



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.07.2019
DELIVERED ON : 30.08.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD)No.211 of 2009

P.Subramanian

.. Appellant/Respondent
Defendant

Vs.

The Srivilliputtur Keelapatti
Saliyar Society, Through its President,
Peechinathan,
S/o, Govindan,
D.No:129 A, Madathupatti Street,
Srivilliputhur.

.. Respondent/Appellant/
Plaintiff

Prayer :Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.83 of 2006 dated 21.11.2007 on the file of the Sub Court, Srivilliputhur reversing the Judgment and Decree dated 12.07.2006 passed in O.S.No.88 of 2003 on the file of the learned Additional District Munsif, Srivilliputhur.

For Appellant : Mr.A.R.M.Ramesh
For Respondent : Mr.S.Santhanam

JUDGMENT

Heard the learned counsel on both the side.

2.This appeal is filed against the judgment and decree passed in A.S.No.83 of 2006 dated 21.11.2007 on the file of the Sub Court, Srivilliputhur reversing the Judgment and Decree dated 12.07.2006 passed in O.S.No.88 of 2003 on the file of the learned Additional District Munsif, Srivilliputhur.

3.The appellant herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.88 of 2003 before the learned Additional District Munsif, Srivilliputhur for a prayer of declaration and for injunction. The trial Court dismissed the suit. Against which, the respondent herein filed an appeal in A.S.No.83 of 2006 before the



Sub Judge, Srivilliputhur. The learned Sub Judge allowed the appeal by setting aside the Judgment and Decree of the trial Court. Against that judgment and decree, the appellant herein has filed this second appeal.

4.The case of the plaintiff herein is that the suit property belonged to Srivilliputhur Keelapatti Saliyar Samuthayam. The suit property is a vacant site and it is situated in survey No.2062. One Pechinathan is the present president of the plaintiff's community. One Mookandi was a tenant in the suit property for the past 10 years. He runs a petty shop. Accepting the request by the plaintiff's, the said Mookandi on 05.12.2002 vacated and handed over the vacant possession of the suit property to the plaintiff. The D.No. assigned to the suit property is 43A. The plaintiff decided to construct a community hall in the suit property. But the defendant proclaimed that the suit property belonged to him and he is trying to disturb the plaintiff's peaceful possession. The plaintiff got a building plan approval for the proposed construction. The plaintiff has been in possession of the suit property and they fenced the same. The defendant attempted to construct a thatched shed in the suit property. But his attempt was thwarted by the plaintiff. Hence, the plaintiff filed a suit for declaration and for injunction.

5.The averments of the written statement filed by the defendant is as follows:

The allegations that the plaintiff is in possession and enjoyment of the suit property and D.No.43A was assigned to them is also denied as false. The suit property measures east-west 47 feet and north-south 16 feet. The defendant owned house property on the eastern side in T.S.No.2063. On the northern side, there is a Municipal Street. On the south, one Renga Moopnar's house in S.No.2063. The suit property situates only in S.No.2063 within the above said boundaries. The suit property originally belonged to the defendant's great grandfather one Govindan. Mookandi @ Govindan is the son of the said Govindan and the defendant is the only son of the said Mookandi @ Govindan. Hence, the suit property belonged to the defendant ancestrally. The measurements and boundaries mentioned in the plaint are wrong. The defendant and his predecessor have been in possession and enjoyment of the suit property for more than 50 years. How the plaintiffs derived title to the suit property was not stated in the plaint. The plaintiff is not entitled to the reliefs of declaration and injunction.

6.On the above said pleadings, the following issues were framed:

- "(i)Whether the suit property belonged to the plaintiff ?*
- (ii)Whether boundaries and measurements were wrongly mentioned in the plaint ?*
- (iii)Whether the suit property is in possession and enjoyment of the plaintiff?*



(iv)What are all the reliefs and cost the plaintiffs are entitled of ?”

