

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.08.2019

PRONOUNCED ON : 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.222 of 2016

M.E.Anjineyan ...Appellant/Appellant/Plaintiff

Vs.

P.Rikkabchand (died)

1.P.R.Chandrabai ...1st Respondent/2nd Respondent/2nd Defenant

2.R.Kamalkumar

3.R.Kishore Kumar

4.R.Premkumar

5.R.Rackkie

... 2-5Respondents/LRs of the 1st Respondent/1st Defendant
(Cause title accepted vide order
of Court dated 31.07.2013 made
in M.P.1/2010 in SA.Sr.50480/2010)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.11.2009 passed in A.S.No.24 of 2009 on the file of the Subordinate Court, Ranipet, confirming the Judgment and Decree dated 30.11.2005 passed in O.S.No.218 of 1998 on the file of the District Munsif Court, Sholinghur.

For Appellant : Mr.A.Gouthaman

For Respondents : Mr.S.Vijayakumar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 30.11.2009 passed in A.S.No.24 of 2009 on the file of the Subordinate Court, Ranipet, confirming the Judgment and Decree dated 30.11.2005 passed in O.S.No.218 of 1998 on the file of the District Munsif Court, Sholinghur.

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

3.Suit for Declaration, Permanent Injunction, Mandatory Injunction and Damages.

4.The case of the plaintiff in brief is that terraced and tiled house portion bearing No.37, Bazaar Street, Sholinghur

originally belonged to Rathinammal and she sold the same to the plaintiff's father M.N.Ethiraju Mudaliar by way of a sale deed dated 02.12.1969 and M.N.Ethiraju Mudaliar constructed the schedule mentioned house in 1970, after demolishing the terraced and tiled house portion and running a fertilizer shop in the same till his death and the plaintiff's father and his vendor were in the exclusive possession and enjoyment of the eastern Wall of the plaint schedule house shown as CDEF in the plaint plan for several decades without any interference from anybody including the defendants and by way of a registered Will dated 14.02.1994, M.N.Ethiraju Mudaliar bequeathed his properties in favour of the plaintiff and the plaintiff became entitled to the plaint schedule house including the suit Wall and enjoying the same and the plaintiff and his predecessor in interest have also perfected their right and title over the same by way of adverse possession on account of their long, continuous and uninterrupted possession and enjoyment of the same beyond the statutory period to the knowledge of the defendants and their vendors. While so, taking advantage of the plaintiff's absence and no sitting of the Court during vacation, the defendants damaged a portion of the suit Wall on their side and formed a big hole measuring 1 feet x 1 feet in the Wall and when the plaintiff and his brother questioned the same, the defendants would claim that the suit Wall belonged to them and thereafter, there was a mediation between the parties and at that point of time, the defendants admitted that they would restore the damaged Wall to its original position and close the hole formed by them. On the other hand, the defendants failed to keep up their promise and hence, according to the plaintiff, the need for the suit for appropriate reliefs.

5.The defendants resisted the plaintiff's suit contending that the claim of the plaintiff that his father had purchased the plaint schedule property including the suit Wall by way of a sale deed dated 02.12.1969 is false and also disputed that the plaintiff's father put up the construction in the property during 1970 and according to the defendants, the suit Wall belongs to them purchased by way of the sale deed dated 07.04.1984 from Ramalingam Chettiar in the name of the second defendant and at the time of purchase, the two storied Madras Terrace house building was in existence and the right and title of Ramalingam Chettiar in respect of the abvoesaid two storied building together with the suit Wall was upheld in the suit filed by him in O.S.No.122 of 1955, the defendants after purchase retained the ground floor construction with the roof and removed the first floor and second floor construction and reconstructed the house on the first floor and the second floor by converting it to RCC roof and rested the same on the suit Wall and hence, the suit Wall forms part of the defendants' property and the defendants removed an extent of 12 feet on the southern side and the plaintiff has no manner of right or enjoyment over the suit Wall at any point of time and even his predecessor in interest had not enjoyed the suit

Wall and disputed the case of the plaintiff that they had assured to restore the demolished Wall to its original position and also disputed the claim of the plaintiff over the suit Wall by way of adverse title and according to them, the construction had been made by the plaintiff in the year 1986 and not in 1970 as claimed in the plaint and when the defendants put up their construction by raising the erection on the suit Wall, they came to know that the premises of the plaintiff had been rested on the suit Wall. However, at no point of time, either the plaintiff or his predecessor in interest claimed any right over the same and the plaintiff is not entitled to the reliefs prayed for and accordingly, prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B3 were marked. Exs.C1 & C2 was also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been preferred.

8. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i). Are the Courts below right in dismissing the suit that the plaintiff is not established the title to the suit property as per Ex.A1, when the plaintiff has established his right by way of adverse possession?

(ii). Are the Courts below right in dismissing the suit when it is clearly established long possession of the plaintiff, it will create right by way of easement?

9. The dispute between the parties is only as regards the suit Wall shown as CDEF in the plaint plan. Now, according to the plaintiff, his father M.N.Ethiraju Mudaliar had purchased the plaint schedule property inclusive of the suit Wall by way of a sale deed dated 02.12.1969, the copy of which document had been marked as Ex.A1. The plaintiff has examined himself as PW1. PW1, during the course of evidence, has clearly admitted that by way of Ex.A1 sale deed, the suit Wall had not been purchased. Therefore, the very case of the plaintiff that his father had acquired the right and title over the suit Wall by way of Ex.A1 sale deed goes out.

10. On a perusal of Ex.A1 sale deed, it is found that the property purchased by way of the same measures 9.1 feet east-west on the northern side and 8.1 feet east-west on the southern side and by way of the abovesaid sale deed, only half right in the western wall had been acquired and in such view of the matter, the claim of the plaintiff that his father had acquired right over the suit Wall under Ex.A1 sale deed cannot be believed and accepted in any manner.

11. On the other hand, according to the defendants, they had acquired right over the suit Wall by way of the sale deed dated 07.04.1984 from Ramalingam Chettiar in the name of the second defendant, which document has been marked as Ex.B1. On a perusal of Ex.B1, it is found that the defendants had acquired the property consisting of two storey building with specific measurements including parent Wall on the western side running north to south. According to the plaintiff, the defendants' property is lying on the eastern side of the suit Wall. However, when as per Ex.B1 sale deed, the defendants are found to have acquired right over the property inclusive of the western parent Wall running north to south with specific measurements, in such view matter, as rightly determined by the Courts below, it is only the defendants, who had acquired absolute right over the suit Wall and accordingly, it is found that the defendants, after Ex.B1 sale transaction, had removed the first floor and the second floor construction in the property and put up a new RCC construction and rested their erection on the suit Wall belonging to them.

12. The plaintiff claims absolute right over the suit Wall under Ex.A1 sale deed. However when as abovenoted, the plaintiff's father has not acquired any right over the suit Wall, as such, under Ex.A1 sale deed and the same has also been admitted by the plaintiff during the course of his evidence, the only other remedy put forth by the plaintiff for claiming right over the suit Wall is by way of adverse possession. Now, according to the plaintiff, his father had put up the new construction in the property purchased under Ex.A1 during 1970 and at that point of time, he had reduced the width of the suit Wall and put up the construction thereon and enjoying the same since then. However, as rightly found and determined by the Courts below, absolutely, there is no material on the part of the plaintiff evidencing that his father had put up the construction resting on the suit Wall during 1970 itself and therefore, the claim of the plaintiff that his father had demolished the suit Wall measuring a width of 2 feet and reduced the width of the Wall to 1.5 feet and rested the construction put up by him on the same during 1970 itself cannot be accepted Ipso facto, particularly, when there is no material placed on the part of the plaintiff pointing to the same. When as above pointed out by way of Ex.A1 sale deed, the plaintiff's father had not acquired any right over the suit Wall and on the other hand, when it is found that it is only the defendants, who had acquired absolute right over the

suit Wall under Ex.B1 sale deed, in such view of the matter, the claim of the plaintiff that his father had been enjoying the suit Wall by resting the construction on the same from 1970 onwards cannot be believed and accepted sans any material pointing to the same.

