

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1260 of 2014

1.Ajay Kumar

2.Jayaraman

.. Plaintiff/Appellants/Appellants

Versus

1.Govindaraj Reddy

2.Government of Tamil Nadu,
Rep. by District Collector,
Vellore District, Sathuvachari,
Vellore-9.

3.Chandira

4.Rajalakshmi

5.Nagarani

... Defendants/ Respondents/Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the Decree and Judgment passed in A.S.No.61 of 2013, dated 15.09.2014, on the file of Subordinate Court, Vellore, confirming the Decree and Judgment passed in O.S.No.556 of 2009, dated 30.09.2013, on the file of District Munsif, Katpadi, Vellore District.

For Appellants :Mrs.D.Malarvizhi

For Respondents : Mr.C.Prabakaran for R1, R3 to R5

Mr.Y.T.Aravind Gosh
Government Advocate (CS)

JUDGMENT

The unsuccessful plaintiffs in O.S.No.556 of 2009, on the file of the District Munsiff, Katpadi, Vellore District are the appellants. The said suit was filed for declaration; permanent injunction and for mandatory injunction.

2. The case of the plaintiffs is that their father Kesava Mudaliar purchased 'A' schedule property measuring an extent of 1 acre 12 cents in Survey No.314/3 of Tharapadavedu, vide sale deed dated 19.06.1946. Since then, he had been in possession and enjoyment of the same and after his demise, the plaintiffs are enjoying the property. The plaintiffs further stated that 'B' schedule property more fully described as "ABCD" in the plaint plan has been classified as poramboke land and it is being used by them and their predecessor, since 1946 and thereby, they acquired right by prescription. It is alleged that the defendants are the neighbouring landowners and they attempted to trespass into 'B' schedule property, without having any right, and hence, the plaintiffs issued a registered notice dated 20.12.2013 and also gave a police complaint, but there was no response. Hence, the suit.

3. A detailed written statement was filed by the second defendant, denying and disputing the averments made in the plaint. It is stated that 'B' schedule property is not in existence and at no point of time, it was enjoyed by the plaintiffs.

4. Based on the pleadings, the trial Court framed necessary issues. On behalf of the plaintiffs, two witnesses were examined as P.Ws' 1 and 2 and Exs.A1 to A12 were marked. On behalf of the defendants, D.W.1 was examined and Exs.B1 and B2 were produced and the Courts documents Exs.C1 and C2 also were marked. The trial Court upon consideration of the evidence adduced by the parties, dismissed the suit. The matter was taken up to the appellate Court by the plaintiffs, but in vain. Aggrieved over the same, they have come up with this appeal.

5. The Second Appeal was admitted on the following substantial questions of law:-

(a) The 'B' schedule of property being a poramboke land in peaceful possession and enjoyment of the plaintiff from 1946 onwards and in light of written statement and evidence of the defendants that they do not have any right over the 'B' schedule property whether the plaintiff had not perfected title by adverse possession over the 'B' schedule property?

(b) The judgment of the both Courts dismissed suit and appeal is not erroneous. The report of the Commissioner plan showing existence of the 'B' schedule property as poramboke land. Whether both Courts erred in holding that there is no proof the 'B' schedule of property is a poramboke land?

(c) Whether the plaintiff had not established

adverse possession from the oral evidence and documentary evidence?"

6. Mrs.D.Malarvizi, learned counsel for the appellants would urge that both the Courts below failed to rely upon the Commissioner's Report for locating and identifying 'B' schedule property. It is submitted that though the defendants denied existence of 'B' schedule property, the report of the Advocate Commissioner categorically establishes existence of 'B' schedule property. She further added that the 'B' schedule property is a poramboke land, but the Government has not contested the suit and remained ex-parte, so, it is not proper for the Courts below to reject the prayer for declaration. According to the learned counsel, both the Courts have not properly appreciated the evidence and hence, they are liable to be set-aside.

7. Per contra Mr.C.Prabakaran, learned counsel for the respondents 1, 3 to 5 would argue that even according to the plaintiffs 'B' schedule property is a poramboke land and hence, no declaratory relief can be sought for by the plaintiffs. It is further argued that in the cross-examination, P.W.1 himself has admitted that he has not produced any evidence for enjoyment of the property for more than the statutory period and that entrance to his property is on the southern side, which shows that the plaintiffs never used the 'B' schedule property, as alleged.

8. Heard the rival submissions and perused the materials available on record.

9. In the matter on hand, the suit was instituted for declaration of title to 'B' schedule property in favour of the plaintiffs; permanent injunction and for mandatory injunction to restore the stone pillar fencing put up along the line 'AB' shown in the plaint plan. It is the case of the plaintiffs that their father became the absolute owner of 'A' schedule property, vide registered sale deed, dated 19.06.1946. Since then, the plaintiffs' father and thereafter, the plaintiffs had been enjoying the property for more than 30 years. There is no dispute that 'A' schedule property belongs to the plaintiffs and the controversy is only in respect of 'B' schedule property.

