



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2013

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Rev Appl (MD) No.68 of 2012

1.Ranjitham
2.Parthasarathy
3.Bhoopathi
4.Sivakumar
5.P.Mahalingam

.. Applicants/Appellants

Vs.

C.Kannan

.. Respondent/Respondent

Review Petition filed under Order Section 114 r/w Order XLVII Rule 1 of the Code of Civil Procedure praying to review the order dated 15.09.2010 passed in SA(MD)No.1293 of 1999 by this Court.

Prayer in SA(MD)No.1293 of 1999:-

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 10.10.1996 passed in A.S. No.41 of 1996 on the file of the Subordinate Judge, Sivaganga reversing the judgment and decree dated 5.12.95 in O.S. No.73 of 1988 on the file of the District Munsif, Sivagangai.

For Petitioners : Mr.A.Sivaji
For Respondent : Mr.S.Srinivasa Raghavan

ORDER

This Review petition has been preferred against the Judgment and decree dated 15.09.2010 passed in SA(MD) No.1293 of 1999 by this Court.

2. The respondent herein as plaintiff has instituted Original Suit No.73 of 1988 on the file of the District Munsif Court, Sivagangai for the reliefs of declaration, permanent injunction and also for recovery of possession, wherein the present review applicants have been arrayed as defendants 2 to 6.

3. In the amended plaint, it is averred that the suit property is the ancestral property of the plaintiff and the same is nothing, but a house site. The suit property has been described as 'A B C D E F G' in the plaint plan. The suit property and its adjoining properties have been purchased by the paternal grandfather of the plaintiff viz., Thoosi Nadar and his younger brother viz., Subbiah Nadar and it measures 35 feet on east-west and 35 feet on north-south. The mother of the defendant viz., Pappammal has purchased 32 feet on east-west and 32 feet on north-south under a registered sale deed dated 06.06.1928. In the suit property, the defendant is not having any manner of right, title and interest. Since the defendant has denied the title of the plaintiff and also tried to disturb the peaceful possession and his enjoyment, the present suit has been instituted for the reliefs sought for therein.



4. In the written statement filed on the side of the defendant, it is averred that the mother of the defendant viz., Pappammal has purchased 32 feet on east-west and 32 feet on north-south. The defendant has put up a temporary latrine at point 'E'. At points 'C' and 'E' the defendant has put up a temporary structure. In the year 1968, the above structures have been put up. The defendant is having his house on the northern side of the southern portion of the suit property. The defendant has had enjoyed the southern portion of the suit property to the knowledge of the plaintiff for more than a statutory period and thereby prescribed title to the same by adverse possession. There is no merit in the suit and the same deserves dismissal.

5. In the additional written statement, it is averred that the averments made in the amended plaint are incorrect. The amended plaint has been filed so as to grab the property of the defendant. The defendant has had enjoyed the southern part of the suit property. The plaintiff is having right with regard to 1½ feet on east-west on the northern side of his house. Beyond the said 1 ½ feet the defendant has put up latrine. The defendant has also put up doorways towards the southern part of the suit property. The defendant has not made any encroachment. There is no merit in the suit and the same deserves to be dismissed.

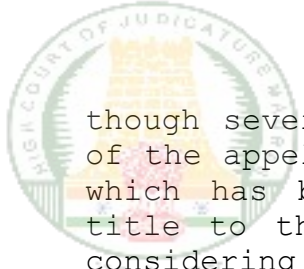
6. On the basis of the rival pleadings raised on either side, the trial Court has dismissed the Suit. The trial Court has further observed that the suit property measuring 9½ feet on north-south should be kept in common. Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No.41 of 1996 on the file of the first appellate Court.

7. The first appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the Appeal and thereby set aside the Judgment and decree passed by the trial Court and ultimately decreed the suit as prayed for. Against the Judgment and decree passed by the first appellate Court, the defendants 2 to 6 as appellants have preferred SA No.1293 of 1999 on the file of this Court.

8. After hearing both sides and upon reappraising the evidence available on record, this Court has dismissed SA No.1293 of 1999 and in order to review the Judgment and decree passed in SA No.1293 of 1999, the present Review Application has been filed.

9. The learned counsel appearing for the review applicants/defendants 2 to 6 has vehemently contended that the defendants have had enjoyed the suit property for more than a statutory period and thereby prescribed title to the same by adverse possession and even though a specific substantial question of law has been raised on the side of the appellants/defendants 2 to 6 with regard to adverse possession, this Court has not at all considered the same and further this Court has not decided the legal position to the effect that *boundaries prevail over area*. Under the said circumstances, the Judgment and decree passed in SA No.1293 of 1999 are liable to be reviewed.

