

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. No.574 of 2020

and

CMP No.12082 of 2020

S.Ramaswami

..Appellant/Defendant

Vs.

H.G.V.Subramaniam

..Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.374 of 2018 dated 20.12.2019, on the file of learned III Additional City Civil Judge, at Chennai, confirming the decree and judgment passed in O.S.No.10894 of 2009 dated 23.03.2018 on the file of learned VI Assistant City Civil Judge, at Chennai.

For Appellant : Ms. Susanna Prabhu

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

The defendant in OS No. 10894 of 2009, who had suffered a decree for mandatory injunction and delivery of possession of an extent of about 218.75 sq. feet of land described in Schedule B to the plaint, upon the confirmation of the said judgment and decree of the Trial Court by the Appellate Court in AS No.374 of 2018, has come up with this Second Appeal.

2. The suit was laid by the respondent herein seeking the reliefs of permanent injunction, mandatory injunction for removal of the Wall in the B Schedule property and for delivery of vacant possession of the B Schedule property, claiming that the suit B Schedule property form part of the Suit A Schedule property which was settled on his father by his grandfather under a registered Settlement Deed dated 26.09.1974. The plaintiff further claimed that his father had settled the said property received by him under the registered Settlement Deed dated 26.09.1974 on the plaintiff by another registered

Settlement Deed dated 10.10.2007.

3. According to the plaintiff, he studied and worked in the United States between November 1999 and August 2003. When he came back and wanted to renovate the property he found that the defendant, who is none else than his paternal uncle, had put up a compound Wall encroaching upon about 218.75 sq. feet of land. He sought for mandatory injunction to remove the compound wall put up by the defendant and recovery of possession.

4. The suit was resisted by the defendant originally contending that the Settlement Deed dated 26.09.1974 was not acted upon partially and the plaintiff's father was never put in possession of the property settled on him. It was claimed that though the document shows the east-west measurement on the south as 45 feet on ground it was only 40 feet and not 45 feet. Therefore, the defendant claimed that he is the legal owner of the extent of 218.75 sq. feet. An additional written statement was filed setting up a plea of adverse possession. It will be significant to point out that the plea based on title raised in the original written statement was not given up. The parties went to trial on the above pleadings.

5. At trial, the plaintiff was examined as P.W.1 and Exhibits A1 to A11 were marked. The defendant examined himself as D.W.1 and Exhibits B1 to B9 were filed. A Commissioner was appointed and his Report and Plans were filed as Exhibits C1 series.

6. Upon a consideration of the evidence on record, the learned Trial Judge found that what was settled on the plaintiff's father was 6296 sq. feet under the Settlement Deed dated 26.09.1974 and the plaintiff's father had settled the same extent on the plaintiff in the year 2007 under Ex.A1. The Trial Court also rejected the claim of the defendant that what was settled was a lesser extent than what is shown in the document. The claim of adverse possession was also rejected on the ground that the defendant has taken mutually destructive pleadings. The Trial Court found that having not admitted the title of the plaintiff, the defendant cannot plead adverse possession. On the said findings, the learned Trial Judge decreed the suit as prayed for. Aggrieved, the defendant preferred an Appeal in AS No.374 of 2018.

7. The learned Appellate Judge on a re-appreciation of the evidence on record concurred with the findings of the Trial Court and dismissed the Appeal. Hence the present Second Appeal.

8. I have heard Ms.Susanna Prabhu, learned counsel appearing for the appellant.

9. Ms.Susanna Prabhu, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in rejecting the plea of adverse possession. She would point out that the disputed Wall was put up even in the year 1982 and the Courts below have not considered the evidence offered by him in this regard.

10. I have considered the contentions of the learned counsel for the appellant.

11. The Courts below have rejected the claim of adverse possession raised by the appellant not on the ground that he has not proved his possession. The plea of adverse possession has been mainly rejected on the ground that it is a mutually destructive plea and having denied the title of the plaintiff, the appellant cannot set up the plea of adverse possession. As I had already pointed out the plea of title based on the patta was never given up by the defendant in the course of trial also.

To put it in other words, the defendant had travelled on two parallel defences, which were mutually destructive. Both the Courts below have considered the evidence on record and have come to the conclusion that the B Schedule Property belongs to the plaintiff and the defendant had encroached upon it. The Courts below have also recorded the finding that the defendant is not entitled to plead adverse possession, since he had not admitted the title of the plaintiff to the B Schedule property.

12. I do not see any error or perversity in the appreciation of evidence by the Courts below or in the findings rendered by them. There is no question of law much less substantial question of law in order to enable me to entertain the Second Appeal. The Second Appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

jv

To

1. The III Additional Judge,
City Civil Court,
Chennai.

2. The VI Assistant Judge,
City Civil Court,
Chennai.

+3cc to Mr.Susanna Prabhu, Advocate, S.R.No. 35253

SA. No.574 of 2020
and CMP No.12082 of 2020

SV(CO)
GN(12/05/2021)



WEB COPY