

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.02.2020
Date of Verdict : 24.02.2020

CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.Nos.2124 & 2125 of 2003

S.A.No.2124 of 2003

1.Durai Raj (Deceased) ...Appellant/Defendant/Plaintiff

2.Rajammal

3.Rajendran

4.Ramesh

5.Radha

... Appellants

(Appellant Nos.2 to 5 are brought on record as legal heirs of the deceased Sole Appellant viz., Durai Raj vide order of the Court dated 28.03.2011 made in C.M.P.Nos. 572 & 573 of 2010 in S.A.No.2124 of 2003)

Vs.

1.Ponnuramgam (Deceased) ...Defendant/Appellant/Respondent

2.Panchali

3.Rajendran

4.Satyandran

5.Mahendran

6.Aruna

(Respondent Nos.2 to 6 are brought on record as legal heirs of the deceased Sole Respondent viz., Ponnuramgam vide order of the Court dated 03.07.2013 made in C.M.P.Nos.475 to 478 of 2013 in S.A.Nos.2124 & 2125 of 2003)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 26.03.2003 made in A.S.No.04 of 2003 on the file of the Principal District Court, Vellore reversing the Judgment and Decree dated 20.06.2002 made in O.S.No.285 of 1998 on the file of the Principal District Munsif Court, Vellore.

For Appellants : Mr.K.S.Gnanasambandan for
Mr.P.Chandrasekar

For R1 : Died

For R2 to R6 : Mr.S.Subbiah, Senior Counsel for
Mr.W.M.Adbul Ageeth

S.A.No.2125 of 2003

1.Durai Raj (Deceased)

2.Sowri

3.Soundararajan

4.Yesu

5.Rajammal

6.Rajendran

7.Ramesh

8.Radha

... Appellants

(Appellant Nos.5 to 8 are brought on record as legal heirs of the deceased 1st Appellant viz., Durai Raj vide order of the Court dated 28.03.2011 made in C.M.P.Nos. 575 & 576 of 2010 in S.A.No.2125 of 2003)

Vs.

1.Thangam

...Respondents 1 to 4/Plaintiffs 1 to 4

2.Ponnurangam (Died)

3.Narayanasamy

4.Arumugam

5.Charli

..5th Respondent/4th Respondent/4th Respondent

6.Panchali

7.Rajendran

8.Satyandran

9.Mahendran

10.Aruna

... Respondents

(Respondent Nos.6 to 10 are brought on record as legal heirs of the deceased 2nd Respondent viz., Ponnurangam vide order of the Court dated 03.07.2013 made in C.M.P.Nos.475 to 478 of 2013 in S.A.Nos.2124 & 2125 of 2003)

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 26.03.2003 made in A.S.No.03 of 2003 on the file of the Principal District Court, Vellore reversing the Judgment and Decree dated 20.06.2002 made in O.S.No.421 of 1998 on the file of the Principal District Munsif Court, Vellore.

For Appellants : Mr.K.S.Gnanasambandan for
Mr.P.Chandrasekar

For R1, R3, R4 : Mr.S.Subbiah, Senior Counsel for
Mr.W.M.Adbul Ageeth

For R2 : Died

For R6 to R10 : Not ready in notice

COMMON JUDGMENT

The appeal in S.A.No.2124 of 2003 has been filed as against the Judgment and Decree dated 26.03.2003 made in A.S.No.04 of 2003 on the file of the Principal District Court, Vellore reversing the Judgment and Decree dated 20.06.2002 made in O.S.No.285 of 1998 on the file of the Principal District Munsif Court, Vellore.

2.The appeal in S.A.No.2125 of 2003 has been filed as against the Judgment and Decree dated 26.03.2003 made in A.S.No.03 of 2003 on the file of the Principal District Court, Vellore reversing the Judgment and Decree dated 20.06.2002 made in O.S.No.421 of 1998 on the file of the Principal District Munsif Court, Vellore.

