

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2019
PRONOUNCED ON : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN
S.A.Nos.220 & 221 of 2018

S.A.No.220 of 2018

G.Rajasekar ...Appellant/Defendant
Vs.
1.Neelavathi ...Respondent/Plaintiff
2.V.Vanaraj
3.V.Vijayakumar ...Respondents/Respondents

(3rd respondent has been
subsequently added as
party and grounds amended
as per order of CMP No.1560/2014
in A.S.No.513/2012 dt.09.03.2015)

S.A.No.221 of 2018

G.Rajasekar ...Appellant/Plaintiff
Vs.
1.Neelavathi
2.V.Vanaraj
3.Ramani
4.V.Vijayakumar ...Respondents/Respondents

(4th respondent has been
subsequently added as
party and grounds amended
as per order of CMP No.1561/2014
in A.S.No.514/2012 dt.09.03.2015)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 21.07.2017 passed in A.S.Nos.513 & 514 of 2012 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 18.06.2012 passed in O.S.Nos.13660 of 1996 & 3436 of 1997 on the file of the VII Assistant Judge, I/C of XI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.J.Sudhakaran
in both appeals

For Caveators : Mr.M.Md.Ibrahim Ali
in both appeals

COMMON JUDGMENT

Challenge in these second appeals are made to the Judgement and Decree dated 21.07.2017 passed in A.S.Nos.513 & 514 of 2012 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 18.06.2012 passed in O.S.Nos.13660 of 1996 & 3436 of 1997 on the file of the VII Assistant Judge, I/C of XI Assistant Judge, City Civil Court, Chennai.

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

3.Both O.S.Nos.13660/1996 and 3436/1997 having been laid for the relief of permanent injunction.

4.According to the plaintiffs, the suit property described in their plaint belonged to the deceased Vasudevan and the title of Vasudevan had been confirmed in O.S.No.679/1973 on the file of the District Munsif Court, Chengalpattu as well as in A.S.No.50/75 on the file of the Subordinate Court, Chengalpattu and according to them, they and one Vijayakumar, who has been impleaded as the 4th respondent in A.S.No.514/2012, are the legal heirs of the deceased Vasudevan and thereby, they had become the absolute owner of the suit property described in the abovesaid suit and been enjoying the same.

5.It is the case of the plaintiffs that the suit property in O.S.No.3436/1997 is situated on the northern side of the suit property involved in O.S.No.13660/1996. It is further put forth by them that during the life time of Vasudevan, dispute arise between them and the defendant and thereafter, a compromise had been arrived at between the parties by way of a compromise settlement dated 21.02.1982 in the presence of the mediators and pursuant to the same, it is stated that the deceased Vasudevan and the second plaintiff gave 3 ½ feet on the northern side of the suit property to the defendant and the defendant in turn relinquished all his claim over the suit property in O.S.No.13660/1996 and despite the abovesaid position, the defendant issued a legal notice claiming title to the property on false allegations and suitable reply had been given by the deceased Vasudevan and the second plaintiff and the defendant had not given back the extent of 3 ½ feet on the northern side of the suit property to the plaintiffs and thereby, contended that the suit laid by the defendant is false and accordingly, prayed for the relief as claimed in their suit and sought for the dismissal of the suit in O.S.No.3436 of 1997.

6. Briefly stated, the defendant would put forth the case that he is not a party to the proceedings in O.S.No.679/1973 and A.S.No.50/1975 and therefore, the judgment and decree passed in the abovesaid proceedings are not binding upon him and furthermore, it is put forth by him that though a compromise had been arrived at on 21.02.1982 as put forth by the plaintiffs, according to the defendant, he had not received 3 ½ feet of land from the plaintiffs and not relinquished his right over the suit property as put forth by them and according to the defendant, the property covered in O.S.No.3436/1997 belonged to his father Govindasamy and after his demise, the legal heirs of Govindasamy succeeded to his estate and the defendant is the son of Govindasamy and the defendant's mother had settled/released her share in the property in favour of the defendant by way of a deed dated 02.12.1980 and his sister had got married and went to her matrimonial home and therefore, the defendant, who is the absolute owner of the suit property in O.S.No.3436 of 1997 and inasmuch as the plaintiffs and one Ramani attempted to interfere with his possession and enjoyment of the property, he had been necessitated to levy the suit against them for the relief of permanent injunction.

7. Considering the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to decree the suit laid by the plaintiffs and dismiss the suit laid by the defendant and also allowed the counter claim made by Ramani in O.S.No.3436/1997. Impugning the same, the present second appeals have been preferred by the defendant.

