

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2019

PRONOUNCED ON : 27.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.861 of 2019

1.S.Vijayaragavan
2.Sellammal
3.Sivaannapoorani
4.Gajendran

...Appellants/ Appellants/ defendants
Vs.

1.Rani ...1st respondent/1st respondent/Plaintiff
2.Karnan ...2nd Respondent/2nd respondent/4th defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.12.2018 passed in A.S.No.5 of 2016 on the file of the I Additional Subordinate Court, Salem, confirming the Judgment and Decree dated 22.08.2013 passed in O.S.No.1057 of 2011 on the file of the Principal District Munsif Court, Salem.

For Appellants : Ms.S.Premakumari

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 12.12.2018 passed in A.S.No.5 of 2016 on the file of the I Additional Subordinate Court, Salem, confirming the Judgment and Decree dated 22.08.2013 passed in O.S.No.1057 of 2011 on the file of the Principal District Munsif Court, Salem.

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

3.Suit for recovery of possession and mandatory injunction.

4.It is found that the plaintiff has laid the suit claiming title to the suit property based on the settlement deed dated 17.04.1985 marked as Ex.A1. It is found that the defendants have not challenged the abovesaid settlement deed and accordingly, it is found that the plaintiff is entitled to the suit property based on Ex.A1 settlement deed executed by her father Ethiraj. Furthermore, it is found that by way of Ex.A1 settlement, an extent of 1200 sq.ft has been settled in favour of the plaintiff in Survey No.88 in the suit village out of the larger extent of 80 cents. In addition to that,

the property settled by way of Ex.A1 has been clearly described in the document.

5. According to the plaintiff, she had allowed her husband Vijayaragavan, the first defendant and sons viz., D4 & D5 to reside in the small tiled house constructed by her lying on the western side and she along with her spinster daughter is residing in another tiled house facing south and according to the plaintiff, her husband viz., the first defendant, who had been permitted to reside in the tiled house on the western side, had brought his concubine Sellammal, the second defendant and her daughter Sivaannapoorani, the third defendant in the suit property and hence, according to her, she has been necessitated to lay the suit for appropriate reliefs.

6. As abovestated, the defendants have not disputed the title deed projected by the plaintiff viz., the settlement deed dated 17.04.1985 for claiming title to the suit property. However, according to them, an adjoining piece of land measuring 612 sq.ft was also brought into the abovesaid settlement deed over and above 1200 sq.ft and further, it is stated that the abovesaid extent of 612 sq.ft had been orally sold to the first defendant by his father-in-law Ethiraj and on that base, he has constructed a house and residing by paying property tax, electricity charges, etc., and therefore, according to the defendants, the plaintiff is not entitled to seek the reliefs prayed for in respect of the abovesaid extent of 612 sq.ft.

7. As rightly found by the Courts below, it is found that considering the documents projected by the plaintiff, on the whole, it is seen that the plaintiff has been enjoying the suit property consisting of two tiled houses by paying property tax, electricity charges, etc., and therefore, the Courts below are found to be justified in upholding the plaintiff's claim of title to the suit property.

8. The defendants are not found to have placed any property tax receipt in respect of the property, which they claimed to have acquired by way of oral sale. As rightly determined by the Courts below, when only the plea of oral sale has been taken by the defendants for claiming their right in the suit property and when the oral sale has not been established either factually and also legally, in such view of the matter, the claim of the defendants that they are having right over the extent of 612 sq.ft adjoining to the suit property does not merit acceptance and on the other hand, as found by the Courts below, the materials placed on record only go to show that the defendants are in the occupation of the suit property on the permission granted by the plaintiff.

9. In the light of the abovesaid factors, knowing fully well that they cannot claim any right to the portion of the

suit property, where they are residing based on the oral sale, resultantly, the defendants have taken the plea of adverse possession and impliedly thereby it is evident that as determined by the Courts below, particularly, the first appellate Court, the defendants have admitted the title of the plaintiff in respect of the suit property. Accordingly, the Courts below rightly determined that only on the oral permission granted by the plaintiff, the defendants are in the occupation of the suit property. In such view of the matter, when the documents projected by the defendants do not sustain their plea of adverse title and particularly, the defendants having failed to plead and establish as to when from their possession of the portion of the suit property has become adverse and furthermore, when the defendants have failed to place acceptable and reliable materials to hold that they are enjoying the portion of the suit property openly, continuously and uninterruptedly to the knowledge of the plaintiff beyond the statutory period by exercising absolute title on themselves and denying the title of the plaintiff with animus possidendi, in such view of the matter, the Courts below are found to be wholly justified in not accepting the plea of adverse title projected by the defendants.

10. The trial Court seems to have committed an error in relying upon the plaint put forth by the plaintiff and the same had been rightly considered and appreciated by the first appellate Court, accordingly, the first appellate Court is found to be justified in not placing reliance on the plaint put forth by the plaintiff.

11. In the light of the abovesaid factors, when it is found that and also not in dispute that the suit property had been settled in favour of the plaintiff by her father by way of Ex.A1 settlement deed and the defendants are found to be residing in one of the tiled houses located therein and the defendants have failed to establish their claim of right to the property in their occupation as put forth by them, in such view of the position, as held by the Courts below, the plaintiff is entitled to recover the possession of the suit property as described in the plaint i.e. the property in respect of which, the plaintiff, had permitted the defendants to reside and accordingly, the plaintiff is also found to be entitled to the relief of permanent injunction as prayed for.

12. The Courts below are found to have analysed the oral and documentary evidence put forth by the respective parties in the correct perspective as well as the principles of law governing the issues involved between the parties and rightly come to the conclusion that the plaintiff is entitled to obtain the reliefs prayed for and excluding the plaint projected by the plaintiff, in all, it is found that the judgment and decree of the first appellate Court granting the reliefs in favour of the plaintiff are found to be correct and the reasonings and conclusions of the first appellate Court,

in particular, not suffering from any perversity or infirmity, in such view of the matter, the same do not warrant any interference.

For the reasons aforesaid, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms
To

- 1.The I Additional Subordinate Judge,Salem.
- 2.The Principal District Munsif Judge, Salem.

Copy to

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

S.A.No.861 of 2019

A.SK(27/02/2020)



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