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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :25.02.2021

PRONOUNCED ON :08.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1576 of 2008

and

M.P.No.1 of 2008

Venkatalakshamma alias Pappamma,
W/o, Late Nagaraj,
Kundumaranapalli Village,
Denkanikottah Taluk,
Krishnagiri District.

... Appellant/Defendant

Vs.

Parvathamma,
W/o, Chinnanna alias Venkitasamy,
Kundumaranapalli Village,
Denkanikottah Taluk,
Krishnagiri District.

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Subordinate Judge of Hosur dated 20.09.2007 in A.S.No.26 of 2006 confirming the judgment and decree of the learned District Munsif and Judicial Magistrate, Denkanikottai dated 10.01.2006 in O.S.No.86 of 2000.

For Appellant : Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent: Mr.P.Mani

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 20.09.2007 passed in A.S.No.26 of 2006 on the file of the Subordinate Court, Hosur, confirming the judgment and decree dated 10.01.2006 passed in O.S.No.86 of 2000 on the file of the District Munsif and Judicial Magistrate Court,, Denkanikottai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.



3. The defendant in O.S.No.86 of 2000 is the appellant in this second appeal.

4. Suit for declaration and recovery of possession.

5. The case of the plaintiff in brief is that the land in S.No.86/1 measuring an extent of 3.08 acres belonged to one Krishnappa and he sold the western portion of an extent of 1.54 acre to the plaintiff by way of a sale deed dated 01.11.1969 and since then, it is only the plaintiff who has been in the possession and enjoyment of the abovesaid extent. After the demise of Krishanappa, his wife Pappamma sold the remaining extent of 1.54 acre in the abovesaid survey number to the defendant by way of a sale deed dated 06.11.1981. Thus the western portion of 1.54 acres and eastern portion of 1.54 acres in S.No.86/1B had been acquired by the plaintiff and the defendant. In the resurvey of the abovesaid survey number, the extent of 1.37 acre had been allotted in S.No.86/1B1 and the extent of 1.71 acre had been allotted in S.No.86/1B2 and accordingly, patta had been granted to the plaintiff in S.No.86/1B1 for the extent of 1.37 acre and the joint patta had been issued to both the plaintiff and the defendant for S.No.86/1B2 measuring an extent of 1.71 acres. The western portion of S.No.86/1B2 ie., the extent of 0.17 cents is the suit property and the plaintiff is also entitled to the suit property by way of adverse possession. The plaintiff has been in the exclusive possession and enjoyment of the suit property and the defendant has no manner of right, title or interest over the same. On account of the strained relationship, the defendant trespassed into the suit property illegally and occupied the same and hence according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs against the defendant.

6. The defendant resisted the plaintiff's suit contending that the claim of the plaintiff that she had purchased an extent of 1.54 acre in the said suit survey number under the sale deed dated 04.11.1969 is false and the claim of the plaintiff that she has been enjoying the extent of 1.54 acre pursuant to the abovesaid sale deed is also false. The eastern portion comprising of 0.68.5 acres in S.No.86/1B2 is in the possession and enjoyment of the defendant and the remaining extent of the land on the western side of the abovesaid survey number is in the possession and enjoyment of the plaintiff. Infact, the plaintiff's land is higher in level and the defendant's land is lower in level. There is a thick ridge is in existence between the plaintiff's and the defendant's land and from time immemorial, the plaintiff's vendor not at all in the possession and enjoyment of the suit property measuring an extent of 0.17



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cents. The plaintiff had acquired the property from her vendor without measuring the property. On the other hand, the defendant purchased the property in his possession under the sale deed dated 06.11.1981 and since then enjoying the same, however in the defendant's sale deed, the lesser extent has been mistakenly mentioned and it has been mentioned as 1.54 acres. However, the boundaries shows that the defendant has been conveyed 0.68.5 hectares. The defendant has been continuously enjoying the property in her possession and also has perfected title to the same by way of adverse possession. The patta has also been granted to the defendant and hence the plaintiff is not entitled to secure the reliefs as prayed for and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A5 were marked. On the side of the defendant, D.Ws.1 to 4 were examined. Exs.B1 to B3 were marked. Exs.C1 and C2 and Exs.X1 and X2 were also marked.

8. On an appreciation of the materials placed on record and the submissions putforth by the respective parties, the Courts below were pleased to grant the reliefs in favour of the plaintiff as prayed for. Challenging the same, the second appeal has been laid.

9. At the time admission of the second appeal, the following substantial question of law was formulated for consideration.

When the plaintiff claims title to the suit property both under the sale deed and adverse possession, the burden is on her to establish her title on the basis of the sale deed and as well as regarding adverse possession and having failed to substantiate the same, whether the courts below are correct in upholding the claim of the plaintiff and granting the relief to her.

