

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.101 of 2020
and CMP.No.2127 of 2020

Ponnusamy

... Appellant/Plaintiff

Versus

1. Panchalai
2. R.Srinivasan
3. R.Siva

... Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.34 of 2016 dated 14.11.2019 on the file of Additional Sub Judge, Ariylaur confirming the judgment and decree in O.S.No.279 of 2007 dated 30.08.2016 on the file of Principal District Munsif, Ariyalur.

For Appellant : Mr.S.Kamadevan

JUDGMENT

The plaintiff in O.S.No.279 of 2007 on the file of the Principal District Munsif, Ariyalur is the appellant herein. The suit was filed for declaration of his right over the suit property and for permanent injunction.

2. It is the case of the plaintiff that under registered sale deed dated 28.03.2005, he purchased 26 cents in Survey No.387/1B of Periyakkurichi Village, Sendurai Taluk in Ariyalur District from one Rasambal. Ever since he has been in possession and enjoyment of the property as absolute owner. It is the further case of the plaintiff that the defendants, who are the adjacent land owners, have no manner of right over the suit property, but, attempted to trespass into the suit property. Hence, the suit.

3. The suit was resisted by the defendants by filing a written statement contending that the suit property and its western contiguous property to an extent of 1.83 acre was

purchased from one Rasambal and her minor children on 22.08.1979 out of 2.02 acres in S.F.No.387/1. The Vendors retained only 0.19 cents but sold 0.26 cents. Since the Vendor of the plaintiff had no right to sell 6 cents to the plaintiff, the suit is liable to be dismissed.

4. The Trial Court framed necessary issues on the basis of the above pleadings and permitted the authorities to adduce evidence. The Trial Court upon consideration of the evidence available on record, partly decreed the suit declaring the right of the plaintiff over 19 cents and granted permanent injunction. Aggrieved over the same, the plaintiff taken up the matter to the Sub Court in A.S.No.34 of 2016. The Appellate Judge dismissed the appeal. Against the concurrent findings of the Courts below, the present appeal has been filed.

5. Mr.S.Kamadevan, learned counsel for the appellant submitted that the Courts below erred in granting decree for declaration only in respect of 19 cents as against the plaintiff's claim of 26 cents, while granting permanent injunction for the entire extent, despite the appellant proved his continuous uninterrupted possession of the suit property for more than the statutory period. It is further contended that the Courts below are not justified to declare that the respondents are entitled to claim 7 cents of the suit property and granting liberty to file a suit for recovery of possession in the suit filed by the appellant.

6. In the instant case, the dispute is only with regard to 7 cents in Survey No.387/1. According to the plaintiff, under Ex.A1, the plaintiff purchased 26 cents from his vendor Rasambal. Since then, he has been in possession and enjoyment of the suit property. It is relevant to note that the appellant claims title to the property under Ex.A1 sale deed dated 28.03.2005 and also by way of adverse possession.

7. It is his case that his predecessor has been in continuous possession of property for more than statutory period and after the sale deed dated 28.03.2005, he is in uninterrupted possession of the property. It is not in dispute that the vendor of the plaintiff Rasambal owned total extent of 2.02 acres in S.F.No.387/1 under Ex.B1. She sold 1.83 acres out of 2.02 acres, which shows that the vendor had retained only 19 cents in Survey No.387/1. Perusal of Ex.A1 sale deed dated 28.03.2005 reveals that she had sold 26 cents, for which, she did not have power or authority. It is also seen that the defendants under Exs.A8 and A9 sold 1.76 acres to one Chinnathambi. According to the defendants, they are in possession of the property in dispute i.e. 7 cents.

8. The Courts below having appreciated the evidence adduced by the parties in proper perspective granted declaratory relief in respect of 19 cents and permanent injunction and observed that the defendant is entitled to get 7 cents by way of filing a suit for recovery of possession. The factual findings arrived at by the Courts below in my view is correct and no substantial questions of law arise for consideration of this Court.

9. In that view, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Additional Sub Judge,
Ariylaur.
2. The Principal District Munsif,
Ariyalur.

+lcc to Mr.S.Kamadevan, Advocate Sr.8938

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