8. As could be seen from the materials placed on record, it is found that as rightly determined by the Courts below, the title of the deceased Vasudevan in respect of the property covered in O.S.No.13660/1996 has been confirmed. Though it is put forth by the defendant that he is not a party to the abovesaid proceedings, from the materials available on record, it is found that Chinnakathirvelu had laid the abovesaid suit in O.S.No.679/1973 against the deceased Vasudevan for recovery of vacant possession of "C" schedule property described in the suit and the said suit had been dismissed and the same had been confirmed by the first appellate Court in A.S.No.50/1975. It is seen that Chinnakathirvelu is the predecessor in title of the defendant. In such view of the matter, when the predecessor in title of the defendant had laid the suit against Vasudevan for the recovery of the property in dispute covered in O.S.No.13660 of 1996 and failed in his suit, the defendant cannot be allowed to contend that the same is not binding upon him on the footing that he is not a party to the abovesaid proceedings, particularly, when his predecessor in title had lost his claim

of title, possession of the property in dispute in the abovesaid proceedings. As rightly found and determined by the Courts below, the defendant cannot be allowed to challenge the abovesaid determination of title to the property in dispute in favour of the deceased Vasudevan in the abovesaid proceedings.

9.It is not in dispute that Vasudevan left behind the plaintiffs and Vijayakumar, the 4th respondent in A.S.No.514 of 2012 and considering the documents projected by the plaintiffs marked as Exs.A1, A3, A4, A16 & A17 as well as the documents of possession projected by them marked as Exs.A7 to A9, A10, A11 & A21, all would go to show, as determined by the Courts below, in the nature of the preponderance of probabilities, it is only the plaintiffs, who are in the settled possession and enjoyment of his property involved in O.S.No.13660 of 1996.

10.As abovenoted, Ex.A2 compromise deed had not been disputed by the defendant. All that, he would state that he had not been given 3 ½ feet by the plaintiffs as put forth by them, pursuant to the abovesaid compromise deed. As rightly held by the Courts below, when the compromise deed Ex.A2 had not been disputed by the defendant, and accordingly, there had been no necessity on the part of the plaintiffs to establish the truth of the same by examining the witnesses to the same. Furthermore, when as per the recitals contained in Ex.A2 compromise deed, to which the defendant is a party, he had been allotted or given 3 ½ feet on the northern side of the suit property and thereby, the defendant having relinquished his claim over the suit property, in such view of the matter, as held by the Courts below, the defendant cannot be allowed to contend that the compromise deed Ex.A2 had not been put in action and that it had not been acted upon.

11.On an appreciation of the materials placed on record and in particular, the recitals contained in Ex.A2 compromise deed, it is found that the defendant is having only 29 feet on the eastern side and accordingly, it is found that the defendant, on the basis of the ex-parte order of Ad-Interim Injunction obtained by him in his suit in O.S.No.3436 of 1997, had encroached upon the land of Ramani and when the alleged encroachment had also been brought home by the report and plan of the advocate commissioner and in such view of the matter, it is found that the defendant cannot be allowed to give a go by to the compromise deed and encroach into the property belonging to Ramani and therefore, the Courts below are justified in granting the counter claim made by Ramani in O.S.No.3436/1997.

12.As held by the Courts below, the defendant has failed to establish his claim of title to the property as described in O.S.No.3436/1997 particularly as to how his father Govindasamy

had acquired title to the property and as abovenoted, when the defendant's predecessor in title viz., Chinnakathirvelu had lost his claim of title and possession of the property in dispute in the earlier proceedings as above pointed out, in all, it is found that the defendant, without any basis, is attempting to re agitate the issue already settled between the parties and thereby, found to have laid a false counter suit claiming the relief of permanent injunction in his suit in O.S.No.3436/1997 after the suit had been laid against him by the plaintiffs in O.S.No.13660 of 1996.

13.In the light of the abvoesaid factors, when the Courts below, on the proper appreciation of the materials placed on record, had rightly held that it is only the plaintiffs, who are in the settled possession and enjoyment of the suit property involved in O.S.No.13660/1996 and the defendant having failed to establish his claim of possession and enjoyment of the suit property involved in O.S.No.3436/1997 as put forth by him and when the defendant cannot be allowed to go against the compromise deed Ex.A2 and as abvoenoted, when the defendant has also failed to establish his claim of title to the property involved in O.S.No.3436/1997 as well as the possession of the same, in all, it is found that the Courts below are found to be wholly justified in rejecting the defendant's case and upholding the case of the plaintiffs and the case of Ramani and the determination of the Courts below, centring on the factual matrix and based on the proper appreciation of the materials projected in the matter and not suffering from any perversity or infirmity, in such view of the matter, both the second appeals do not merit acceptance.

14.The defendant's counsel, in support of his contentions, placed reliance upon the decision reported in 2014-3-L.W.397 (Subramanian Vs.Kosalai Ammal (Deceased) & others) and 2007 (4) CTC 70 (Chinna Nachiappan and another Vs.PL.Lakshmanan). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

For the reasons aforestated, no substantial question of law is found to be involved in the matter and resultantly, the second appeals are dismissed. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The VI Additional Judge, City Civil Court, Chennai.
- 2.The VII Assistant Judge, I/C of XI Assistant Judge,
City Civil Court, Chennai.

Copy to

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

+1 CC to Mr.J.Sudhakaran, Advocate sr 72185.

+1 CC to Mr.M.Md.Ibrahim, Ali, Advocate sr 76331.

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PP(CO)
SP(28/01/2020)



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