

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 21.12.2018
JUDGMENT PRONOUNCED ON : 3 .01.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
Second Appeal No. 342 of 2012
and M.P.No.01 of 2012

The Corporation of Chennai,
Rep., by its Commissioner,
Ripon Buildings,
Chennai - 600 003.

... Appellant/Appellant/Defendant

Vs.

Mrs.Uma Devi

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the learned II Additional City Civil Judge, Chennai in A.S.No.258 of 2010 dated 23.08.2011, confirming the judgment and Decree of the learned XII Assistant City Civil Judge, Chennai in O.S.No.5994 of 2005 dated 15.12.2008.

For Appellant : Mrs. Karthika Ashok

For Respondent : Mrs. Vasudha Thiagarajan for
M/s.R. Thiagarajan

JUDGMENT

1. Aggrieved over the concurrent findings of the Court below the present second appeal has been filed.

2. The brief facts of the Plaintiff's case is as follows:

2(a) The Plaintiff become an owner of the property by virtue of purchase from 19.03.1998 and he is in possession and enjoyment of the suit property. The suit property formed part of the larger extent of the property originally owned by one Mr.Balakrishna Naicker, who is the father-in-law and grand father of the Plaintiff's Vendor. The said Mr.Balakrishna Naicker acquired the suit property under a registered sale deed dated 05.07.1937. After his death, the suit property and other properties devolved upon his son Mr.Veera Raghavan Naicker. The said Mr. Veera Raghavan Naicker converted the larger extent into the housing plots and sold several plots and died intestate on 03.03.1990 leaving behind the plaintiff's vendors as his legal

heirs to inherit the properties. The legal heirs who have succeeded those properties sold the suit property to the Plaintiff. The plaintiff is in possession of the property. On 10.09.2005 some men removed the thorn bushes put up around the suit property and when the Plaintiff questioned their act, they have informed the plaintiff that they were acting under the instructions of the officials of the defendant Corporation. Hence the suit.

3. The case of the defendant in nutshell is as follows:

3(a) The plaintiff is not the owner of the property. The property belongs to the Corporation. Originally the suit property belongs to one Mr.Gopinathan, who has gifted the suit property to the Corporation of Chennai, by way of Gift Deed dated 05.04.1977. Besides, the said Gopinathan has also handed over all roads and land in lay out No.24/73 to Velachery town panchayat, for public purpose. The Velachery town property was brought under the city limit, therefore the said property has been vested with the corporation of Chennai. The Plaintiff has no right over the property. The Corporation of Chennai is putting up a compound wall to protect the property from the encroaches. Hence, they prayed for dismissal.

4. On the sider of the plaintiff P.W.1 was examined. Ex.A.1 to Ex.A.8 were marked. On the side of the Defendant, Assistant Engineer of the Defendant Corporation was examined as D.W.1., and Ex.D1 and Ex.D.2 were marked.

5. The trial Court after analyzing the evidence and materials decreed the suit. The first appellate Court is also confirmed the findings of the trial Court and dismissing the appeal, against which the present second appeal has been filed.

6. At the time of admission of the Second Appeal the following substantial questions of law were framed:-

a) Whether the courts below have committed an error in drawing an adverse inference against the contentions of the appellant herein/defendant that the property in question was approved only as a vacant land to be maintained as park, despite the production of Ex.B.2? and

b) Whether the finding of the courts below that the disputed property is not the one earmarked for public purpose, is perverse?

7. The learned counsel appearing for the Appellant vehemently contented that the suit properties is earmarked for public purpose in Plan No.24/73. Therefore, the property is vested with the corporation. Ex.B2 filed in this regard is not at all considered by the Courts below. The plaintiff Plot No.25 never found in the approved plan as a plot. Hence, submitted that the Trial Court as well as the Appellate Court misinterpreted the evidence and drawn adverse inference against the Appellant Corporation. The appellant corporation has produced Ex.B.2 the documents available with them. If Ex.B2 has been properly considered by the Courts below, the plaintiff had no right to the property. Admittedly, the property has been vested with the Corporation and gifted to the Corporation by the erstwhile owner by way of Ex.B1 Gift Deed. Hence, submitted that the trial Court and the first Appellate Court have not appreciated the evidence properly. Hence, prayed for allowing the Appeal.

8. The learned Counsel appearing for the respondent has submitted that the property originally belong to one Mr.Balakrishna Naicker and the Plaintiff has purchased the property from legal heirs of the said Mr.Balakrishna Naicker's son. The contention of the Corporation is that the suit property originally belong to one Mr.Gopinath is absolutely false. The title deed filed by the plaintiff would show that the property all along belong to Mr.Balakrishna Naicker. Therefore, the contention of the corporation that the property belongs to Mr.Gopinath cannot be countenanced.

9. It is the further contention of the learned counsel, even assuming that one Mr.Gopinath has gifted the property, under Ex.B.1 there is no reference to the suit property. Further, Ex.B2 is also did not contain the signature of the owner of the property. The corresponding documents have not been filed by the Corporation to show that the suit property has been ear marked for public purpose. In the absence of any evidence to show that the suit property vested with the corporation and classified for public purpose, the Corporation have no right to question the title of the plaintiff. Hence, submitted that the Courts below rightly appreciated the evidence and decreed the suit and there is no substantial question of law in the appeal.