7.One witness was examined as P.W.1 and 4 documents were marked as Exs.A1 to A4 on the side of the plaintiff and two witnesses were examined as D.W.1 and D.W.2 and 2 documents were marked as Exs.B1 and B2 on the side of the defendant. After considering the evidences and arguments, the trial Court dismissed the suit. Against which, the respondent herein preferred an appeal in A.S.No.83 of 2006. On the aforesaid pleadings, the following issues were framed:

“(i)வழக்கிடை தபசில் சொத்து வாதி சமூகத்திற்கு பாத்தியப்பட்டது என்பதும் அதுகுறித்து விளம்புகை பரிகாரம், நிரந்தர தடை உத்தரவு பரிகாரம் கிடைக்கத்தக்கதா ?

(ii) இந்த மேல்முறையீடு அனுமதிக்கத்தக்கதா ?”

8.The first appellate Court allowed the appeal filed by the appellant. Aggrieved by the judgment and decree, the appellant herein has preferred this second appeal.

9.In the grounds of second appeal, it is stated that the lower appellate Court failed to consider that the plaintiff did not raise any plea on prescriptive title or title by adverse possession. The first appellate Court failed to consider that the plaintiff did not produce any title deeds. The plaintiff did not give any source of title. The appellate Court has not framed an issue on the prescriptive title of the defendant. In case of vacant site, possession follows title. The lower appellate Court failed to consider this and allowed the appeal only based on the possession over a vacant site. Exs.A1 to A4 did not prove the title or possession of the plaintiff. Whereas Ex.B1 is a registered othi deed dated 11.12.1958 in favour of the defendant's great grandfather. Ex.A1 is the approved building plan issued by the Municipality cannot prove title or possession and that building plan also was not renewed. The plaintiff did not put up any construction even in the year 2003, though the building plan was approved on 29.04.1996 itself. No document is filed to prove that the Society was registered. Permission of Court under Order 1 Rule 8 of CPC was not sought for and the appeal is to be dismissed.

10.This Court by its order dated 05.02.2019, has admitted the second appeal and has framed the following substantial questions of law:

“(a)Can a suit by a Society, which is neither pleaded nor evidenced to be a registered one sustained without recourse to the provisions of Order 1 Rule 8 of the Civil Procedure of Code?

(b)Can there be a decree for declaration of title of plaintiff without evidence of proof of it's legal title especially in the case of the suit property being admittedly vacant site ?

(c)Can there be a decree for declaration of title of plaintiff squarely based on the supposed possession of the plaintiff



in the absence of specific plea on the part of the plaintiff claiming prescriptive title by adverse possession ?

(d)When the plaintiff was miserable failed to prove his case for declaration of title and injunction, can it succeed merely on pricking holes in the defence case?"

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Issue No.(a) :

11.On the side of the appellant, it is stated that the plaintiff did not prove the registration of the Society and that the plaintiff failed to get permission of the Court under Order 1 Rule 8 of CPC.

12.It is seen that the petition under Order 1 Rule 8 of CPC was not filed by the plaintiff. The registration Certificate for the Society was not marked before the trial Court. But it is seen that the appellant did not raise any such point in his written statement. The point which is not pleaded cannot be raised at the time of second appeal. Hence, this issue is not acceptable.

Issue Nos.(b) and (c) :

13.On the side of the appellant, it is stated that the respondent did not prove title and that when the suit property is vacant site, the first appellate Court cannot allow the appeal on the basis of alleged possession and that Ex.A1 building plan approval cannot confer any title to the plaintiff. It is further stated that the plaintiff has not raised any plea of adverse possession in the plaint and that the first appellate Court allowed the appeal in favour of the respondent only on the ground of adverse possession. It is stated that when no such claim is raised by the plaintiff it is not open to the first appellate Court to decide that the plaintiff is having title by prescription.

14.On the side of the respondent, it is stated that tax receipt, Ex.A2, Ex.A3, extract from the records and measurement for T.S.No.2062 and 9(2) notice issued to the plaintiff issued by Srivilliputhur Circle Assistant Inspector (survey) which is marked as Ex.A4 will prove that the respondent has proved the title and possession.

