

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2020

Date of Verdict : 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1455 of 2005

Subramania Gounder ...Appellant/Appellant/Defendant

Vs.

Ponnammal ...Respondent/Respondent/Plaintiff

Prayer :- This Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.07.2005 made in A.S.No.89 of 2003 on the file of the Additional Sub Court, Tindivanam, confirming the judgment and decree dated 27.08.2003 made in O.S.No.442 of 1998 on the file of the Additional District Munsif, Tindivanam.

For Appellant : Mr.P.Dinesh kumar
For Mr.T.R.Rajaraman

For Respondent : Ms.N.Mala

JUDGMENT

This second appeal has been preferred as against the judgment and decree dated 26.07.2005 made in A.S.No.89 of 2003 on the file of the Additional Subordinate Court, Tindivanam, confirming the judgment and decree dated 27.08.2003 made in O.S.No.442 of 1998 on the file of the District Munsif, Tindivanam.

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 declaration and injunction. The suit property ad measuring 2 acres 91 cents comprised in old survey No.161/2A belonged to one Chinnathambi Naicker. Adjacent to the said property situated at northern side ad measuring 78 cents comprised in Survey No.165/2C is also the suit property. Both the properties under re-survey, new survey number was allotted as 121/1 for the extent of 1.49.5 hectare and issued patta in patta No.341. The land comprised in old survey No.161/2A ad measuring 2.91 cents was sold out in favour of the defendant by the registered sale deed dated 20.02.1979. Unfortunately, while registering the said deed, there was no boundaries mentioned in the sale deed. In the

said property, the defendant dugged out a well and by purchasing another property on the northern side of the suit property, he had been laid pipe line through the suit property for which he obtained necessary permission from the plaintiff.

3.2. While being so, the suit property ad measuring 78 cents in survey No.165/2C was sold out to the plaintiff by registered sale deed dated 27.07.1998 and other properties were gifted to the plaintiff by the said Chinnathambi Naicker, who is none other than the father of the plaintiff. Therefore, the plaintiff is put in possession and enjoyment of the property and all the revenue documents mutated in her name and she is paying revenue dues regularly. While being so, the defendant attempted to trespass into the suit property as such, the plaintiff caused legal notice on 16.10.1998 for which, the defendants also issued reply notice dated 23.11.1998 with false and frivolous particulars. Hence the suit.

4. Resisting the same the defendant filed written statement by denying all the averments made in the plaint. One Chinnathambi Naicker sold out the entire land in the Mel Peradikuppam village to the defendant and also delivered possession of entire property under sale deed dated 20.02.1979. Thereafter, the defendant alone is in possession and enjoyment of the suit property, which was purchased by him along with the suit property. Thereafter the Chinnathambi Naicker never was in possession and enjoyment of any of the property situated in Mel Peradikuppam village at any point of time.

4.1. He also denied that he purchased other property on the northern side of survey No.165/2C and he sought permission from Chinnathambi Naicker to lay the pipe line for irrigating the property, for which he granted permission. The defendant laid under ground pipe line in his own land situated on the east of one Susaiyappan's land and south of Rajamanickam's land. Therefore, the entire property situated in Mel Peradikuppam was sold out in favour of the defendant and the said Chinnathambi Naicker was never in possession and enjoyment of the suit property. He further stated that he has been in possession and enjoyment of the property for more than statutory period, thereby he prescribed title by adverse possession. Therefore, the suit itself barred by limitation and prayed for dismissal of the suit.

5. On the side of the plaintiff, they examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.6. On the side of the defendants, they examined D.W.1 to D.W.3 and were marked Ex.B.1 to Ex.B.23. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant preferred an appeal suit

in A.S.No. 89 of 2003 and the first appellate Court dismissed the appeal by confirming the judgment and decree passed by the trial Court in favour of the plaintiffs. Aggrieved by the same, the defendant preferred this present second appeal.

6. At the time of admission of this second appeal on 20.01.2006, the following substantial questions of law were formulated for consideration:-

"a) Is the learned Subordinate Judge right in decreeing the suit when the plaintiff has not filed any valid documents to prove his title or possession?

b) When it is settled in law that boundaries prevail over extents, is the learned Subordinate Judge right in decree the suit without considering the documents, namely Ex.A.1 and Ex.B.1?

c) When it is settled in law that plaintiff should stand or fall on the strength of his own case and not rely on alleged weakness of defendant's case, still is the learned Subordinate Judge right in decreeing the suit upon taking some weakness on defendant's case?

d) When the defendant has filed numerous documents Ex.B.3 to Ex.B.21 to prove his long, continuous, uninterrupted possession, still is the learned Subordinate Judge right in negating the plea of adverse possession?

e) When the first appellate Court, being the final court of fact ought to have adverted to every material fact available before it either oral or documentary, is the learned Subordinate Judge correct in simply dismissing the appeal without considering or assigning any valid reasons?"