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

4.The case of the plaintiff in S.A.No.2124 of 2003 in brief is as follows :-

4.1.The suit is filed for declaration and injunction. The plaintiff is the absolute owner of the suit schedule property, which was inherited from his father Kali. He has been in possession and enjoyment of the suit property as absolute owner thereof for more than the statutory period and perfected his title by adverse possession also. He obtained patta and also paid the house tax and other Revenue dues to the authorities. He has his entrance to the suit property on the eastern side. Some years ago, the eastern wall became dilapidated due to efflux of time. Therefore, the plaintiff decided to put up a new wall in the place of old wall by removing the same and started the construction on 04.04.1998. He raised the wall upto twelve feet. Till that time the defendant was keeping quiet and did not object the same. The defendant is living in the opposite house of the plaintiff. There is a five feet lane in between the plaintiff's house and defendant's house. It is classified as "poramboke" and in fact through the said lane the plaintiff and the defendant can reach the Sivaraj Street. The Adangal extract issued by the Village Administration Officer also clearly shows the said lane.

4.2.Due to the construction put up by the plaintiff, the defendant is with the ulterior motive of extracting money from the plaintiff, the defendant obstructed the construction as if the plaintiff lodged the complaint. Though in the panchayat, the defendant agreed not to disturb the construction of the

plaintiff, but the defendant exerted political influence and threatened the plaintiff to stop the construction. The plaintiff is unable to proceed with construction because of the defendant's physical threat. The defendant has no right to prevent the plaintiff from constructing his eastern side wall of the suit property. Hence the suit.

5. Resisting the same, the defendant filed the written statement stating that the suit is not at all maintainable. The plaintiff has no right or title in the suit property and also denied the entire averments and allegations made in the plaint are false and frivolous. Further, the plaintiff did not approach the Court with clean hands. He suppressed the Survey number of his house, which has been mentioned in the Adangal extract filed along with the plaint and he mentioned only the Door number of his house that too without proper measurement of the house plot as in the schedule.

5.1. The mother of the defendant viz., Kuliammal purchased a vacant site in Survey No.53/12 situated in Virudampattu Village in the total extent of 0.46 acres, which is bounded on the east by the house of Kuliammal; on the north of Munisami house; on the west by the house of Kaligopal; and on the south by the street measuring east to west 3 ½ yards; north to south 16 yards under the registered Sale Deed dated 10.04.1968. After her demise, the defendant and his brothers were enjoying the same as her legal heirs. In fact, the plaintiff and his brother tried to interfere with the peaceful possession and enjoyment of the defendant's property by letting out sewage water in the property belonging to the defendant. Therefore, the defendant and his brothers filed a suit in O.S.No.307 of 1993 on the file of the Principal District Munsif Court, Vellore for declaration and injunction and the suit was decreed in their favour by Judgment dated 15.04.1998. The plaintiff completely suppressed the above suit and filed the present suit. The plaintiff had encroached upon the defendant's property after obtaining injunction in the suit and constructed the wall in the defendant's property. Therefore, the defendant filed a suit in O.S.No.421 of 1998 before the Principal District Munsif Court, Vellore for injunction and it is pending. Therefore prayed for dismissal of the suit.

6. The case of the plaintiffs in S.A.No.2125 of 2003 in brief is as follows :-

6.1. The defendants in O.S.No.285 of 1998 filed this suit along with their brothers for declaration and injunction restraining the defendants from putting up further construction and also for mandatory injunction directing the defendants in O.S.No.421 of 1998 to demolish and remove the construction put up by them in the suit property.

6.2.The plaintiff in O.S.No.285 of 1998 is the defendant in the present suit and his family members are defendant Nos.2 to 5. Both the suits have been filed in respect of their respective houses.

7.Both the suits have been clubbed together by the trial Court and joint trial has been conducted. On the side of the plaintiff in O.S.No.285 of 1998 and the defendants in O.S.No.421 of 1998 examined PW1 and PW2 and two documents were marked as Ex.A1 and Ex.A2. On the side of the defendants in O.S.No.285 of 1998 and the plaintiffs in O.S.No.421 of 1998 examined DW1 & DW2 and were marked Ex.B1 to Ex.B13. The Advocate Commissioner's report and other reports were marked as Ex.C1 to Ex.C9. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court passed a common Judgment and Decree and thereby decreed the suit in O.S.No.285 of 1998 and dismissed the suit in O.S.No.421 of 1998. Aggrieved over the Judgment and Decree of the trial Court, the defendants in O.S.No.285 of 1998 and the plaintiffs in O.S.No.421 of 1998 preferred the appeal suits in A.S.Nos.4 of 2003 and 3 of 2003 respectively before the Principal District Court, Vellore. The first appellate Court by a common Judgment and Decree dismissed the suit in O.S.No.285 of 1998 and decreed the suit in O.S.No.421 of 1998. Challenging the same, the plaintiff in O.S.No.285 of 1998 and the defendants in O.S.No.421 of 1998 have come forward with these two second appeals.