15.On the side of the appellant, it is further stated that the suit property is a vacant site and even in the schedule of property, the suit property was discussed only as a vacant site. Ex.A1 was the plan approval. The plan will not confer any title. Ex.A2 was the tax receipt. Exs.A2 and A3 were not issued for the suit property. No title deed was filed by the plaintiff and no revenue documents was filed and the plaintiff failed to prove title or possession. It is further stated that the claim of the plaintiff is that the plaintiff rented the vacant site for a sum of Rs.120/- (Rupees One Hundred and Twenty only) to Mookandi to run a petty shop. It is stated that the plaintiff requested Mookandi to vacant



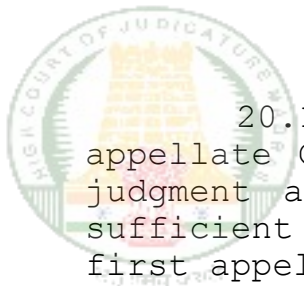
the premises on 08.11.2002 and that he vacated the suit property and handed over the premises on 05.12.2002.

16. On the side of the appellant, it is stated that the plaintiff failed to file any document to prove that they rented the vacant site to Mookandi and received Rs.120/- (Rupees One Hundred and Twenty only) towards rent. It is stated that the above said Mookandi was not examined on the side of the plaintiff and that the trial Court make an observation that there was corrections in Ex.A1 pertaining to the survey number and gave a findings that Ex.A1 is not a genuine document.

17. On the side of the respondent, it is stated that P.W.1 in his cross examination has admitted that the house of the defendant is situated on the west of the suit property but the claim of the defendant is that he inherited the property from his grandfather. The defendant has not filed any counter claim.

18. P.W.2 has deposed that the suit property is a vacant site. The first appellate Court gave a finding that Ex.B1 is not sufficient to prove possession. On the side of the respondent, it is further stated that the suit property belongs to the respondent and the respondent clearly prove the title and ownership by way of revenue records and the appellant has not produced any title deeds and the possession of the appellant is not proved. Ex.B1 is pertaining to T.S.No.2063 and not the suit property. Ex.B2 is an extract of town survey register for T.S.No.2062 in door No.43A which belong to Srivilliputhur Keelapatti Saliyar Samuthayam and door No.6 belong to the thatched shed of Subban. Ex.A1 is the approved building plan for door number 43A in T.S.No.2062 and the plan was approved on 29.04.1996. Ex.A2 are the municipal receipts in the name of Srivilliputhur Keelapatti Saliyar Samuthayam for petty shop with door no.43A dated 24.10.1997, 31.03.1999, 22.10.1999, 25.07.2000, 21.11.2000, 21.02.2002 and 12.09.2002. Ex.A3 is the extract from the records and measurements for T.S.No.2062 and Ex.A4 is the 9(2) notice issued in the name of plaintiff.

19. From Ex.B1, it is stated that the defendant is entitled for T.S.No.2063. Ex.B1 is not a document relating to the suit property. Ex.B2 Adangal extract reveals that Door No.43A in 2062 is in name of Srivilliputhur Keelapatti Saliyar Samuthayam except single adangal dated 07.06.2006 in the name of Subban, there is no document on the side of the defendant to prove title or possession. Ex.B1 reveals that door no.43A belong to Srivilliputhur Keelapatti Saliyar Samuthayam and Ex.B1 corelates the documents filed by the plaintiff in Exs.A1 to A4. Ex.A1 was issued in the year 1961 clearly reveals that the door No.43A is in the name of the plaintiff. Ex.A2 receipts also reveals that door No:43A is with the Srivilliputhur Keelapatti Saliyar Samuthayam from the year 1997 till 2002.



20.In the above circumstances, it is decided that the first appellate Court is correct in allowing the appeal by reversing the judgment and decree passed by the trial Court. There is nothing sufficient enough to interfere in the judgment and decree of the first appellate Court.

21.Hence, this Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.83 of 2006 dated 21.11.2007 on the file of the Sub Court, Srivilliputhur. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1.The Sub Judge, Srivilliputhur.

2.The Additional District Munsif, Srivilliputhur.

3.The V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. SANTHANAM, Advocate SR-84915.

+1 CC to M/s.A.R.M. RAMESH, Advocate SR-84965.

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30.08.2019

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