7. The learned counsel appearing for the appellant/defendant vehemently contended that Chinnathambi Naicker sold out the entire property comprised in Survey No.161/2A including the suit property. Though the extent is mentioned as 2.91 acres in the sale deed, which was marked as Ex.B.1, the revenue records mutated insofar as the entire extent of the property in the name of the defendant and he paid all revenue dues for the entire property. Only at the time of re-survey it was found that some excess land is available more than the extent mentioned in the sale deed and utilizing the said situation in the year 1998, ie., on 27.07.1998, the father of the plaintiff created sale deed in favour of the plaintiff for an extent of 78 cents and also had given separate survey No.165/2C. On the strength of the said

sale deed, the plaintiff filed the present suit.

7.1. In fact in the sale deed executed in favour of the defendant, there was no mentioning about the boundaries, since the entire property was sold out by the said Chinnathambi Naicker in favour of the defendant. The defendant purchased the property on 20.02.1979 and in the year 1985, there was resurvey and after the resurvey they found the excess land of 78 cents situated on the southern side of the property, which was purchased by the defendant. At no point of time, the plaintiff or her father was in possession and enjoyment of the suit property, since the entire property situated at Mel Peradikuppam was sold out in favour of the defendant and they shifted their residence from Mel Peradikuppam. Unfortunately, both the Courts below did not consider these grounds and decreed the suit in favour of the plaintiff and prayed for dismissal of the suit.

8. Per contra, the learned counsel appearing for the respondent/ plaintiff submitted that the plaintiff purchased the suit property by a registered sale deed dated 27.07.1998 for valid sale consideration from Chinnathambi Naicker, who happened to be her father. The said Chinnathambi Naicker already sold out the property comprised in survey No.161/2A ad measuring 2.91 acres by registered sale deed dated 20.02.1979 in favour of the defendant. Except the land mentioned in the sale deed, the defendant is not at all entitled more than the land mentioned in the sale deed.

8.1. Admittedly, the defendant is in possession and enjoyment of the suit property ad measuring 2.91 acres comprised in Survey No.161/2A situated at Mel Peradikuppam. In fact Ex.B.23 was issued after the resurvey in which, new survey number was allotted as 121/1 for the old survey numbers 161/2A and 165/2C for the total extent of 1.49.5 hectare, stands in the name of Chinnathambi Naicker. It is pertinent to note here that though no extent was mentioned for the old survey number 165/2C, the resurvey number was given 121/1 and mentioned the extent for the survey No.121/1 as 1.49.5 hectares. To arrive 1.49.5 hectare, 2.91 acres + 78 cents = 1.49.5 hectare. Therefore, the third sub division in survey No.165/2C ad measuring 78 cent was sold out in favour of the plaintiff. That apart the defendant is never in possession and enjoyment of the suit property other than the property purchased by him. Therefore, both the Courts below rightly held in favour of the plaintiff as per the sale deed executed in favour of the plaintiff. To support of her contention, the learned counsel appearing for the respondent/plaintiff cited the following reported judgments:-

(i) (2001) 3 M.L.J.13 (SC) - Saraswathi and anr Vs.

S.Ganapathy and anr.

(ii) 2005(2) CTC 58 - Neelavathi Vs. Shanmugam and anr.

9. Heard Mr.P.Dinesh Kumar, learned counsel appearing for the appellant/defendant and Ms.N.Mala, learned counsel appearing for the respondent/plaintiff.

10. The suit is filed for declaration and injunction, on the basis of the sale deed executed in favour of the plaintiff dated 27.07.1998 for the suit property. The property comprised in survey Nos.161/2A & 165/2C, originally belonged to one Chinnathambi Naicker. He sold out the property comprised in Survey No.161/2A ad measuring 2.91 acres in favour of the defendant by the registered sale deed dated 20.02.1979. Thereafter by the sale deed dated 27.08.1998, the land ad measuring 78 cents comprised in Survey No.165/2C was sold out in favour of the plaintiff herein. The defendant marked Ex.B.3 to Ex.B.21, the kist receipts, in respect of the entire property comprised in survey No.121/1 in patta No.341. Ex.B.23 stands in the name of Chinnathambi Naicker i.e., the vendor of the plaintiff as well as the defendant. Ex.B.23 issued for the property comprised in resurvey No.121/1 for the old survey No.161/2A and 165/2C for the extent of 1.49.5 hectare.

11. It is seen from the sale deed dated 20.02.1979, specifically mentioned the extent as 2.91 acres. The extent in the sale deed dated 27.07.1998 mentioned as 78 cents. The extent mentioned in Ex.B.23 is 1.49.5 hectare. Therefore, Ex.B.23 issued for entire property stand in the name of the vendor i.e., Chinnathambi Naicker. On one hand, the defendant claimed titled for the entire property including the suit property by the sale deed dated 20.02.1979 i.e., Ex.B.1, and on the other hand he is also claiming title by adverse possession that he prescribed title by adverse possession. But, he cannot seek title by both through sale deed as well as by adverse possession.

