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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :24.04.2019

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CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.927 and 928 of 2005

P.Srinivasan

... Appellant in both appeals/
1st Plaintiff/1st Defendant

Vs.

1.G.No.1250 Thiruporur
Agricultural Service
Co-operative Society

Rep. By its Special Officer,

...1st Respondent(in both)/
Defendant/plaintiff

2.Karuppusamy
(Given up)

...2nd Respondents in both /
2nd Plaintiff/2nd Defendant

Prayer in S.A.No.927 of 2005:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Principal Subordinate Judge, Chengalpattu in A.S.No.31 of 2004 dated 24.09.2004 confirming the judgment and decree of the District Munsif, Chengalpattu in O.S.No.685 of 1987 dated 28.02.2003.

Prayer in S.A.No.928 of 2005:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Principal Subordinate Judge, Chengalpattu in A.S.No.32 of 2004 dated 24.09.2004 confirming the judgment and decree of the District Munsif, Chengalpattu in O.S.No.249 of 1990 dated 28.02.2003.

For Appellant : M/s.J.Amritha Sarayoo
for M/s.J.Srinivasa Mohan

For RR1 : Mr.C.Jagdish
for M/s.LP.Shanmugasundaram

RR2 : Given up



C O M M O N J U D G M E N T

S.A.Nos.927 and 928 of 2005 are directed against the judgment and decree dated 24.09.2004 passed in A.S.Nos. 31 and 32 of 2004 on the file of the Principal Subordinate court, Chengalpat, confirming the judgment and decree passed in O.S.Nos.685 of 1997 and 249 of 1990 on the file of the District Munsif Court, Chengalpat.

2. Both the second appeals have been admitted on the following substantial questions of law:
S.A.No.927 of 2005:

1. In case of conflict between specific and general measurements would not specific measurements prevail?
2. Whether the action of the courts below in not relying upon the exhibits that show the extent of specific measurements vide Ex.A-15 and others, can be sustained in law and whether such non-reliance or wrong reliance have not vitiated the judgments of the courts below?
3. When specific boundaries are given would that not prevail and take within itself all the extend available within the said boundaries?
4. When plan with specific measurements is given, will it not prevail over the statement that lesser extent has been assigned?
5. Are not the judgments of the court below vitiated by misreading of exhibit A-1?
6. Whether the report of the advocate commissioner can be relied upon when the same merely reproduces the FMB sketch, and the property has not been actually measured vis-a-vis survey stones, for which purpose the commissioner was appointed?



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S.A.No.928 of 2005:

7. Whether the judgments of the Courts below can be sustained in law, in the face of Ex.A7, when admittedly the appellant is in possession of the property and the suit is for bare injunction?

1. In case of conflict between specific and general measurements would not specific measurements prevail?

2. Whether the action of the courts below in not relying upon the specific measurements in Ex.A15, but relying upon the general extent, be sustained in law?

3. When specific boundaries are given would that not prevail and take within itself all the extent available within the said boundaries?

4. Whether the Courts below were justified in allowing the suit filed by the 1st respondent on the findings arrived at in the suit filed by the appellant?

5. Whether a suit for declaration can be decreed in the absence of document of title, namely the assignment order in this case?

6. Whether adangal and A-register extract can be treated as primary proof/ documents of title in a declaration suit?

7. Is not the prayer for damages, included by way of amendment pending suit, beyond the period of limitation, barred as such an no relief could be granted?

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 the rankings in the trial court.



5. Suffice to state that the plaintiffs have laid the suit against the defendant for the relief of permanent injunction in O.S.No.685 of 1987. The defendant has laid the suit against the plaintiffs in O.S.No.249 of 1990 for the reliefs of declaration, possession and damages. Based on the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiffs' suit and decree the suit laid by the defendant. Impugning the same, the present second appeals have been preferred.

6. Briefly stated, the plaintiffs' claim title to the suit property by way of the sale deed dated 12.02.1986 executed in their favour by one Velayutham. According to the plaintiffs, following the abovesaid sale deed, they had put up the terraced house with a wall in the suit property by enclosing the same with a compound wall and enjoyed the same for a continuous period of time and thereby also prescribed title to the suit property by way of adverse possession and the defendant who is having the property on the northern side of the said property, sent a notice as if the plaintiffs had encroached into its property and to the said notice, the plaintiffs sent a reply and despite the same, inasmuch as, the defendant endeavored to remove the compound wall put up by the plaintiffs in their property, according to the plaintiffs, they had been necessitated to lay the suit against the defendant for appropriate reliefs.

