

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.06.2019

PRONOUNCED ON : 12.06.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S.A.No.121 of 2016

Varadharajan

...Appellant

Vs.

1. Manickam
2. Palanisamy
3. Chinnammal
4. Mohan
5. Kumar
6. Arumugam
7. Dhanasekaran

...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.04.2015 made in A.S.No. 114 of 2009 on the file of the I Additional Subordinate Judge, Salem, in confirming the Judgment and decree dated 01.03.2007 made in O.S.No.664 of 2002 on the file of the II Additional District Munsif Court, Salem.

For Appellant : Mr.C.Prabakaran

For Respondent : R1 to R7 - No appearance.

Set exparte
vide order dated 10.06.2019

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 13.04.2015 passed in A.S.No. 114 of 2009 on the file of the I Additional Subordinate Court, Salem, confirming the Judgment and decree dated 01.03.2007 passed in O.S.No.664 of 2002 on the file of the II Additional District Munsif Court, Salem.

2. It is seen that the second appeal has not been admitted and only the notice of motion has been ordered to the respondents. Furthermore, as could be seen from the available records, though the notice had been served on the respondents, they had not chosen to enter

appearance and they being called and remaining absent, they had been set exparte.

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

4. Suit for declaration, mandatory injunction and possession.

5. Briefly stated, the plaintiff claims title to the suit property based on the sale deed dated 05.06.2000 said to have been executed by one Navaneethammal and her 4 sons and according to the plaintiff, he has been in the possession and enjoyment of the suit property and the defendants unable to compete in the purchase of the suit property for a low price, attempted to trespass into the suit property, without any authority or entitlement, and despite the resistance, according to the plaintiff, the defendants had encroached into a portion of the suit property of an extent of 100 feet x 35 sq.ft. shown as ABCD in the rough plan and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that neither the plaintiff nor his predecessors in interest had any right, title or interest in the suit property and never been in the possession and enjoyment of the suit property at any point of time. It is also further contended by the defendants that the earlier suit filed by the plaintiff through one N.M.Subramania Chettiar, as his power agent, was also dismissed for non prosecution and according to the defendants, they had put up the tiled house in the portion of the suit property and enjoying the same for several years and also contended that the others have also put up the titled houses in the other portions of the suit property and further contended that the description of the suit property is not correct and the plaintiff has not described the suit property with correct survey number, boundaries, extent, etc., and accordingly prayed for dismissal of the said suit. Furthermore, the defendants have also pleaded that the suit laid by the plaintiff seeking for the relief of declaration is barred by limitation.

7. In support of the plaintiff's case P.Ws.1 and 3 were examined and Exs.A1 to A8 were marked. On the side of the defendants no oral evidence has been adduced and Exs.B1 to B6 were marked.

8. As could be seen from the materials placed on record, it is found that the suit had been originally laid by the plaintiff during September 2001, only for the relief of bare injunction. The plaintiff claims title to the suit property based on the sale deed dated 05.06.2000 marked as Ex.A1. The defendants have impugned the truth and validity of the abovesaid sale deed and further contended that the plaintiff's vendors themselves have no right, title or interest in respect of the suit property. In such view of the matter, it is for the plaintiff, who has come forward with the suit seeking for the reliefs of declaration, mandatory injunction and possession, to establish that his predecessors in interest had a valid title to the suit property and competent to convey the same to him by way of Ex.A1 sale deed. However, the plaintiff, as rightly determined by the courts below, had failed to establish the abovesaid aspect of the matter. In this connection, the plaintiff would rely upon the earlier title deeds, the xerox copies of which documents have been marked as Exs.A3 to A5. As rightly found and determined by the courts below, in Ex.A3, there is no survey number and similarly the documents marked as Exs.A4 and A5 also do not contain any survey number and in such view of the matter, it does not stand to reason as to how the plaintiff correlates the properties covered in Exs.A3 to A5 with the suit property alleged to have been purchased by him by way of Ex.A1 sale deed. In particular, the plaintiff has not come forward with the suit describing the suit property with clear boundaries. In such view of the matter, when the plaintiff has failed to establish and correlate the properties comprised in Exs.A3 to A5 with the property comprised in Ex.A1 and furthermore and when the plaintiff has failed to establish that it is only the suit property which is covered in the sale deed projected by him, in such view of the matter, the case of the plaintiff that he had acquired title to the suit property based on Ex.A1 sale deed, as such, cannot be accepted and rightly turned down by the courts below.

