

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.01.2019

Pronounced on: 25.01.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

Second Appeal No.880 of 2018
and
C.M.P. No.23497 of 2018

G.Venkatesan

...
Appellant/Appellant/Plaintiff

Versus

1. Logabirama Naidu

2. G.Sulochana

.... Respondents/Respondents/
Plaintiffs

Prayer ::

Second Appeal is filed under Section 100 of C.P.C. against the Judgment and Decree passed in A.S.No.18 of 2012 dated 22.09.2017 on the file of Sub-Court, Kancheepuram confirming the Decree and Judgment passed in O.S.No.219 of 2007 dated 17.12.2011 on the file of Principal District Munsif Court, Kancheepuram.

For Appellant : M/S.S.Thamizharasi

For Respondents : Mr.Thirunavukarasu for R2

J U D G M E N T

The unsuccessful plaintiff in both the courts below is the appellant before this court. The suit is filed for a declaration that the defendant is the absolute owner of the properties described in the 'B' Schedule to the suit schedule and that he has perfected title over the same by adverse possession and consequently to grant a permanent injunction restraining the defendants their men from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property (the parties are arrayed as per their rank in the suit).

2. The suit 'A' Schedule properties and 'B' Schedule properties has been described as follows:-

'A' Schedule of Properties

Kancheepuram District, Kancheepuram Taluk, in Varanawasi Village, Nanja lands:

1.	S.No.186/6	0.28 Cents
2.	S.No.186/7	0.24 Cents
3.	S.No.186/4	Out of 0.45 - 0.07 Cents
Total		0.59 Cents

'B' Schedule of Properties

Kancheepuram District, Kancheepuram Taluk, in Varanawasi Village, Nanja lands:

1.	S.No.186/2	0.09.0 Ar	0.22 Cents	Kist Rs.1.61
2.	S.No.186/4	0.18.0 Ar	0.44 Cents	Kist Rs.3.46
Total		0.27.0 Ar	0.66 Cents	Kist Rs.5.07

3. The case of the plaintiff is that under a registered sale deed dated 10.02.1986, he had purchased the 'A' Schedule properties from the 1st defendant's younger brother Venugopal Naidu. After the sale the plaintiff had entered into possession of the said properties and has been in enjoyment of the sale since then. His further case is that after the purchase of the 'A' Schedule properties he had taken possession of the 'B' Schedule properties on 12.02.1986 and was in enjoyment since then. The 'B' Schedule mentioned properties was owned by the 1st defendant, his case is that he has been in open continuous and uninterrupted possession of the 'B' Schedule properties since 12.02.1986 and therefore he had perfected title to the 'B' Schedule properties. It is also his case that he has been paying the kist for the 'B' Schedule properties in his name and patta has also been granted in his favour.

4. It is his further case that on 20.03.2007 the 2nd defendant informed him that she had purchased the 'B' Schedule properties from the 1st defendant. The plaintiff had informed her about his adverse possession and the fact that he had prescribed title to the same. However, considering the fact that the 2nd defendant has now staked a claim and is likely to disposes him from the 'B' Schedule properties, the plaintiff was left with no other alternative except to file the suit for the reliefs stated supra.

5. The 1st defendant has filed a written statement inter alia contending that the plaintiff has come forward with the false case and that the property which he and his brother Venugopal Naidu, had purchased under the sale deed of the year 1956 was partitioned between the two under a partition dated 17.02.1983, registered as Document No.658 of 1983 in the file of the Sub Registrar, Wallajabad. It is the further case that the property comprised in Survey Nos.186/2 and 186/4 measuring an extent of 60 Cents was allotted to him and this property has been sold by him to the 2nd defendant under a sale deed of the year 2001, registered as Document No.1694 of 2001 on the file of the Sub-Registrar, Wallajabad.

6. He would submit that on the date of the sale itself he had handed over possession of the suit 'B' Schedule properties to the 2nd defendant. He denied the plaintiff's enjoyment of the suit property and further contended that the issuance of the UDR Patta was a mistake which the Office bearers have themselves acknowledged and had taken steps to rectify the same. He would therefore claim that the suit filed by the plaintiff should be dismissed.

7. The 2nd defendant has also filed a written statement more or less on the same lines as the 1st defendant except by putting forth the various incidents that had taken place after the purchase of the property by her and after her attempts to get the Patta changed in her name and the property sub divided. She would contend that in the month of February, 2007 she had approached the Tahsildar, Kancheepuram Taluk, to get Patta by making sub division of the property.

8. However in the second week of March, 2007 and on 18.03.2007 when the authorities went to survey the properties the plaintiff along with his rowdy elements had prevented the authorities from discharging their duties. The attempts of the 2nd defendant to lodge a police complaint on 19.03.2007 also did not yield satisfactory results as the plaintiff appeared to be a very influential person. The 2nd defendant would submit that she has been in the peaceful and enjoyment of the property since her purchase and therefore the suit is devoid of merits and is liable to be dismissed.

9. The parties had gone to trial before the Principal District Munsif Kancheepuram in O.S.No.219 of 2017 and the learned District Munsif had framed three issues. The plaintiff had examined himself as P.W.1 and marked Exs. A1 to A6. The defendants had neither entered the box nor marked any documents in support of the case and had only relied upon the documents and oral evidence of P.W.1 to canvass the case.

