of the adverse possession. However, considering the materials projected by the third defendant, when the same do not point out that the third defendant had been in the possession and enjoyment of the same openly, continuously and uninterruptedly to the knowledge of the plaintiff beyond the statutory period with the animus possidendi, as rightly determined by the courts below, the claim of title to the abovesaid portion by the third defendant by way of the adverse title to the property had been rightly declined by the courts below. Particularly, when it is noted that the third defendant's predecessor in title had attested the plaintiff's title document marked as Ex.A1, the third defendant deriving title from him, cannot plead ignorance of the plaintiff's entitlement to the encroached portion and therefore, the plea of adverse possession projected by the third defendant as regards the encroached portion has been rightly declined by the courts below.

9. On the basis of the materials placed on record, the courts below have correctly held that the plaintiff is having title, possession and enjoyment of the 'C' schedule property and on finding that the third defendant has no entitlement to dispute the plaintiff's possession with reference to the same, granted the relief of permanent injunction in favour of the plaintiff with reference to the 'C' schedule suit property.



the en
as we

the en
as we

the en
as we

the en
as we

the en
as we

the en
as we

the en
as we

- the en
as we

the en
as we

the en
as we

the en
as we

the en
as we