

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :15.07.2019

PRONOUNCED ON:18.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.758 of 2019

and

C.M.P.No.14681 of 2019

1. Anandan

2.Selvamani

3.Lakshmi Ammal

.... Appellants/Appellants/
Plaintiffs1 to 3

Vs.

1.KaliyaperumalIst Respondent/1st Respondent/Defendant

2.Perumal2nd Respondent/2nd Respondent/4th Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 12.09.2018 made in A.S.No.113 of 2017 on the file of the Sub Court, Ulundurpet, confirming the judgment and decree dated 08.12.2011 made in O.S.No.293 of 2009 on the file of the Principal District Munsif Court, Ulundurpet.

For Appellants : Mr.P.Parthi Kannan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 12.09.2018 passed in A.S.No.113 of 2017 on the file of the Subordinate Court, Ulundurpet, confirming the judgment and decree dated 08.12.2011 passed in O.S.No.293 of 2009 on the file of the Principal District Munsif Court, Ulundurpet.

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

3. Suit for declaration and permanent injunction in respect of the plaint D schedule property.

4. The plaintiffs in support of their case placed reliance upon four documents marked as Exs.A1 to A4. It is found that the suit property is comprised in Survey No.338/2. It is admitted by the plaintiffs that the properties comprised in the plaint schedule are resurveyed as Survey Nos.338/1, 338/2 and 338/3 and accordingly P.W.1 examined on behalf of the plaintiffs has admitted during the course of his evidence that the site described in Ex.A1 sale deed refers to the property lying to the north of the suit property and the same is comprised in Survey No.338/1. Furthermore, he has also admitted that the property comprised in Ex.A1 is not the suit property. In addition to that he has also admitted that the settlement deed marked as Ex.A2 only refers to the property situated to the north of the suit property and the same pertains to Survey No.338/1 and therefore it is evident that both Exs.A1 and A2 putforth by the plaintiffs do not relate to the suit property. It is also admitted by the plaintiffs that in resurvey proceedings, the suit property is held to be lying in Survey No.338/2 and only with reference to the said site, the suit has been laid by them. The plaintiffs have produced the rough sketch marked as Ex.A3 and admitted that the property shown lying on the northern side pertains to Survey No.338/1 [A schedule] and the property shown in the middle is pertaining to Survey No.338/2 [D schedule] and the property lying on the south side pertains to Survey No.338/3 and therefore, it is found that as such Ex.A3 by itself would not be sufficient to hold that the plaintiffs are the owners of the suit property and the same is in their possession and enjoyment. Similarly, the sale deed marked as Ex.A4 has also been admitted by the plaintiffs to be not relating to the property in dispute described in the plaint D schedule. In the light of the abovesaid position, Exs.A1 to A4 do not disclose and support the trace of title of the plaintiffs to the suit property comprised in Survey No.338/2 and the plaintiffs having not placed any other material evidencing their claim of title, possession and enjoyment of the suit property i.e., plaint D schedule property, in such view of the matter, the Courts below are found to be totally justified in non-suiting the plaintiffs and plaintiffs cannot be allowed to pick holes in the defence version and thereby endeavour to succeed in their case.

5. The reasonings and conclusions of the Courts below for not accepting the plaintiffs' case, being founded on the proper appreciation of the materials on record, both factualwise as well as legalwise, accordingly there is no reason warranting to interfere with the concurrent judgment and decree of the Courts below. For the reasons aforesaid, the

second appeal fails and no substantial question is found to be involved in this second appeal. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Ulundurpet.
- 2.The Principal District Munisif,
Ulundurpet.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.61405

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and

सत्यमेव जयते C.M.P.No.14681 of 2019

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srg 04/12/2019

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