



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.10.2020	Pronounced on: 16.10.2020
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Coram::

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.1617 of 2010
& M.P.No.1 of 2010

Senguttuvan,
S/o.Govindaraju,
Thirukalappur Village,
Udayarpalayam Taluk ... Appellant/Appellant/Plaintiff

/versus/

Erasappa,
S/o.Adhimoolam,
Periyathukurichi,
Udayarpalayam Taluk ... Respondent/Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree of the Learned Additional District Judge, Fast Track Court, Ariyalur dated 25.10.2008 passed in A.S.No.35 of 2004 dismissing the Appeal, confirming the decree and judgment of the Court of the District Munsif, Jayankondam made in O.S.No.59 of 1994 dated 25.10.1999.

For Appellants : Mr.B.Dayalan

For Respondent : No appearance

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the plaintiff against the dismissal of his suit for declaration and permanent injunction, concurrently by the Courts below.

2. The case of the plaintiff is that, his father Govindarasu, purchased 3 cents of land from one Anjaliammal on 19.09.1960. After the demise of Govindarasu, in the year 1978, his legal heirs entered into an oral partition on the 2nd day of Tamil month "Chitirai", 1980. Though, in the sale deed, the extent of the property is shown as 0.37 cents, in lay, it was

0.48 cents and same was in their possession and enjoyment. In the oral partition, the plaintiff was allotted 0.36 cents and balance 0.12 cents was shared equally by his brothers Radhakrishnan and Sivaramakrishnan. The revenue records are in their respective names and enjoyed without any let or hindrance. While so, the defendant setting up title upon them, trying to dispossess him. Hence, suit for declaration and permanent injunction was filed.

3. The case of the defendant is that, the claim of the plaintiff tracing title over the suit property through Anjaliasammal is false and the claim that, in lay, the extent of property is 0.48 cents though title deed is only for 0.37 cents is an invented plea. The suit property is part of S.No.352/10 to extent of 3 acres 02 cents. The patta stands in the name of 8 persons jointly. Neither the name of the plaintiff nor their vendor Anjaliasammal are Pattadars. The defendant is absolute owner of 1.88 acres of land in the said Survey Number, which they purchased through different persons. During UDR, the surveyor, by mistake, the revenue authorities have not shown the correct extent and boundaries. Knowing about that mistake, the plaintiff trying to stake claim over the defendant's property and extent over and above his title document. The UDR mutation was done behind his back without notice and it will not bind him. Hence, the suit has to be dismissed.

4. Both the parties besides claiming title over the suit property, also set up a plea of adverse possession, based on the 'Kist' and 'Adangal'.

6. The Trial Court framed the following issues:-

(i). Whether the suit property belong to the plaintiff and the plaintiff is in possession of the suit property?

(ii). Whether the plaintiff is entitled for the declaration relief?

(iii). Whether the plaintiff is entitled for the relief of Permanent Injunction?

(iv). To what relief the plaintiff is entitled?

Additional Issues:-

(i). Whether the plaintiff had title by adverse possession of the suit property?

(ii). Whether the defendant had title by

adverse possession to the suit property?

(iii). Whether the suit is bad for non-joinder of necessary?

(iv). Whether the suit is affected due to wrong description of suit properties?

7. Before the Trial Court, 2 witnesses were examined to support the case of the plaintiff. 4 witnesses were examined on behalf of the defendant. 6 documents were marked by the plaintiff and 20 documents were marked by the defendant.

8. The Trial Court, dismissed the suit on the ground that, the discrepancies found in the boundaries shown in the plaintiff document, disproves the case of the plaintiff. The oral sale of portion of the property claimed by the defendant is accepted by the vendor. The plaintiff claims that, on lay his father held about 11 cents more than the extent shown in the title deed not proved.

9. Aggrieved by the dismissal, the plaintiff filed Appeal before the Additional District Court, in A.S. 35/2004. The Lower Appellate Court confirmed the Trial court judgment and decree by assigning reasons after re-appreciating the evidence.

10. In the Second Appeal, the learned counsel for the appellant contend the Trial Court wrongly held that, under Ex.B-11, the defendant had purchased 12½ cents of land from the plaintiff's brothers namely Thiru.Sivaramakrishnan and Thiru.Radhakrishnan, so the properties dealt in Ex.A-2, Ex.B-2 and Ex.B-10 (to a total extent of 29 ½ cents) is different and distinct properties. Had the boundaries shown in Ex.B-11, been properly appreciated by the Courts below they would have concluded that the western boundary of the property is the 0.26 cents property of the plaintiff. The Trial Court ought to have rejected the defendant plea that, he purchased 15 cents of land in the said survey number from Thiru.Dharmalingam and 19 cents from his father-in-law orally. Since the sale consideration exceeds Rs.100/-, any immovable property worth above Rs.100/- ought to be conveyed only by a registered written document. Contrary to Section 54 of the Transfer of Property Act and Section 49-C of the Registration Act, the Courts below has accepted the case of oral purchase pleaded by the defendant and rejected the plea of the plaintiff.

11. On hearing the submission and examination of evidence, this Court finds that, the plaintiff father Govindaraju purchased 0.37 cents of land from Anjaliasamma under Ex.A-1 on 19.06.1960. The "A" Register copy is marked as Ex.A-

4. It reveals the patta number for the property in S.No.352/10 total extent 3.02 acres is 230. Kist receipts in the name of Anjaliasammal is Ex.A-3 which reveals she has paid land revenue for three different pattas including patta number 230. The Kist receipts in the name of the plaintiff is for new patta No.1741. Under Ex.B-2 to Ex.B-11, the defendant has purchased about 1.17 ½ acres out of 3.02 acres in S.No.352/10 from different persons. In addition, he claims by oral purchase, he acquired 0.71 cents from his father-in-law and others. Thus, he holds totally 1.88 ½ acres of land in S.No.352/10. It is correct that the acquisition of 0.71 cents of land through oral purchase is inadmissible in evidence. The plea has been considered by the Courts below to ascertain the case of the plaintiff regarding his title and possession and not to decide the defendant's title. Even if the plea of oral purchase to an extent of 0.71 cents is not taken into consideration, the inadequacy of description of the suit property, discrepancy in the boundaries, mutually destructive plea of declaration based on title as well as by adverse possession, disentitles the plaintiff getting the relief sought.

12. The Lower Appellate Court has rightly pointed that without ascertaining the actual extent owned by the others in S.No.352/10, Court cannot hold that the plaintiff is in possession and enjoyment of property more and above conveyed to him. For want of evidence and proper pleadings, the plaintiff claims right, title and interest for the extent more than what his father purchased from Anjaliasammal under Ex.A-1 is unsustainable.

13. This Court finds that the Courts below on facts concurrently held against the plaintiff/appellant. The finding and reasoning given by the Courts below are in accordance to law, evidence and probabilities. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Additional District Judge,
Fast Track Court, Ariyalur.

2.The District Munsif,
Jayankondam, Ariyalur District.

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

S.A.No.1617 of 2010
& M.P.No.1 of 2010

AD(CO)
CB(29/04/2021)



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