

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.NO.123 OF 2020

1. Veeramuthu
2. Paramasivam

.. Appellants/Appellants/
Plaintiffs

Versus

1. Manickam
2. State of Tamil Nadu
Rep.by District Collector, Ariyalur.
3. The Tahsildar, Ariyalur.

.. Respondents/Respondents/
Defendants

Prayer:-Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.10 of 2018 on the file of Principal Subordinate Court, Ariyalur dated 02.11.2019 in confirming the decree and judgment passed in O.S.No.56 of 2008 dated 22.12.2017 on the file of the Additional District Munsif Court, Ariyalur.

For Appellants : Mr.G.Padmanapan

JUDGMENT

The unsuccessful plaintiffs in O.S.No.56 of 2008 on the file of the Additional District Munsif Court, Ariyalur are the appellants in this appeal. The suit was filed for declaration and permanent injunction. During the pendency of the suit, sole plaintiff died and her legal heirs were impleaded as plaintiffs 2 and 3. The case of the deceased plaintiff is that the suit property belongs to her and it was purchased by her grand father, Perumal Padayachi by a registered sale deed dated 03.07.1928 from one Ramasamy and Chinnathambi. Since then, the plaintiff and her predecessors have been in possession and enjoyment of the same. However, on 10.01.2008, the first defendant disputed her title over the suit property and attempted to interfere with her possession and enjoyment.

2. In the written statement filed by the first defendant, it has been stated that the suit property is a public pathway and it is classified as Government Poramboke in the revenue records. In the sale deed of one Velu s/o Ramasamy dated 29.03.2000, the property is mentioned as public road. The suit property is the only passage to reach his property. Hence, the plaintiffs are not entitled for the prayer sought for in the suit.

3. In the written statement filed by the third defendant and adopted by the second defendant the allegations and averments made in the plaint were denied. It is further stated that during UDR Survey, the Survey No.371 was subdivided as 371/23 and suit property was classified as street.

4. Based on the above pleadings, the Trial Court framed necessary issues. On the side of the plaintiffs, second plaintiff examined himself as PW1 and marked Exs.A1 to A5. On the side of the defendants, DW1 and DW2 were examined and Exs.B1 and B2 were produced. The Trial Court after analysing the entire evidence adduced by the parties dismissed the suit. The findings of the Trial Court was confirmed on the appeal preferred by the plaintiffs. Challenging the same, the present appeal has been filed.

5. Mr.G.Padmanapan, learned counsel for the appellants would argue that the judgment and decree of the Trial Court as well as the Appellate Court are contrary to law, weight of evidence and probabilities of the case. According to the learned counsel, the Courts below have not properly appreciated the oral and documentary evidence adduced on the side of the appellants in proper prospective, which ended in miscarriage of justice. He further added that the Courts below failed to note that in the year 1928, no survey was conducted and only boundaries will prevail over the survey number and extent.

6. In the matter on hand, the original plaintiff approached the Court for declaration of her title over the property and for permanent injunction. It is the case of the original plaintiff that her grandfather Perumal Padayachi purchased the property through Ex.A2, registered sale deed dated 03.07.1928. After perusing the recitals in the sale deed, the Courts below have observed that no survey number has been mentioned in the sale deed. The first defendant in the written statement as well as in his evidence as DW1 has categorically stated that he has been using the suit property as the passage to reach his property and no other alternative way is available to him. It is relevant to state that no steps were taken by the plaintiff to prove that the first defendant is having alternative way to reach his property. The Village Administrative Officer of Ian Attur gave evidence as DW3 and deposed that the suit property was

classified as a road in the survey conducted in the year 1987.

7. It is settled law that in a suit for declaration of title, the burden of proof is on the plaintiff to prove the right over the property. From the perusal of records, it is seen that except Ex.A2 no other document was produced to establish the title of the plaintiffs over the property in question. Both the Courts on proper appreciation of evidence have come to the conclusion that the plaintiffs have not proved their case. I find no substantial question of law to entertain this appeal. In that view, the Second Appeal is dismissed as devoid of merits. No costs.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Principal Subordinate Court,
Ariyalur.
2. The Additional District Munsif Court,
Ariyalur.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.G.Padmanapan, Advocate, S.R.No.11586

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BS (CO)
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