

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2019
PRONOUNCED ON : 23.09.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 228 of 2016

1. Boopathi

2.D.Muruganantham

.... Appellants/Respondents/Defendant
.... Appellants/Respondents/Defendants

Vs.

1. S.Vijaya

2.Shyamala Devi

...Respondents/Appellants/Defendants
...Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 01.09.2015 passed in A.S.No.33 of 2015 on the file of the learned Principal Subordinate Judge, Salem reversing the judgment and decree dated 06.01.2015 passed in O.S. No. 506 of 2005 on the file of the learned II Additional District Munsif, Salem.

For Appellants : Mr.J.R.K.Bhavanantham

For Respondents : Mr.V.R.Rajasekaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 01.09.2015, passed in A.S.No.33 of 2015, on the file of the Principal Subordinate Court, Salem, reversing the judgment and decree dated 06.01.2015, passed in O.S. No. 506 of 2005, on the file of the II Additional District Munsif Court, Salem.

2. Second appeal has been admitted on the following substantial questions of law.

1. Whether the suit for bare injunction without the relief for declaration of title to the suit wall in the case of disputed title to the suit wall is maintainable?

2. Whether on the commissioner's report, the title to the suit property, in the absence of measurement of the plaintiff's property, and the existence of wall within 11'9" north to south, can be established?

3. Whether the lower Court properly exercised its jurisdiction as per Section 96 of C.P.C.?

4. Whether the interpretation of Ex.A3 agreement is proper or contrary to the text of Ex.A3?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. Suit for permanent injunction.

5. Considering the pleas set out by the respective parties, it is found that the parties had been at issue only as regards the southern, east-west wall lying in between the plaintiffs' house and the defendants' house. Now, according to the plaintiffs, they had acquired title to the suit property as described in the plaint based on the sale deed dated 22.02.1996 marked as Ex.A1. The parent title deeds of the plaintiffs qua the suit property have come to be marked as Ex.A2, dated 16.02.1981 and the sale deed dated 20.02.1965, the certified copy of which has been marked as Ex.A15. Considering the abovesaid title deeds in toto and the recitals contained therein, as rightly put forth by the plaintiffs, it is evident and as determined by the first appellate Court, the plaintiffs have acquired title to the suit property as described in the plaint inclusive of the disputed southern wall and therefore, it is found that right from 1965 onwards and much earlier to the same, the plaintiffs' predecessor in title and the plaintiffs had been exercising title, possession and enjoyment of the suit property inclusive of the southern wall and therefore, the plaintiffs' title deeds as abovestated point to the affirmation of the title of the plaintiffs to the wall in dispute and when there is no material at all placed on the part of the defendants evidencing that they had acquired a valid claim of title to the wall in dispute and that the wall in dispute had been in their possession and enjoyment or in the possession and enjoyment of their predecessor in interest in any manner and the defendants having also not projected any clear claim of title to the wall in dispute in the written statement i.e., as how they traced title to the same and in such view of the matter, as held by the first appellate Court, considering the facts and circumstances

projected by the respective parties, it is found that the plaintiffs, as such, are not required to seek the relief of declaration of title to the suit property, particularly, the wall in dispute and in such view of the matter, the trial Court is found to have erred in rejecting the plaintiffs' case mainly on the footing that the plaintiffs have failed to seek the relief of declaration of title to the suit property i.e., the wall in dispute.

6. That the wall in dispute has been in the possession and enjoyment of the plaintiffs and their predecessor in interest over a considerable period of time and the same had also been acknowledged by the defendants' predecessor in interest, the same could be gathered from the agreement entered into between the predecessors in interest of the plaintiffs and the defendants dated 08.10.1926 marked as Ex.A3. It is found that Ex.A3 agreement has been entered into between Nallathambi pillai, the predecessor in title of the first defendant and Sadaiya pillai, the predecessor in title of the plaintiffs and on a careful analysis of the recitals contained in Ex.A3 agreement, it is found that Nallathambi pillai had acknowledged the right of Sadaiya pillai over the wall in dispute and had only sought permission to insert pillars and wall over the wall in dispute and had also assured that Sadaiya pillai had the entitlement to remove the wall in dispute even from the foundation level or to put up or raise the construction without causing damage to the property of Nallathambi pillai and in such view of the matter, when the execution of Ex.A3 agreement has been not disputed by the defendants during the course of their evidence and also admitted that the same had been executed by Nallathambi pillai, their predecessor in interest in favour of the plaintiffs' predecessor in title i.e., Sadaiya pillai, in such view of the matter, inasmuch as the disputed wall had been in the possession and enjoyment of the plaintiffs' predecessor in title within their property limits and enjoyed by them as their own, accordingly, acknowledging the said right Nallathambi pillai is found to have executed the agreement Ex.A3 in favour of the Sadaiya pillai and accordingly, the first appellate Court is also found to be justified in acceding to the plaintiffs' case based on Ex.A3 agreement.

7. The photographs marked in the matter as Ex.A16 series also go to buttress the case of the plaintiffs that the disputed wall is in existence and in the possession and enjoyment of the plaintiffs and in addition to that, the commissioner's report and plan marked in the proceedings as Exs.C1 and C2 go to advance the plaintiffs' case that the wall in dispute is in existence and lying within the limits of the plaintiffs' property and in the light of the abovesaid factors, when the plaintiffs have placed overwhelming evidence worth acceptance

for sustaining their claim of title, possession and enjoyment of the wall in dispute and the right of the plaintiffs' predecessor in title having also been acknowledged by the defendants' predecessor in title as above referred to and the physical features obtaining in the locality as could be gathered from the commissioner's report and plan and the photographs marked as Ex.A16 series, in all, it is found that the plaintiffs are in the possession and enjoyment of the suit property as described in the plaint inclusive of the wall in dispute and in such view of the matter, when there is no document at all on the part of the defendants evidencing their claim of title to the wall in dispute, in particular, in such view of the matter, the first appellate Court is wholly justified in upholding the plaintiffs' claim of title to the suit property by reversing the judgment and decree of the trial Court.

