

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.01.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.1929 OF 1999

AND

C.M.P.NO.21295 OF 1999

1. Ammasi @ Thirupathy (Died)
2. Natesan (Died) ... Appellants/Appellants 1,2,4 & 5
3. Venkataramani (Died) (Cause title of the appellants is accepted vide C.M.P.19307/99 dt.22.11.1999 by Dy. Reg(AS))
4. Ponnusamy ... Defendants 1,2,4 & 5/Appellant
5. Chinnapillai
6. Chinnaraj ... LRs of the Deceased 3rd Defendant
7. Selvi
(7th Appellant brought on record as legal heirs of the deceased third defendant viz., Rajamanickam vide order of the Court dated 23.04.2015 made in C.M.P. No.2544 of 2007 in S.A. No.1929 of 1999)
8. Sadasivan
9. Susendran
10. Govindammal
11. Rani
12. Murugesan
(Appellants 8 to 12 are brought on record as legal heirs of the deceased first appellant vide order of the Court dated 23.04.2015 made in C.M.P.No. 2538 to 2540 of 2007 in S.A.No.1929 of 1999)
13. T.Thangammal
14. Sekar
15. Gowri
(Appellants 13 to 15 are brought on record as legal heirs of the deceasedsecond appellant vide order of the Court dated 23.04.2015 made in C.M.P.No. 2541 to 2543 of 2007 in S.A.No.1929 of 1999)

16. Gowrammal
17. Jaisankar
18. Chinnappayan
19. Madhu

(Appellants 16 to 19 are brought on record as legal heirs of the deceased third appellant vide order of the Court dated 18.07.2019 made in C.M.P.No. 14973 & 14975 of 2019 in S.A.No.1929 of 1999)

...Appellants

Vs.

1. P.Velayudham
2. P.Ramasamy (Died)

... Respondents/Responenents/Plaintiffs

3. Adiammal
4. Kalaiarasi
5. Kalaiselvi
6. Rajasekar

(Respondents 3 to 6 are brought on record as legal heirs of the deceased second respondent vide order of the Court dated 16.12.2019 made in C.M.P.Nos. 14963, 14968 and 14971 of 2019 in S.A.No.No.1929 of 1999)

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.06.1996 made in A.S.No.63 of 1993 on the file of the III Additional District Court, Dharmapuri at Krishnagiri, confirming the judgment and decree dated 11.12.1992 made in O.S.No.31 of 1988 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.D.Shivakumar
For Mr.C.R.Muralisharan

For Respondents
For R1, 3 to 6 : Ms.V.Srimathi

R2 : Died

JUDGMENT

This second appeal has been filed as against the judgment and decree dated 28.06.1996 made in A.S.No.63 of 1993 on the file of the III Additional District Court, Dharmapuri at Krishnagiri, confirming the judgment and decree dated 11.12.1992 made in O.S.No.31 of 1988 on the file of the District Munsif

Court, Krishnagiri.

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

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for declaration and possession. The suit property comprised in survey No.1/2AG marked as ABCDEF in the plan annexed to the plaint ad measuring 15 cents belonged to the plaintiffs. It is called as Aviyarpunji. The land situated adjacent to the suit property is called as Vettiyan kollai and it is belonged to the defendants. In the suit property, the defendants have no right or title over the same. Even then in the year 1987, part of the suit property which is marked as BCDE ad measuring 5 cents, the defendants encroached and started to cultivate the same. Thereafter so many panchayat held and even then the defendants did not hand over the possession of the property, which was occupied by them. In fact they are also attempted to cut the trees and damaged the road. Hence the suit.

4. Resisting the same the defendants filed written statement stating that originally the suit property comprised in survey No.1/2 AG, does not belong to the plaintiffs' ancestral through partition and they are not in possession and enjoyment of the same. In fact, the marked portion in the plan annexed to the plaint the portion marked as ABCDEF belonged to the defendants and the same has been in their absolute possession and enjoyment of the same. The suit property never called as Aviyar punjai, which was otherwise known as Dobi Inam Punjai. In fact, it is situated on the further west to the suit property. The major portion of the suit property consists of rocks and there are some country trees & plants and a small pond put up by the defendants in the suit property. The eastern portion of the suit property along with other land east of it is cultivable land and is being cultivated by the defendants over 50 years.