12. In this regard, the learned counsel appearing for the respondent/plaintiff cited the judgment reported in 2005 (2) CTC 58 in the case of Neelavathi Vs. Shanmugam and anr in which, this Court has held as follows :-

"7. Again, when plaintiff had relied upon a particular document of title, namely, Ex.A-1 gift deed, in order to claim right and title to suit property, she cannot claim it by adverse possession, because when once she claims title upon a particular document, then whatever right plaintiff claims would be flowing if at all under that document, in which case there is no element of adverse nature of possession in order to make out a case of prescription by title. Thus, the substantial question of law is answered against the appellant/plaintiff and I find no reason to allow this second appeal.

8. The Second Appeal is dismissed and decree and judgment passed by the first appellate court is confirmed. No costs."

This Court has held that when the plaintiff claimed title by a particular document, the plaintiff cannot claim title by adverse possession.

13. In the case on hand, the defendant claimed title of the suit property by Ex.B.1, the sale deed as such, he cannot claim title by adverse possession, because once he claimed title upon the particular document then what ever the right he claims would be followed if at all under the document, in which case there is no element of adverse nature of possession in order to make out a case of prescription by title. That apart, the specific case of the defendant is that after resurvey, the vendor found excess land in the land possessed by the defendant and therefore, the vendor created the sale deed for the excess land i.e., the suit property in favour of her daughter ie., the plaintiff herein. Even assuming that it is true, the defendant is not entitled for more than the extent, which is not mentioned in his sale deed executed in favour of him. Admittedly, the land ad measuring 2.91 acres was sold out in favour the defendant and as such he is not entitled more than the extent of 2.91 acres. Therefore the Courts below rightly held in favour of the plaintiff and decreed the suit.

14. In view of the above discussion, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the Courts below for upholding the case of the defendant. Therefore, this Court is of the considered opinion that no substantial question of law involved in this appeal. Be that as it may, all the substantial questions of law formulated by this Court are answered in favour of the plaintiff and as against the defendant.

15. In fine, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. There is no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Additional Subordinate Judge,

Tindivanam.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Additional District Munsif,
Tindivanam.

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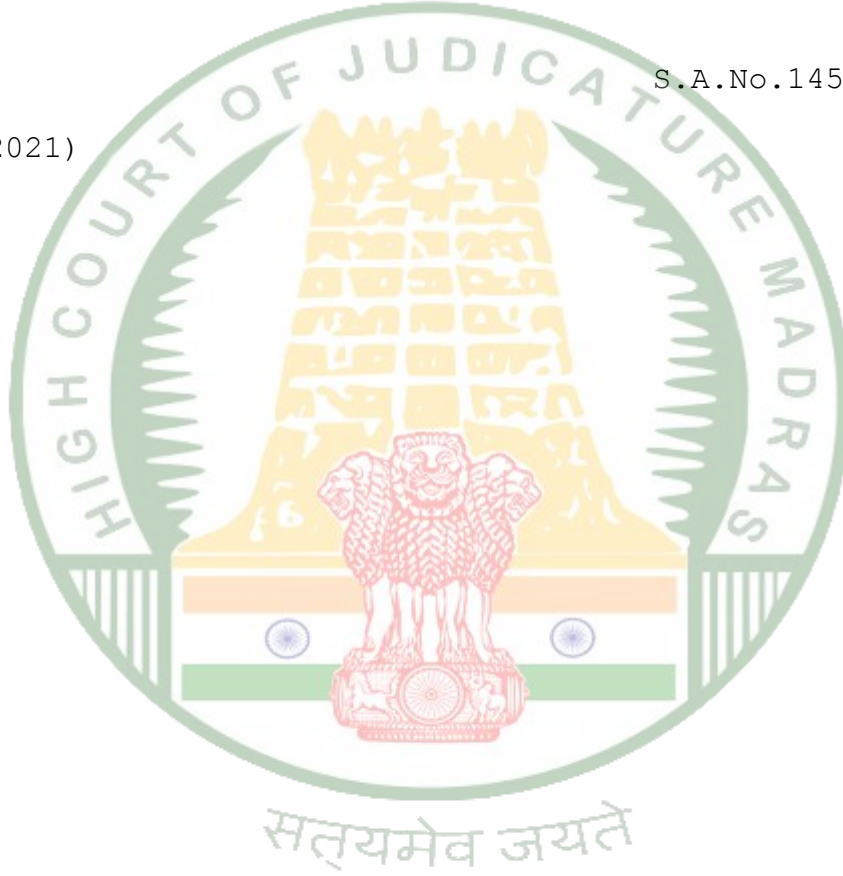
The Section Officer,
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+lcc to Mr.N.Malar, Advocate, S.R.No. 9880

+lcc to Mr.D.Ravichander, Advocate, S.R.No. 9400

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