10. It is the case of the defendants that 'B' schedule property was never in existence and it was not being used by the plaintiffs and their father. The sale deed dated 19.06.1946, through which, the plaintiffs acquired right in the 'A' schedule property was produced by the second defendant under Ex.B1. Admittedly, in Ex.B1, there was no reference about 'B' schedule property. The first plaintiff / P.W.1, has admitted in his cross-examination that no document was produced to show that 'B'

schedule property was enjoyed by his father in pursuance of Ex.B1. It is also admitted that entrance for his property on the southern side.

11. On perusal of the Advocate Commissioner's report and plan, it is seen that there was no 'B' schedule property as claimed by the plaintiffs. It is relevant to note that the Government of Tamil Nadu, represented by the District Collector, Vellore did not contest the suit, but a counter affidavit has been filed before this Court, stating that the entire extent of 5 acres in Survey No.314/1 was previously a natham poramboke land and during the Natham Settlement in the year 1993, a patta for the disputed area was given in favour of one Mr.Yesurathinam and it is now transferred to Mr.G.Rukmangathan, the husband of the third respondent-Chandira. It is also stated that during the inspection by the Advocate Commissioner, the Village Administrative Officer, Tahsildar and Surveyor were present and it was found that the disputed property was a vacant site and it was fulfilled with Acacia Arabia trees and stones.

12. It is pertinent to note that there was no proper pleading and evidence to establish that the plaintiffs have been enjoying the suit property for more than the statutory period, thereby perfected title by adverse possession insofar as 'B' schedule property.

13. Both the Courts, after analyzing the entire evidence adduced by the parties, independently, came to the conclusion that there was no 'B' schedule property as claimed by the plaintiffs and rejected their case. In view of the above discussion and finding, the questions of law are answered against the appellants. In fine, the Second Appeal fails and the same is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Vellore.
2. The District Munsif,
Katpadi, Vellore District.

3.The District Collector,
Government of Tamil Nadu,
Vellore District, Sathuvachari,
Vellore-9.

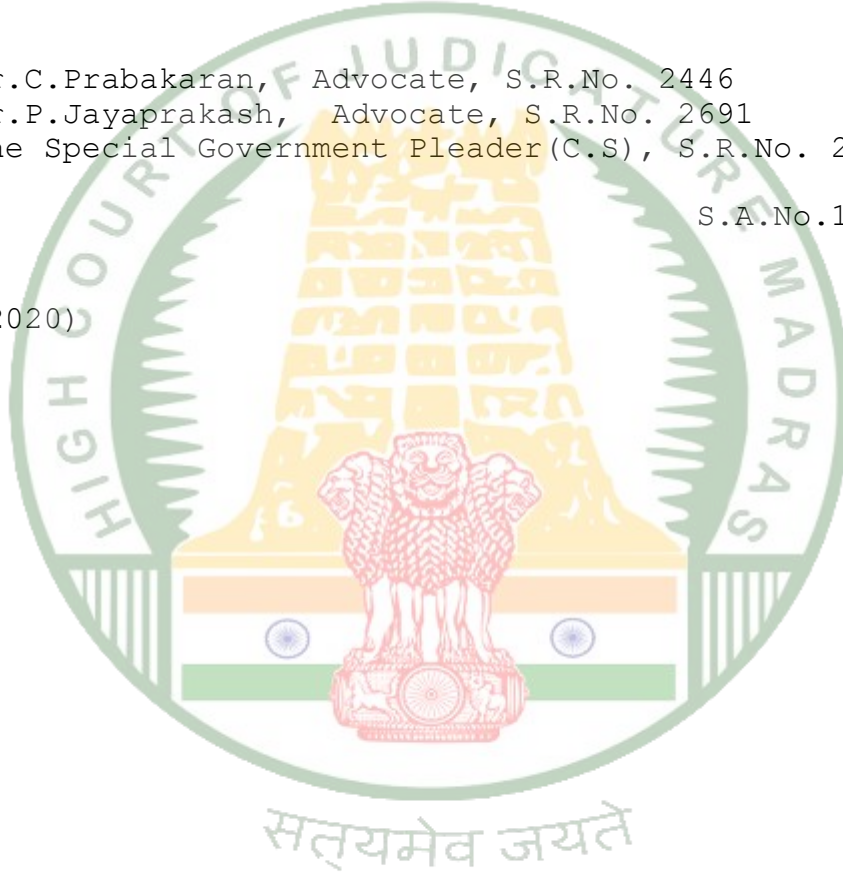
Copy to

The Section Officer,
V.R. Section, High Court,
Madras-104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No. 2446
+1cc to Mr.P.Jayaprakash, Advocate, S.R.No. 2691
+1cc to the Special Government Pleader(C.S), S.R.No. 2704

S.A.No.1260 of 2014

PVS (CO)
GN(29/09/2020)



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