7. The abovesaid case of the plaintiffs had been resisted by the defendant and also the case has been projected by the defendant in the suit laid by it, contending that the plaint A schedule property described in the suit belong to them and in their possession and enjoyment as recorded in the settlement register and the plaintiffs who are occupying the property on the southern side of the plaint A schedule property without any manner of right or title, trespassed into the portion of the plaint A schedule property on the southern side described as the plaint B schedule property and accordingly called upon the plaintiffs to surrender the possession of the same and inasmuch as the plaintiffs without any entitlement, put up the compound wall in the encroached property without any right whatsoever and also failed to deliver the possession of the said property to the defendant, according to the defendant, it is entitled to the reliefs prayed for in the suit preferred by it against the plaintiffs and also on the abovesaid grounds, sought for the dismissal of the plaintiffs' suit.

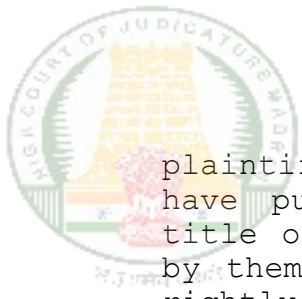
8. The plaintiffs resisted the abovesaid case of the defendant contending that the property in their possession



belongs to them by virtue of the sale deed dated 12.02.1986 and that they had not encroached into the property belonging to the defendant and also challenged the entitlement of the defendants to seek for damages from them as claimed in the plaint.

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9. As abovenoted, the plaintiffs mainly claim title to the property in their occupation by virtue of the sale deed dated 12.02.1986 said to have been executed by Velayutham in their favour and the said sale deed has been marked as Ex.A1. According to the plaintiffs, by way of Ex.A1 sale deed, Velayutham had conveyed an extent of 10 cents in their favour in suit survey No.111/6. On a perusal of Ex.A1 sale deed it is found that Velayutham had sold the abovesaid extent with basement etc., and in the abovesaid sale deed, Velayutham is found to have traced the title to the abovesaid extent by way of an assignment dated 22.07.1979. The abovesaid deed of assignment has been marked as Ex.A7. P.W.1 examined on behalf of the plaintiffs, during the course of his evidence has admitted that he had not measured the property at the time of the purchase from Velayutham under Ex.A1 sale deed and also pleaded ignorance as to whether Velayutham had been assigned the land and granted patta only in respect of the 3 cents of land on 22.07.1989 and admitted that as regards the claim of Velayutham, that the suit property is his ancestral property, there is no document except Ex.A7 patta and further admitted that by way of Ex.A7, the patta had been granted only in respect of 3 cents of land and in such view of the matter, it is found that Velayutham had been assigned only the extent of 3 cents of land under Ex.A7. In such view of the matter, it does not stand to reason as to how he would be competent to convey the extent of 10 cents of land to the plaintiffs by way of Ex.A1 sale deed. In Ex.A1 sale deed, the linear measurements of the property conveyed had not been specified. It has not been established by the plaintiffs that by way of Ex.A7, Velayutham had been assigned more than 3 cents of land in survey No.111/6. Though in the plan depicted in the said assignment, the property assigned is said to be measuring 92, 40, 80 and 40 ft, it is evident that Velayutham had been assigned only 3 cents of land. In such view of the matter, when there is no material placed on the part of the plaintiffs to evidence or hold that Velayutham had a valid title to the extent of 10 cents of land and when Velayutham's son examined as P.W.2 has also not been able to show that his father is entitled to 10 cents of land and when there is no material placed on record to hold that following Ex.A1, Velayutham was in the possession and enjoyment of 10 cents of land and though the plea has been put forth by the plaintiffs that Velayutham was in the possession and enjoyment of more extent of land by encroaching into Proamboke land and with reference to the so called enjoyment of Poramboke land, there is no acceptable and reliable material projected on the part of the



plaintiffs, when as above noted, the plaintiffs are found to have purchased the property without verifying the antecedent title of Velayutham and also by measuring the property acquired by them under Ex.A1 sale deed, in such view of the matter, as rightly determined by the Courts below and when furthermore, the plaintiffs are found to have put up the house construction and compound wall only after the purchase and thereby when it is found that the plaintiffs had encroached into the property on the northern side belonging to the defendant and put up the compound wall, accordingly, it is seen that the Courts below are fully justified in holding that the plaintiffs had miserably failed to establish the title of their vendor Velayutham as well as their title to the extent of 10 cents of land as pleaded by them and when the plaintiffs have miserably failed to establish their alleged possession and enjoyment of the 10 cents of land beyond the statutory period by exercising hostile attitude to the true owner thereof by placing acceptable and reliable materials, the plea of adverse title projected by the plaintiffs is found to be not meriting acceptance. It is thus evident that the plaintiffs had encroached into the suit property belonging to the defendant lying on the northern side.