13.It is mainly put forth by the plaintiff's counsel that the commissioner's report and plan as well as the defendants themselves have admitted that the plaintiff's construction is resting upon the suit Wall and accordingly, it is his case that if the suit Wall is allowed to be removed or demolished by the defendants, the plaintiff's building would collapse and accordingly, the Court should hold that the plaintiff has prescribed title to the suit Wall by way of adverse possession on account of the long and continuous enjoyment. Even though the plaintiff's construction is found to be put up on the suit Wall, according to the defendants, the same had been put up by the plaintiff without their knowledge and therefore, on that basis, it is stated that the plaintiff cannot claim any right or title over the suit Wall as put forth by him. When the plaintiff has miserably failed to establish his claim of right over the suit Wall and also as to at what point of time, he or his father had put up construction resting on the same and merely because, the plaintiff's construction is resting on the suit Wall, as rightly held by the Courts below and as rightly contended by the defendants, it is found that the construction had been put up by the plaintiff resting on the suit Wall without the knowledge of the defendants and without obtaining their consent and on that basis, the plaintiff cannot be held to have acquired right over the suit Wall, as such, by way of adverse title. When the plaintiff has miserably failed to establish that he and his predecessor in interest had been enjoying the suit Wall openly, continuously, uninterruptedly to the knowledge of the defendants by refuting their title over the same with absolute interest and right over the same with animus possidendi beyond the statutory period, in such view of the matter, the plaintiff's claim of right over the suit Wall by way of the adverse possession has been rightly declined by the Courts below and I do not find any valid reason to interfere with the same.

14.The plaintiff's counsel during the course of argument also put forth the contention that considering the factor that the plaintiff's property is resting on the suit Wall, the Court should have granted the right of easement in favour of the plaintiff for resting his property on the suit Wall and accordingly, put forth the claim of easementary right over the suit Wall. However, when the plaintiff has laid the suit claiming right over the suit Wall on the footing that the suit Wall absolutely belongs to him by way of Ex.A1 sale deed and that he had also prescribed title to the same by way of adverse possession and when the plaintiff has miserably failed to establish the abovesaid claim of title to the suit Wall, quite inconsistent to the abovesaid pleas, the plaintiff

cannot be allowed to seek right of easement over the suit Wall, during the course of arguments. When the claim of title over the suit Wall has been the basis for instituting the suit on the part of the plaintiff, quite inconsistent to the abovesaid pleas, the plaintiff cannot be allowed to raise the right over the suit Wall by way of easement as put forth during the course of arguments and the right of claim of title and the right by way of the easement being inconsistent rights, in such view of the matter, the claim of the plaintiff over the suit Wall by way of easement cannot at all be accepted in any manner and accordingly, the plaintiff cannot be granted the reliefs over the suit Wall on the footing that he has easementary right over the same.

15.The plaintiff's counsel, in support of his contentions, placed reliance upon the decisions reported in MANU/SC/2774/2006 (Hero Vinoth Vs. Seshammal), MANU/TN/1363/2016 (Paramasivan Vs.Pandian) and MANU/TN/0684/1977 (The Church of South India Trust Association Vs. Raja Ambrose). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

16.For the reasons aforesated, the Courts below had properly appreciated the materials placed on record, both oral and documentary and rightly found that the plaintiff has miserably failed to establish his claim of title to the suit Wall by way of Ex.A1 sale deed as well as by way of adverse title and the plaintiff's claim of easementary right over the suit Wall being inconsistent to his pleas, in all, it is found that the Courts below are justified in declining the reliefs prayed for by the plaintiff and the judgment and decree of the Courts below not suffering from any perversity or infirmity, in such view of the matter, I do not find any merits in the second appeal. The substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and accordingly, the same is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sms

To

1.The Subordinate Judge, Ranipet.

2.The District Munsif, Sholinghur.

Copy to

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

+1cc to Mr.UM.Ravichandran, Advocate SR.No.79010

S.A.No.222 of 2016

SSD (CO)
GMY (20/11/2020)



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