8.At the time of admission of the second appeal on 08.12.2003 the following substantial questions of law were framed :-

"1.Whether the respondent is estopped from questioning the possession of the appellant over the suit property, when he has not questioned the same in the earlier suit in O.S.No.307 of 1993?

2.Whether the appellant is entitled to claim adverse possession over the suit property?

3.Whether the Court below is right in dismissing the suit when the respondent himself admits the possession of the appellant over the suit property for time immemorial?"

9.Heard both the sides.

10.The plaintiff in O.S.No.285 of 1998 and the defendants in O.S.No.421 of 1998 claiming that the suit property originally owned by their father and thereafter, they have been in possession and enjoyment of the suit property. The eastern side of the suit property, there was a wall became dilapidated

due to efflux of time. Therefore, they decided to put up a new wall in the place of old wall by removing the same and started the construction on 04.04.1998. He raised the wall upto twelve feet. The defendants in O.S.No.285 of 1998 and the plaintiffs in O.S.No.421 of 1998 are residing opposite house of the plaintiff. There is a five feet lane in between their houses. It is classified as "poramboke" and belonged to the Government. It is only lane for both the plaintiffs and the defendants to reach the Sivaraj Street. The house tax receipts were marked as Ex.A1 and Ex.A2.

11.The defendant's mother Kuliammal purchased the suit property as a vacant site comprised in S.No.53/12 situated in Virudampattu Village in the total extent of 0.46 acres, which is bounded on the east by the house of Kuliammal; on the north of Munisami house; on the west by the house of Kaligopal; and on the south by the street measuring east to west 3 ½ yards; north to south 16 yards. The Sale Deed was marked as Ex.B5. The property tax in respect of their suit property was marked as Ex.B6 stands in the name of the defendants mother viz., Kuliammal and Ex.B7, the kist receipt of the suit property stands in the name of one of the brother of the defendants viz., Ponnurangam. In fact, they also filed a suit in O.S.No.307 of 1993 on the file of the Principal District Munsif Court, Vellore for declaration and injunction and the suit was decreed in their favour by Judgment dated 15.04.1998. Though it was an Ex-parte decree and it was not challenged by the plaintiff.

12.On perusal of the decree shows that the defendants and his brother filed a suit for injunction restraining the plaintiff in O.S.No.285 of 1998 from letting out the drainage water in the defendants property. Whereas, the present suit has been filed by the plaintiffs for injunction restraining the defendants from interfering the construction of the plaintiff put up by them on the eastern wall of their houses. The decree in O.S.No.307 of 1993 were marked as Ex.B12. The Advocate Commissioner was appointed and he inspected the property and measured the same. His report and the rough plan were marked as Ex.C1 and C2.

13.In fact, PW2, who is none other than the brother son of the plaintiff deposed that the plaintiff's house situated in S.No.53/11A originally belonged to three brothers in which the suit property is comprised in S.No.53/11A was allotted in favour of the plaintiff and the property comprised in S.No.53/11B was allotted in favour of PW2 and the property in comprised in S.No.53/11C was allotted to one Sreeman, the brother of the plaintiff. Therefore, the plaintiff was allotted the suit property which is comprised in S.No.53/11B. Back side of their house, there was a lane and it belonged to all. Adjacent to the

lane the defendants house was situated and S.No.53/12. He also admitted that the defendants filed a suit in O.S.No.307 of 1993 in respect of the property comprised in S.No.53/12. The plaintiffs have no way connected to the property belonged to the defendants and they never claimed anything over the suit property in O.S.No.421 of 1998. Therefore, it is clear that the plaintiffs property comprised in S.No.53/11 and the defendants property comprised in S.No.53/12 in between their houses, there is a five feet lane in which the defendants filed a suit in O.S.No.307 of 1993 restraining the plaintiffs not to let out the drainage water. The plaintiffs now filed the present suits for injunction restraining the defendants not to interfere with the construction put up by the plaintiff on the eastern side wall of their house.