10. After detailed consideration of the evidence that was taken in the above matter the learned District Munsif, held that the plaintiff had not proved his adverse possession of the 'B' Schedule properties and therefore dismissed the suit. Aggrieved by this judgment and decree the plaintiff had filed A.S.No.18 of 2012 on the file of the Subordinate Judge, Kancheepuram, the appellate judge also concurred with the finding of the learned District Munsif and consequently dismissed the appeal. It is challenging the said judgment and decree that the appellant/plaintiff is before this court.

11. Today when the matter came up for admission Mrs.S.Thamizharasi, who appeared on behalf of the appellant would contend that the courts below totally overlooked Ex.A4, which is a notice issued under Section 9(2) of the Survey and Boundaries Act 1923. She would contend that the said notice has been issued only on account of the fact that the plaintiff is the owner of the survey number and this was issued on 20.09.1986 which would clearly establish the fact that the plaintiff has perfected her title by adverse possession.

12. She would further contend that the plaintiff has based his entire case on adverse possession in respect of the 'B' Schedule properties and having proved adverse possession for over 21 years, it is clear that the plaintiff had perfected title and therefore the judgment and decree of the Courts below are totally erroneous. She would also rely on the following judgments in support of her case that once the defendant had proved his open and continuous possession of the property, it is not necessary that this adverse possession should be brought to the knowledge of the person against whom it is claimed.

1. AIR 1986 Mad 106, V.Muthiah Pillai (Died) And Ors. Vs Vedambal And Ors. on 26 March, 1985.
2. (2004) 3 LW 273, K.Krishnan Vs S.Mari Naicker on 27 December, 2002.
3. AIR 2004 AP 390, Kalal Thimmanna And Ors. Vs Krishna Reddy and Anr. on 23 February, 2004.

13. Heard, the counsel and perused the papers. It is the admitted case of both parties that the properties subject matter of the suit originally belonged to the two brothers Logabirama Naidu, (who is the 1st defendant herein) and his brother Venugopal Naidu. The plaintiff would contend that he has purchased the property which has been allotted to the share of Venugopal Naidu, under a partition deed dated 17.02.1983, registered as document No.658 of 1983 on the file of the Sub Registrar, Wallajabad.

14. The plaintiff would contend that as regards the 'A' Schedule property the same has been purchased by him. As regards the 'B' Schedule property it is the case of the plaintiff that he had taken the property from the 1st defendant on 12.02.1986 and from that day he has been in open continuous and uninterrupted possession of the said properties. The plaintiff has not pleaded as to how he has taken possession whether it is by virtue of permission or by virtue of an encroachment, be that as it may. The plaintiff has admitted that the property in question belong to the 1st defendant.

15. A reading of Ex.A1 partition deed dated 17.02.1983 would clearly show that Logabirama Naidu the 1st defendant was allotted an extent of 21 cents in Survey No.186/02 and 38 cents in S.No.186/04 in all an extent of 0.59 cents. It is this property that the plaintiff claims he has entered possession. A reading of the 'B' Schedule would indicate that the plaintiff is claiming an extent of 22 cents in S.No.186/2 and 44 cents in S.No.186/4, which is more than what was allotted to the said Logabirama Naidu under the partition deed. It is also to be noted that even according to the plaintiff the total extent in S.No.186/4 is 45 Cents as indicated in the 'A' Schedule. Therefore the balance extent which is available is an extent of 38 cents and not 44 Cents as shown in the 'B' Schedule. Therefore the plaintiff has not come forward with the exact measurements of the 'B' Schedule property and there exists an anomaly.

16. Coming to the arguments of the learned counsel for the appellant that the courts below have not considered Ex.A4, it is seen from the judgment of the learned Principal District Munsif, Kancheepuram that Ex.A4 has been taken note of and the same has been rejected by the learned Judge on the ground that Ex.A4, does not prove the plaintiff's possession and enjoyment of the 'B' Schedule property. This is on account of the fact that the said Exhibit is only a notice issued under Section 9(2) of the Survey and Boundaries Act 1923, informing the plaintiff that the Survey in respect of the lands mentioned therein was to take place and that the plaintiff should produce all the documents relating to the said properties. This does not prove that the plaintiff is in possession of the 'B' Schedule property. It is also to be borne in mind that the notice could have been issued on account of the fact that the plaintiff is an owner of 7 Cents in S.No.186/4 and the remaining extent is with the other co-owner namely the 1st defendant herein, the application being for a sub-division therefore all the co-owners are issued notices. This by itself does not prove that the plaintiff is in possession of the entire 'B' Schedule property. The fact that the plaintiff has not been able to explain the manner of his entering possession of the suit property itself casts a cloud of

suspicion around the claim of the plaintiff. As rightly pointed out by the courts below the plaintiff has failed to prove his continuous, open and hostile possession to the suit property from the date of his purchase/entering into possession. The judgments relied upon by the appellants will not bail him out since the plaintiff has not proved that he has prescribed title to the suit property.

17. I find no infirmity in the order of the Courts below and further the plaintiff has not made out any question of law much less a substantial question of law warranting the interference of this Court. Hence, the second appeal stands dismissed. The Judgment and Decree of the courts below is confirmed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

msvm

To

1. The Principal District Munsif Court,
Kancheepuram.
2. The Subordinate Judge,
Kancheepuram.

+1cc to M/S.S.Thamizharasi, Advocate, S.R.No.5948

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S.A.No.880 of 2018

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CS/18/07/2019

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