

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.1180 OF 2005

Kesavan

..Appellants/Respondent/Plaintiff

Vs.

1. Arumugham

2. Thangavel

...Respondents/Appellants/Defendants

Prayer:

Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree made in A.S.No. 93 of 2002 dated 19.07.2004 on the file of the learned Sub-Ordinate Judge, Kallakurichi reversed the judgment and decree made in O.S.No. 491 of 1997 dated 26.02.2001 on the file of the learned II - Additional Munsif, Kallakurichi.

For Appellant : Mr.R.Ramachandran

For Respondents : R1 - Notice served
R2 - Died

J U D G M E N T

This second appeal has been filed as against the judgment and decree dated 19.07.2004 passed in A.S.No.93 of 2002 on the file of the learned Sub-Ordinate Judge, Kallakurichi reversing the judgment and decree dated 26.02.2001 passed in O.S.No.491 of 1997.

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

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

3.1 The suit is filed for permanent injunction. The suit property belongs to the plaintiff, which was purchased along with other property by the plaintiff's father by the registered sale deed dated 20.10.1923. After demise of the plaintiff's father, the plaintiff is in exclusive possession and enjoyment of the suit property by way of inheritance. Thereafter, he also

constructed a small thatched house. The natham Patta also issued in favour of the plaintiff and the remaining place adjoining to the house is also in occupation and enjoyment. Therefore, the plaintiff acquired a perfect and good title over the suit property by excluding others and also acquired a perspective title by way of adverse possession from the date of possession by father of the plaintiff. The defendants, being the neighbours, due to their previous enmity, all are attempting to trespass into the suit property with ulterior motive of disturbing the plaintiff's peaceful possession and enjoyment. Hence, the suit.

4. Resisting the same, the defendants filed written statement and stating that the boundaries given in the suit property is not correct. The plaintiff is not in possession of the suit property and therefore, the plaintiff is not at all entitled for any relief as prayed for. Further, submitted that the suit itself is not at all maintainable without the prayer of declaration when there is a dispute over the ownership of the suit property. Further, the plaintiff failed to mention the vendor of the property. Since the vendor had no title over the suit property. Therefore, the alleged sale deed itself is not valid one. The Patta issued in respect of the house in the name of the plaintiff and the suit property is not at all belong to the plaintiff and it is situated backyard of the plaintiff's house. Therefore, prayed for dismissal of the suit.

5. On the side of the plaintiff, he examined P.W.1 and were marked Exs.A1 to A4. On the side of the defendants, they examined D.W.1 and D.W.2 and were marked Exs. D1 to D18. On perusal of the oral and documentary evidence adduced by the parties and the submission made by the learned counsel, the Trial Court allowed the suit in favour of the plaintiff. Aggrieved by the same, the defendants preferred an appeal suit in A.S.No. 93 of 2002 and the first Appellate Court allowed the appeal and dismissed the suit filed by the plaintiff. Aggrieved by the same, the plaintiff filed this second appeal.

6. At the time of admission of the second appeal, the following substantial question of law were framed:-

" Whether the lower Appellate Court having found that the plaintiff has purchased about 30 Kaladi on the East West and 100 Kaladi on the North South under Ex.A1 sale deed, should have at least decreed the suit to that extent but has wrongly dismissed the suit totally?"

7. Heard Mr.R.Ramachandran, learned counsel appearing for the appellant.

8. The plaintiff filed a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property comprised in Survey No. 270 admeasuring 0.00.42 sq.mtr. in which the thatched house bearing Door No.18 along with 0.07 cents of vacant land situated at Rishivandhiyam Village, Sankarapuram Taluk. The suit property is classified as Natham. The suit property originally purchased by the plaintiff's father by the registered sale deed dated 20.10.1923 which was marked as Ex.A1. After demise of his father, the plaintiff is in exclusive possession and enjoyment of the suit property by way of inheritance. Ex.A1 reveal that the measurement of the house is that 75 X 25 approximately gives around 1875 sq.mtrs. Whereas in the plaint, the plaintiff has stated as 7 cents. In the deposition of P.W.1 also, he failed to prove his case in respect of the extent of the property. According to the defendant, they also purchased the suit property and claiming ownership of the suit property. When there is no categorical measurement of the suit property, it cannot be decreed as prayed for. Except house tax receipt, the plaintiff did not produced any piece of evidence to show that the plaintiff is in possession and enjoyment of the entire property. The trial Court decreed the suit, the first Appellate Court rightly reversed the findings of the Trial Court and dismissed the suit filed by the plaintiff.

9. In view of the discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first Appellate Court. Therefore, this Court is of the considered opinion that no substantial question of law is involved in this second appeal. Be that as it may, the substantial question of law is accordingly answered in favour of the defendant and as against the plaintiff. In fine, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:-

1. The Sub-Ordinate Judge, Kallakurichi.
2. The II - Additional Munsif, Kallakurichi.

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

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