10. In order to dispel the contention put forth on the side of the review applicants /defendants 2 to 6, the learned counsel appearing for the respondent/plaintiff has contended that in SA No.1293 of 1999 even



though several substantial questions of law have been raised on the side of the appellants/defendants 2 to 6, the only substantial question of law which has been argued is as to whether the defendants have perfected title to the suit property by adverse possession and this Court after considering the rival evidence adduced on either side has rightly rejected the plea of adverse possession and no error apparent on the face of the record is in existence in the Judgment and decree passed in SA No.1293 of 1999 and therefore, the present petition deserves to be dismissed.

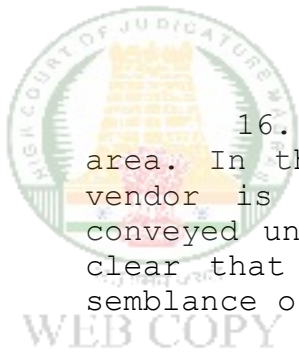
11. In fact, SA No.1293 of 1999 has been disposed of at the stage of admission. It is true that on the side of the appellants/defendants 2 to 6 various substantial questions of law have been raised for consideration. But at the same time, the learned counsel appearing for the appellants /defendants 2 to 6 has urged only the plea of adverse possession and this Court after considering the available evidence on record and necessary pleadings put forth in the written statements has negatived the plea of adverse possession. Considering the fact that on the side of the appellants/defendants 2 to 6 the only substantial question of law which has been urged is as to whether the defendants have perfected title to the suit property by adverse possession and this Court has considered the same *in extenso* and ultimately negatived it, the present Review Application is not legally maintainable.

12. As pointed out earlier, the second point urged on the side of the review applicants /defendants 2 to 6 is that this Court has failed to consider the legal position to the effect that *boundaries prevail over area*.

13. It is an admitted fact that the predecessor in title of the review applicants /defendants 2 to 6 has purchased the property which situates immediately on the northern side of the suit property by virtue of Ex.A3. In Ex.A3 it has been clearly mentioned that the property of the vendor is situate immediately on the southern side of the property conveyed under Ex.A3. Under Ex.A3 the predecessor in title of the review applicants /defendants 2 to 6 has purchased 32 feet on north-south and 32 feet on east-west.

14. It is an admitted fact that in the trial Court an Advocate Commissioner has been appointed and he inspected the suit property and its adjacent properties and filed his report and plan. In the Commissioner's plan it has been clinchingly stated to the effect that the property which is in possession of the defendants is admeasuring 32 feet on north-south excluding the suit property.

15. Considering the fact that in Ex.A3 it has been clearly mentioned to the effect that the property of the vendor is situate immediately on the southern side of the property conveyed under Ex.A3 and also considering that there is no diminution in north-south measurement, it is very clear that under Ex.A3, the predecessor in title of the review applicants/defendants 2 to 6 has purchased only 32 feet on north-south and 32 feet on east-west and the same extent does not include the suit property which is situate immediately on the southern side of the property mentioned in Ex.A3.



16. It is a settled principle of law that boundaries prevail over area. In the instant case, as stated supra, since the property of the vendor is situate immediately on the southern side of the property conveyed under Ex.A3, by applying the said principle of law, it is very clear that the review applicants/defendants 2 to 6 are not having any semblance of right, title and interest over the suit property.

17. It has already been decided that SA No.1293 of 1999 has been disposed of at the stage of admission and whatever the substantial question of law urged on the side of the appellants/defendants 2 to 6, has been discussed in detail and ultimately found against the appellants/defendants 2 to 6. In fact this Court has not committed any error apparent on the face of the record and since this court has not committed any error apparent on the face of the record, this Review Application is not legally maintainable and altogether the present Review Application deserves to be dismissed.

18. In fine, this Review Application deserves dismissal and accordingly is dismissed without cost.

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Sivaganga.

2.The District Munsif,
Sivaganga.

+ 1 cc to Mr.A.Sivaji, Advocate, SR No.2120
+ 1 cc to Mr.S.Srinivasa Raghavan, Advocate, SR No.2262

Order in
Rev.Appl (MD)No.68 of 2012

18.01.2013

mj
RJ/7.2.13
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