4.1. The entire suit property marked as ABCDEF also form part of Ettiyan kollai and they have been absolute possession and enjoyment of the same. Ettiyan Kollai comprised in survey No.3/1A1 and the same was purchased by the defendants' father Chinnapaiyan Egali from Kandasami Pillai, Govindaraju and others for valid sale consideration of Rs.2,000/- under the registered sale deed dated 02.02.1965. From the date of purchase, the defendants have been put in possession and enjoyment of the same. In fact, they also perfected their title to the suit property by adverse possession for more than 50 years of unobjectionable possession and enjoyment. Therefore, the plaintiffs have no right, title or interest over the suit property and never in possession of the same and he prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.5. On the side of the defendants, they examined D.W.1 to D.W.4 and were marked Ex.B.1. The Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. Based on the material produced on record and on considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court decreed the suit in favour of the plaintiffs and directed the defendants to hand over the possession of the suit property within a period of one month. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No.63 of 2002 and the first appellate Court also confirmed the judgment and decree passed by the trial Court. Aggrieved by the same, the defendants preferred this present second appeal.

6. At the time of admission of this second appeal on 18.11.2003, the following substantial questions of law were formulated for consideration:-

"i) Whether the Court below had failed to appreciate that the appellants/defendants had perfected their title to the suit property by adverse possession of the same for over the statutory period?

ii) Whether the Courts below had failed to properly identify the suit property as forming part of the land known as "Ettiyan Kollai" and instead erroneously holding that the suit property is situated in the land known as "Aviar Punjai" or "Dhobi Inam Punjai", which land is actually situated further west of the suit property?

iii) Whether the Courts below had erred in holding that the appellants/defendants had failed to establish their continuous possession and enjoyment of the suit property for over the statutory period, even since the date of their purchase under Ex.B.1 Sale deed in the year 1965, notwithstanding the failure of the plaintiffs to prove the alleged trespass by the appellants/defendants in the year 1987?

iv) Whether the Courts below had failed to appreciate the Commissioner's report as well as the oral and documentary evidence in the property perspective, which clearly establish the entitlement of the appellants/

defendants to the suit property by virtue of their long, continuous and uninterrupted possession and enjoyment of the same, adverse to all, for over the statutory period?"

7. Heard Mr.D.Shivakumaran, learned counsel appearing for the appellants/defendants and Ms.V.Srimathi, learned counsel appearing for the respondents/plaintiffs.

8. The suit property situated at Talihalli village comprised in survey No.1/2AG ad measuring 15 cents and the same is marked as ABCDEF in the plan annexed to the plaint. The suit property was originally purchased by the plaintiffs' father from one Munusamy. After demise of their father, it was derived by the plaintiffs. The suit property was mentioned as Aviyar punjai land. On the eastern side of the suit property there is land called Ettiyan Kollai. The said Ettiyan Kollai was purchased by the defendants' father by Ex.B.1 on 02.02.1965. The patta was marked as Ex.A.2 for the disputed property, in which the land comprised in 1/2AG ad measuring 0.14.5 hectare mentioned in favour of the plaintiffs. At the same time no patta was issued in favour of the defendants in respect of the land comprised in survey No.1/2AG. Though the defendants had taken specific stand that the suit property wrongly added in the patta, they did not file any evidence to prove the same. In the suit property ad measuring 15 cents marked portion as ABCDEF encroached by the defendants.

9. On perusal of Ex.B.1, which was filed by the defendants, the property mentioned as comprised in survey No.3/31 and out of the total extent of 65 cents, they purchased 6 cents. The Advocate Commissioner was also appointed and he noted down the physical feature of the suit property and his report and plan were marked as Ex.C.1 and Ex.C.2. It is also clear that the suit property is not the property called as Ettiyan Kollai. The boundaries of the property belonged to the plaintiffs is very clear that the suit property is not connected to the Ettiyan Kollai property.

10. While being so, the 5 cents of the property belonged to the plaintiffs, now encroached by the defendants and now they are cultivating the same. To prove their possession, the defendants did not produce any patta or chitta to the said property to claim the same in their possession. If the suit property is in possession and enjoyment of the defendants for long time, they would have taken steps to get patta and other revenue documents. At the same time, the defendants also claimed

titled by adverse possession in respect of the suit property, for which also they did not file any evidence to show their continuous possession and enjoyment of the property more than 12 years. Therefore, both the Courts below rightly concluded that the defendants encroached the suit property and decreed the suit in favour of the plaintiffs.

11. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below for upholding the case of the plaintiffs. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the plaintiffs and as against the defendants.

12. In fine, the second appeal stands dismissed by confirming the judgment and decree of the Courts below. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

Sd/-
Assistant Registrar(MDU)

//True Copy//

Sub Assistant Registrar

rts
To

1. The III Additional District Judge, Dharmapuri at Krishnagiri.
2. The District Munsif, Krishnagiri.
3. The Section Officer, V.R.Section, Madras High Court, Chennai.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.6241

+1cc to Mr.D.Shivakumar, Advocate, S.R.No.6069

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VBA(CO)
CS/23/11/2020