14.DW1 deposed that the plaintiff's father purchased their house and after his demise his three sons including the plaintiff partitioned their property and they are residing in their respective shares. Accordingly, the suit property comprised in S.No.53/11 was conveyed to him and he categorically admitted that the defendants are no way connected with the property comprised in S.No.53/11. On the eastern side of the suit property, the defendants house is situated and it is comprised in S.No.53/12. It is also corroborated by the Advocate Commissioner's report that the plaintiff's house is situated at Door No.3/111 and defendants house was situated at Door No.3/113. Both the houses were situated in opposite side, in between the houses there was a five feet lane. The Advocate Commissioner further submitted that there was a sub division in S.No.53/11 as 53/11A, 53/11B and 53/11C. In fact, the Advocate Commissioner with the help of the Surveyor measured the property.

15.PW1 also deposed that after the decree obtained by the defendants in O.S.No.307 of 1993, they never let out any drainage water in the lane belonged to the defendants in O.S.No.285 of 1998. Now the defendants filed a suit in O.S.No.421 of 1998 for mandatory injunction to remove the construction put up by the plaintiff. If at all the plaintiff encroached the partition of the land belonged to the defendants, they would have very well sought for the relief for mandatory injunction in O.S.No.307 of 1993 itself. Further they also did not prove in which area and what extent the plaintiff encroached the property. Though the plaintiff did not produce any document to show their title, the defendants categorically admitted that the plaintiff is residing in their house comprised in S.No.53/11 and they were also issued patta. Therefore, the admitted fact need not be proved, though the defendants did not produce any title documents. In fact, the plaintiff in O.S.No.285 of 1998 is filed only for injunction. The defendants filed a suit in O.S.No.421 of 1998 for declaration and permanent injunction

along with the prayer of mandatory injunction. The plaintiff never claimed any title over the property belonged to the defendants and they never questioned about the defendants title over the property. Hence, only after filing of the suit in O.S.No.285 of 1998 by the plaintiff, the defendants filed a suit in O.S.No.421 of 1998 for declaration, injunction along with the prayer of mandatory injunction.

16.In support of his contention the learned counsel for the appellants relied upon the following Judgments:

1.2001 AIR (Gauhati) 65 : 2001(1) GauLR 268 : 2000(3) GauLT 599 : 2001(1) GauLJ 265 in the case of Holy Mother of Aurobindo Ashram of Pondicherry /Vs./ State of Meghalaya and others;

2.AIR 1950 Travancore-Cochin 19 in the case of Subramonian Nambooripad /Vs./ Cheeran Variayathu and other; and

3.(1996) 3 Supreme Court Cases 289 in the case of S.Noordeen /Vs./ V.S.Thiru Venkita Reddiar and others.

17.In support of his contention the learned counsel for the respondents relied upon the following Judgments:

1.(2004) 10 Supreme Court Cases 779 in the case of Karnataka Board of Wakf /Vs./ Government of India and others;

2.(2008) 4 Supreme Court Cases 594 in the case of Anathula Sudhakar /Vs./ P.Buchi Reddy (Dead) by Lrs. And others;

3.(2009) 3 Supreme Court Cases 306 in the case of Subramanya Swamy Temple, Ratnagiri / Vs./ V.Kanna Gounder (Dead) By Lrs.;

4.(2014) 2 Supreme Court Cases 269 in the case of Union of India and others /Vs./ Vasavi Cooperative Housing Society Limited and others; and

5.2020-1-L.W. 518 in the case of Poornasami /Vs./ Natarajan and another.

18.The learned Senior counsel appearing for the respondents contended that when the plaintiff is failed to mention about the measurement and survey number of the suit property in the plaint, he is not entitled for any relief. Further, there is a cloud over title property of the plaintiff ought to have filed the suit for declaration and prayer of injunction alone cannot be maintained. In the case on hand, though the plaintiff failed to mention the survey number and measurement of the suit property and categorically mentioned

about the boundaries and the door number. Therefore, the boundaries can prevail over the measurement, since it is categorically admitted by DW1 about the possession and enjoyment of the suit property by the plaintiff. Therefore, the admitted facts need not be proved and the Judgments cited by the respondents are not helpful for the case on hand.