10. As could be seen from the materials placed on record by the defendant, particularly Ex.B1 adangal extract, Ex.B3 settlement register, it is found that the defendant is having the title to the property lying in survey No.111/4 of an extent of 0.40.5 hectares and accordingly noting that the plaintiffs had encroached into its property, it is found that the defendant had sent a notice on 24.11.1986 complaining of the encroachment and also reiterated the same by way of the notice dated 07.01.1987 marked as Exs.A4 and A6 respectively and despite the same, as the plaintiffs had failed to surrender the possession of the encroached property and illegally occupying the same, it is found that the defendant had been necessitated to institute the suit against the plaintiffs for appropriate reliefs.

11. When the defendants had established its claim of title to the property belonging to it in survey No.111/4 by way of Ex.B3 settlement register extract and also when the encroachment of the defendant's property by the plaintiffs had also been brought home by way of the adangal extract Ex.B1 as well as the Commissioner's report and plan and the surveyor's plan marked as Exs.C1 to C3, the Courts below are fully justified in accepting the defendant's case and rejecting the plaintiff's case.

12. As regards the claim of damages, as abovenoted, when even prior to the institution of the suit, the defendant has been putting forth the case that the plaintiffs had



encroached into its property by way of Exs.A4 and A6 notices and despite the same, the plaintiffs had been raising untenable pleas to the same and though there is found to be some inconsistency in the area of encroachment committed by the plaintiffs on the part of the defendant that would not in any manner affect the defendant's case and when the encroachment made by the plaintiffs had been clearly and amply demonstrated and established by the defendant by way of Exs.C1 to C3 and D.W.2's evidence as well as the other materials, accordingly when the plea of damages claimed by the defendant is found to be inconsonance with the pleas already made by the defendant in both the suits and the plea of damages is only found to be based on the facts already disclosed by the defendant, in such view of the matter, the defendant having also been allowed to carry out the necessary amendments for seeking the relief of damages, in my considered opinion, the plea of damages cannot be said to be affected on the point of limitation as sought to be projected by the plaintiffs and the abovesaid case of the defendant for claiming the relief of damages had been rightly analysed and assessed by the Courts below by determining the quantum of damages to which the defendant is entitled to receive in the right proportion, in such view of the matter, I do not find any reason to interfere with the relief of damages granted in favour of the defendant as determined by the Courts below.

13.In the light of the abovesaid discussions, the Courts below are found to have analysed, assessed and determined the issues involved between the parties in the right perspective, based on the materials available on record as well as the principles of law governing the same and correctly granted the reliefs in favour of the defendant and dismissed the plaintiffs' suit and in such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeals. Be that as it may, the substantial questions of law formulated in the second appeals are accordingly answered against the plaintiffs and in favour of the defendant.

14.In support of her contentions, the plaintiffs counsel placed reliance upon the decisions reported in

1. 2008 (14) SCC 632 : 2008 (6) Supreme 714 [South Konkan Distilleries and another Vs. Prabhakar Gajanan Naik and others]
2. 1996 (1) SCC 90: 1996 0 AIR(SC) 642 [Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd and another]
3. 2011 (1) ALT 474 [Shaik Ali and Others Vs. District Collector, Chittoor and others]
4. Regular Second Appeal No.818 of 2013, dated 15.09.2014, Karnataka High Court at Bangalore [N.Varalakshmi Vs. Noorulla Khan and others]



15. In support of his contentions, the defendant's counsel placed reliance upon the decision reported in 2014 (1) SCC 669 : 2014 (1) SCC (Civ) 630 : 2013 SCC Online SC 853 [Gurdwara Sahib Vs. Gran Panchayat Village Sirthala and another]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16. In conclusion, both the second appeals fail and accordingly, are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1. The Principal Subordinate Judge,
Principal Sub Court,
Chengalpattu.

2. The District Munsif,
Chengalpattu.

+2 cc to Mr. L. P. Shanmugasundaram Advocate sr44915, 44916
+1 cc to Mr. J. Srinivasa Mohan Advocate sr44868

S.A.Nos. 927 and 928 of 2005

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