10. In the light of the above submissions, when the materials and evidence analyzed makes it clear that the plaintiff has filed the suit for Permanent Injunction against Corporation not to interfere with the possession of the plaintiff. The plaintiff has filed Ex.A.2 sale deed dated 19.03.1998 to show that the property originally owned by one

Mr.Balakrishna Naicker. Apart from that, Ex.A6 Encumbrance Certificate was also filed. On bare perusal of Ex.A6, the same indicated that Mr.Balakrishna Naicker had originally purchased the property in the year 1997. It is the main contention of the Defendant that the property originally owned by one Mr.Gopinath. Under Ex.B1 gift deed, he has handed over the same to the Velachery town panchayat. To show that the property originally owned by Mr.Gopinath, except Ex.B.1 absolutely, there is no materials and particulars on the side of the defendant. It is the specific contention of the defendant that the said Mr.Gopinath handed over the suit property at the time of obtaining plan and accordingly the property vested with the Velachery panchayat, thereafter merged with the Corporation. If the contention of the Corporation that Gopinath made applications for forming layout, the application and the proceedings of the Corporation must be in the file of the Defendant. But the Defendant having taken a specific stand that the property originally belong to Mr.Gopinath and he has applied for lay out permission, they have not produced any document in this regard.

11. It is well settled that when a party asserts specific contention, the burden lies on him to establish the same. Whereas, the plaintiff has established his title by producing the sale deed and also shown that the property belong to one Mr.Balakrishna Naicker and he acquired the property in the year of 1937. When the title of the property was held by some other person as alleged by the defendant, it is for the defendant to produce better evidence to disprove the above fact. Unless, the title held by Mr.Balakrishna Naicker is challenged by the defendant, they cannot simply rely upon the unregistered documents to show that some other person is the owner of the property and has handed over the same to the defendant. It is curious to note that Ex.B1 cannot be looked into for any purpose as the same is not a registered document. Even cursory look at Ex.B1 the same does not refer to the suit survey number whereas it refers to some other survey numbers. Therefore, Ex.B.1 even received and admitted as an evidence will not serve any purpose to the defendant to prove their contention. It is also to be noted that any person who applies for permission for lay out should file an application under Section 49 of the Town and Country Planning Act. The defendant have not produced any document to show that only Mr.Gopinath has obtained lay out permission and the suit property has been granted permission under Ex.B.2 and suit property has been reserved for public purpose.

12. Ex.B.2 on which much reliance has been placed by the Appellant counsel when carefully seen, the plan of the Velachery Town panchayat showing that the suit property and other

properties shown as house plots. But the name of the person who applied for permission has not found, in fact the some portion of the plan has been torn, and not attached to Ex.B.2. The reason for such tampering has also not explained by the defendant. It is also curious to note that according to the defendant entire planning permission was accorded only on the basis of the gift deed Ex.B1 where as the gift deed there is no reference to the suit survey number 707, where as Ex.B2 included 707. How such inclusion appeared in this Ex.B.2 plan, there is neither any explanation nor materials available. When the property itself is not vested with the corporation as per the Ex.B1, this Court is at loss to understand how the above survey number is included in the Ex.B2. This aspect is also not clarified by the defendant.

13. As already stated necessarily there must be an application by the person who applied for permission to make lay out under Section 49 Tamil Nadu Town and Country Planning Act. The Defendant, mainly relied upon the Plan No.24/73 to show that the suit property comes within the above survey number. But their main case is that the suit property originally belongs to one Mr.Gopinath which has not been established.

14. On the other hand, the Plaintiff has clearly established the title and shown that the property held by Mr. Balakrishna Naiker right from the year 1937. When the title set up by the Defendant has not been established without any other materials they cannot succeed that the suit property has been reserved for public purpose. No doubt, any plot within the municipality or corporation reserved for public purpose while granting the permission for lay out, the owner of the land ceases to be the legal owner and he owns the land only for the benefit of the society or public in general and he cannot sell it. In fact, the defendant has not established their specific contention that the suit property belongs to one Gopinath. Whereas the documents filed by the plaintiff clinchingly established that the suit property originally belongs to Mr.Balakrishna Naicker. In the absence of any evidence to show that the original owner, in fact, he has applied for permission and handed over the possession to the corporation, the corporation cannot rely upon Ex.B2 which was prepared on the basis of the Ex.B1 given by one Mr.Gopinath, who is not the owner of the property.

15. Hence, this Court does not find any infirmity in the judgment of the Courts below. When the corporation is a public authority is failed to produce the relevant documents despite the opportunities given by the Trial Court and also the Appellate court, there is nothing wrong in drawing adverse

inference against them. It is curious to note that the originally the exparte decree has been passed there after in the appeal the matter has been remitted back and the appellant has given opportunity to adduce the evidence. Even than no documents have been filed except Ex.B1 and Ex.B2. Therefore, the findings of the trial Court and appellate Court drawing adverse inference against the Corporation cannot be faulted.

16. Further, it is brought to the notice of this Court, at the time of the submissions by the counsel that subsequently the appellant corporation has accorded the building permission to the Plaintiff based on which further constructions have been put up with the proper approval. Such subsequent event though is not a material for deciding this appeal cannot be ignored together. Hence in view of the above this Court do not find any infirmity or perversity in the judgment of the Appellate Court and also the trial Court. Accordingly, the substantial questions of law are answered against the appellant and the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TO:

1.The II Additional Judge,
City Civil Court, Chennai.

2.The XII Assistant Judge,
City Civil Court, Chennai.

3.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mrs. Karthika Ashok, Advocate sr.no.986
+3cc to M/s.R. Thiagarajan, Advocate sr.no.431

S.A.No.342 of 2012

nr 27/03/2019