8. Not only that, though the defendants would claim by way of the oral evidence alone that the wall at present available in the locality belongs to them, however, as could be seen from the evidence adduced by DW1 and the compromise decree entered into between DW1 and the first defendant in O.S.No. 417/1996, on the file of the Principal District Munsif Court, Salem, marked as Ex.A18, it is found that the defendants have not claimed any exclusive right over the wall and would only put forth the joint ownership of the wall as such. Therefore, if really the wall in existence had already been demolished by the plaintiffs and the wall now available exclusively belongs to the defendants, there is no need on the part of the defendants to admit joint ownership of the wall in the proceedings of O.S.No. 417/1996 as above pointed out. The abovesaid factors also would only lend support to the plaintiffs' case that the wall in dispute had all along been lying within the limits of the plaintiffs' property and in the possession and enjoyment of the plaintiffs and their predecessor in interest and accordingly, their right had been acknowledged by the predecessor in interest of the defendants as above pointed out and in such view of the matter, the documents projected by the plaintiffs, on the whole, marked as Exs.A1 to A18 and the commissioner's report and plan marked as Exs.C1 and C2, all put together, would only reinforce and strengthen the plaintiffs' case that the wall in dispute belongs to the plaintiffs and the same is in their possession and enjoyment.

9. Though the defendants would claim that the wall in dispute belong to them and lie within their limits, however, to sustain their case, as above pointed out, the defendants have not placed any materials with reference to the same. Furthermore, the defendants have also not endeavoured to enter into the witness box to sustain their defence version. The third defendant is sought to be impleaded at the later stage in the suit and though the third defendant would claim to have

acquired some right from the second defendant, however, the so called alienation said to have been effected in favour of the third defendant by the second defendant having not seen the light of the day and no material put forth by the defendants pointing to the same and the alleged power of attorney deed said to have been given in favour of DW1 by the second defendant having also not been projected, in all, it is found that the defendants without any basis or material is found to have projected a false claim of title to the wall in dispute and thereby endeavoured to obstruct the plaintiffs from proceeding with the construction in their property by laying a false claim of title to the subject matter involved in the suit and the position being above, the first appellate Court is found to be wholly justified in refusing to accept the defence version and upholding the plaintiffs' case by setting aside the judgment and decree of the trial Court.

10. For the reasons aforesaid, the first appellate Court is found to have assessed and analysed the materials placed on record, both oral and documentary, in the right perspective and applied the principles of law governing the issues relating to the parties properly and for cogent and convincing reasons, rightly set aside the judgment and decree of the trial Court and the reasonings and conclusions of the first appellate Court being centering on factual matrix and not suffering from any infirmity or perversity in any manner, in all, it is found that the second appeal does not merit acceptance. The substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiffs.

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

s/d-

Assistant Registrar (CS V)

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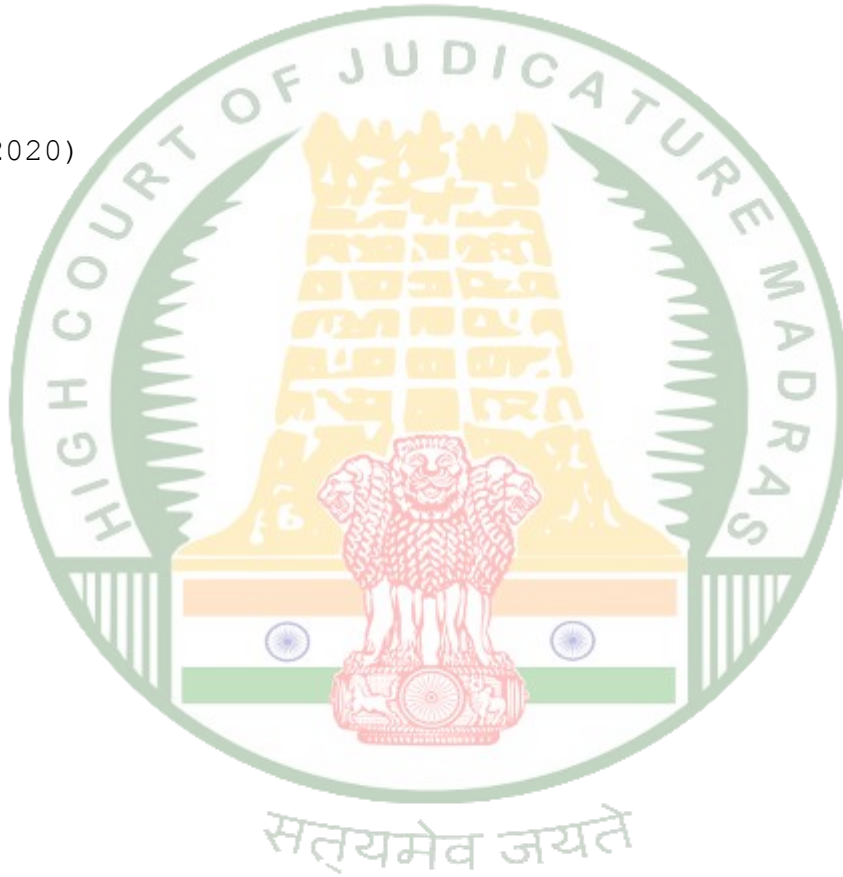
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