19. Therefore, the trial Court has rightly decreed the suit in O.S.No.285 of 1998 and dismissed the suit in O.S.No.421 of 1998. The first appellate Court reversed the finding only on the basis of the Advocate Commissioner's report, since the plaintiff did not mentioned the Survey number as well as the measurement of the suit property. Whereas the defendants categorically admitted the possession and enjoyment of the plaintiff in their suit property. Therefore, the finding of the first appellate court is perverse and against the evidence on record. As such, this Court constraint to interfere with the finding of the first appellate court. Accordingly, the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff in O.S.No.285 of 1998 and against the plaintiffs in O.S.No.421 of 1998.

20. In fine, both the Second Appeals are allowed. The Judgment and Decree dated 26.03.2003 made in A.S.Nos.3 & 4 of 2003 on the file of the Principal District Court, Vellore are set aside and the Judgment and Decree dated 20.06.2002 made in O.S.No.285 of 1998 and O.S.No.421 of 1998 on the file of the Principal District Munsif Court, Vellore are restored. No order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Vellore.
2. The Principal District Munsif,
Vellore.

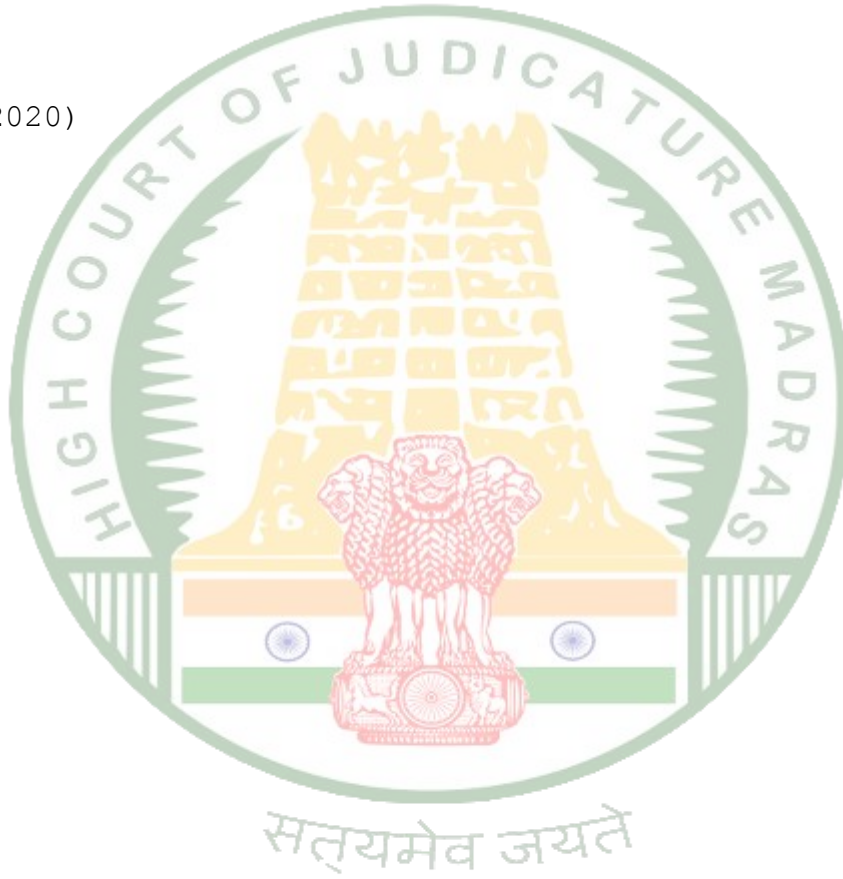
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3. The Section Officer,
V.R. Section,
High Court,
Madras.

+2cc to M/s.W.M.Abdul Majeed, Advocate Sr.15521,15522[18/08/2020]
+2cc to M/s.P.Chandrasekar, Advocate Sr.16040,16041[18/08/2020]

S.A.Nos.2124 & 2125 of 2003

RGN (CO)
SP (14/08/2020)



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