9. Though the plaintiff would claim that he has been in the possession and enjoyment of the suit property pursuant to Ex.A1 sale deed, as regards his alleged possession and enjoyment, absolutely there is no material forthcoming on the part of the plaintiff. As above noted, the defendants have also taken the plea that the suit property has not been properly described by giving the correct survey number, boundaries, etc. Despite the abovesaid plea, the plaintiff has miserably failed to establish to identify the suit property and particularly failed to establish that it is only the suit property

which had been dealt with in the title deeds marked as Exs.A3 to A5. In such view of the matter, when the plaintiff has failed to establish that his predecessors in interest had a valid title to the suit property and competent to convey the same to him by way of Ex.A1 sale deed and when the courts below have rightly found by analysing the materials placed on record that the properties covered under Exs.A3 to A5 do not have any similarity with the property comprised under Ex.A1 sale deed, in such view of the matter, the courts below are found to be wholly justified in not accepting the plaintiff's case that he has acquired a valid title to the suit property based on Ex.A1 sale deed.

10. According to the defendants, they have been in the portion of the suit property along with the property on the eastern side of the suit property by putting up the tiled house, etc., for several years and enjoying the same. It is also pleaded by the defendants that the plaintiff, claiming right to the suit property, had preferred the earlier suit as the power agent of N.M.Subramania Chettiar. It is admitted that the said suit had not been prosecuted by the plaintiff one way or the other. Therefore, it is found that the plaintiff had attempted to sustain his claim of title to the suit property in the earlier litigation, having failed to proceed with the same as per law, thereafter, has come forward with the present suit based on Ex.A1 sale deed.

11. According to the plaintiff, the defendants had encroached into the suit property after the institution of the suit laid by the plaintiff. Per contra, it is the case of the defendants that they had been in the possession and enjoyment of the portion of the suit property for several years by putting up the tiled house, etc. The plaintiff has failed to establish that the defendants had encroached into the suit property after the institution of the suit. The plaintiff has miserably failed to establish that on the date of the suit, he has been in the possession and enjoyment of the suit property as described in the plaint. Similarly, though the plaintiff would claim that the defendants had encroached into the portion of the suit property after the lis, had failed to establish as to the extent of the property in the occupation and enjoyment of the defendants and in this connection, had also not endeavoured to take out the commission for identifying the alleged encroachment said to have been made by the defendants in respect of the suit property. Therefore, it is found that the plaintiff himself is not sure as to the extent said to have been encroached by the defendants in the suit property and

also not sure about the identity of the suit property and accordingly not endeavoured to describe the suit property with the clear boundaries as well as the proper extent and accordingly the courts below are found to be correct in not accepting the plaintiff's case.

12. As above found, the suit had been laid by the plaintiff during the year 2001, only for the bare relief of permanent injunction. Thereafter only, during the year 2005, the plaintiff has chosen to amend the plaint for seeking the relief of declaration and possession. As could be seen from the materials available on record, it is found that the defendants had been in the possession and enjoyment of the portion of the suit property by putting up the tiled house much prior to the institution of the suit. The same could be gathered from the exchange of notices between the parties particularly marked as Ex.B3. Therefore, when it is found that the defendants had, during the year 1997 itself, been asserting that they are in the portion of the suit property by putting up the tiled house, etc., and thereby had denied the alleged claim of title of the plaintiff in respect of the suit property, despite the knowledge of the same, the plaintiff had not chosen to seek the relief of declaration within the time allowed by law. On the other hand, the plaintiff had chosen to levy the suit initially only for the relief of bare injunction and thereafter, conveniently, during the year 2005, had chosen to amend the plaint seeking the relief of declaration. In such view of the matter, as determined by the courts below, the plaintiff's suit for the relief of declaration is found to be clearly barred by limitation and no reason is warranted to interfere with the abovesaid determination of the courts below.

13. In the light of the abovesaid factual matrix, when the plaintiff has failed to establish the identity of the suit property by giving the clear description of the same, failed to establish that his predecessors in interest had a valid title to the suit property, failed to establish that he has acquired a valid title to the suit property based on Ex.A1 sale deed, failed to establish that the defendants had encroached into the suit property and, in particular, failed to establish that he has a better title to the suit property, particularly the portion of the suit property in the occupation of the defendants, in such view of the matter, the courts below are found to be fully justified in not accepting the plaintiff's case and declining the reliefs prayed for by him. No reason is warranted to interfere with the abovesaid findings and conclusions of the courts below. The abovesaid findings and conclusions of the

courts below having been arrived at by the courts below based on the proper appreciation of the materials placed on record and the same centering on the factual matrix, in such view of the matter, I do not find any substantial question of law involved in this second appeal.

14. In the light of the abovesaid factors, the second appeal is found to be devoid of merits and accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

bga

1. I Additional Subordinate Judge, Salem
- 2.II Additional District Munsif Court, Salem.

Copy to:

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

+1cc to Mr.C.Prabakaran , Advocate SR.No. 47410
S.A.No.121 of 2016

sv

A.SK(03/09/2019)

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