10. The suit property measuring an extent of 0.17 cents is comprised in S.No.86/1B2 within specific boundaries. From the pleas and the materials putforth by the respective parties, it is found that originally one Krishnappa was the owner of 3.08 acres in S.No.86/1B. The plaintiff has purchased 1.54 acres from Krishnappa under the sale deed dated 01.11.1969 marked as Ex.A1. After the demise of Krishnappa, the defendant had purchased the extent of 1.54 acre in the abovesaid survey number from Krishnappa's wife Pappamma under Ex.B1 sale deed dated 06.11.1981. When by way of Ex.A1, the original owner Krishnappa had alienated the extent of 1.54 acres to the plaintiff, subsequent thereto, his wife Pappamma would not be entitled to convey more extent in the abovesaid survey number to the defendant. Therefore the claim of the defendant that he has



purchased the extent of 1.71 acres from Pappamma under Ex.B1 sale deed, as such, cannot be countenanced. It is also admitted by the defendant that his sale deed only reflects the extent of 1.54 acres.

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11. It is noted that subsequently, S.No.86/1B has been subdivided as S.No.86/1B1 measuring an extent of 1.37 acre and S.No.86/1B2 measuring an extent of 1.71 acre. Inasmuch as, the defendant had acquired only an extent of 1.54 acre under Ex.B1 sale deed and on the other hand, she having been granted patta for more extent in S.No.86/1B2, the plaintiff appealed to the revenue authority challenging the same and from the proceedings of the Tahsildar marked as Ex.A3 dated 25.11.1988, it is found that the abovesaid authority after considering the claims of both the parties and the materials projected by them, concluded that the extent of 0.17 cents in S.No.86/1B2 actually belong to the plaintiff and resultantly directed the issuance of joint patta in respect of S.No.86/1B2 both in the name of the plaintiff and the defendant and as regards the extent of 1.34 acres in S.No.86/1B1, it is found that it is only the plaintiff who had been granted the patta. As against the order of Tahsildar, no challenge has been made by the defendant. Therefore, when it is found that the plaintiff's claim of title to the extent of 1.54 has been upheld by the revenue authority by way of Ex.A3 proceedings and despite the same, the claim of the defendant that she has been in the exclusive possession and enjoyment of the suit property measuring an extent of 0.17 cents and purchased the same by way of Ex.B1 sale deed, as such, cannot be accepted in any manner. To evidence that the defendant has been in the possession and enjoyment of the suit property openly, continuously and uninterruptedly by exercising hostile attitude, animus possidenti against the plaintiff beyond the statutory period, there is absolutely no acceptable and reliable material putforth on the part of the defendant. When it has been admitted by the defendant that she has not measured the property at the time of purchase under Ex.B1 and the same has also been confirmed by her son examined as D.W.2 and when Ex.B1 document reveals that the defendant has purchased only the extent of 1.54 acre, it is seen that under the guise of wrong patta issued by the revenue authorities, the defendant is endeavoring to claim more extent to be in her possession and enjoyment. However, when the same had been set right by the concerned authority vide Ex.A3 proceedings, the claim of the defendant that she is having a clear title to the suit property, as such, cannot be accepted. Considering the recitals found in Exs.A1 and B2 sale deeds of the respective parties, it is found that the parties had acquired only the extent of 1.54 acre in the suit survey number from their vendors. Taking advantage of the wrong patta effected in favour of the defendant, for excess extent, it is seen that the defendant is endeavoring to make a



false claim of title, possession and enjoyment without any basis and accordingly unable to sustain his claim of title to the suit property either by way of purchase or by way of adverse possession also.

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12. Though the plaintiff has also claimed title to the suit property by way of Ex.A1 sale deed as well as by way of adverse possession, when as above discussed, the plaintiff has clearly established her claim of title to the suit property without any doubt, the plea of adverse title based on the possession and enjoyment of the plaintiff, is only found to have been taken as usually made in the moffusil pleadings and in such view of the matter, the same has also been not taken into consideration by the Courts below. Therefore, when the materials placed on record, go to reveal that it is only the plaintiff who has title to the suit property and the same had been considered and determined by the Courts below on the proper appreciation of the available materials on record in the right perspective and when the reasonings and conclusions of the Courts below pointing to the same are not shown to be in any manner perverse, illogical or irrational, no reason is warranted to interfere with the same. In such view of the matter, the substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendant.

13. For the reasons aforesaid, the judgment and decree dated 20.09.2007 passed in A.S.No.26 of 2006 on the file of the Subordinate Court, Hosur, confirming the judgment and decree dated 10.01.2006 passed in O.S.No.86 of 2000 on the file of the District Munsif and Judicial Magistrate Court, Denkanikottai are confirmed. Resultantly, the second appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

mfa
To

1.The Subordinate Judge,
Subordinate Court,
Hosur.

2.The District Munsif and Judicial Magistrate,
District Munsif and Judicial Magistrate Court,
Denkanikottah.



Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.P.Mani, Advocate, S.R.No.14454

+1cc to M/s.V.Nicholas, Advocate, S.R.No.14486

S.A.No.1576 of 2008

and

M.P.No.1 of 2008

GP (CO)

CB(26/10/2021)