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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.764 of 2008

1. Ramalingam (deceased)
 2. R. Gandhimathi, W/o. Ramalingam
 3. R. Angayarkanai, W/o.P. Ravichandran
 4. Rajalakshmi, W/o.K. Sivakumar
 5. R.Adhmanathan, S/o. A. Ramalingam
- ...Appellants/Appellants/Plaintiff

Appellants 2 to 5 brought on record as LR's of the deceased sole appellant vide order of Court dated 11.12.2014 made in M.P. No.1 of 2014.

Vs.

1. Chinnakunju @ Muthulakshmi
W/o. Kasinathan
2. Selvaraj
S/o. Kasinathan
3. Balakrishnan
S/o. Kasinathan
4. Kannan
S/o. Kasinathan
5. Devi @ Dhanalakshmi,
D/o. Kasinathan

... Respondents/Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the Judgment and Decree dated 29.09.2005, in A.S. No.165/95, on the file of the Sub-ordinate Court, Ariyalur, upholding the Judgment and Decree dated 11.08.1995, in O.S. No.252 of 1992, on the file of the District Munsif Court, Jayamkondam.

For Appellants : Ms. R. Meenal

For R1 to R5 : Mr. P. Valliappan



JUDGMENT

The unsuccessful plaintiff before both the courts below, has filed the present Second Appeal. During the pendency of this appeal, the appellant/plaintiff died and his legal heirs were impleaded as appellants 2 to 5.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial court and in appropriate places, their ranking in the present appeal would also be indicated.

3. The brief facts of the case of the appellant/plaintiff are as follows:

The suit properties were originally owned by one Kanagasabai and he executed a sale deed dated 09.09.1957 (Ex.A2) in favour of the plaintiff's father. A house was built up on the eastern end of Item No.1 with a sun shade on the western wall. The remaining portion on the western side of the plaintiff's house was kept vacant for the purpose of white washing the house. The length and breadth of suit Item No.1 is 128' and 2'. The suit Item No. 2 is a vacant land admeasuring 39' x 4'. The first defendant (since deceased) purchased a property, situate on the western side and on the southern side of suit Item Nos. 1 and 2 respectively and had occupied more area than what is mentioned in his sale deed. The first defendant also constructed a thatched shed in a portion of suit Item No.1. In any event, the plaintiff has prescribed title to the suit properties by adverse possession and prescription and the defendant is threatening the plaintiff with dire consequences and is also attempting to trespass into the plaintiff's property. Hence the plaintiff had filed the suit for declaration of his title to suit Item Nos.1 and 2 and for a consequential relief of permanent injunction restraining the defendant, his men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. The plaintiff has also prayed for a mandatory injunction directing the defendant to remove the thatched shed put up by the defendant in suit Item No.1 and also to remove three bamboo sticks in suit Item No.2.

4. The suit was resisted by the defendant on the following grounds:

- 1) The plaintiff had constructed a house in his entire property and did not leave any vacant space on the western side of his house as alleged by him.



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- 2) The defendant prevented the plaintiff from putting up a sun-shade protruding in the property of the defendant six months prior to the filing of the suit by the plaintiff.
- 3) The plaintiff did not mention the boundary, description of the property for which he has claimed mandatory injunction.
- 4) The Advocate Commissioner appointed by the trial court in his report has clearly mentioned that only a portion of the thatched shed is in suit Item No.1 and the measurements of the same have also not been given by the plaintiff.
- 5) The plaintiff has not prescribed title to suit Item Nos.1 and 2 by adverse possession and prescription.

Hence, the defendants had prayed for dismissal of the suit.

5. The trial court, after framing necessary issues and after full contest, dismissed the suit filed by the plaintiff, vide its decree and judgment dated 11.08.1995, on the following grounds.

- 1) The plaintiff who had filed the suit for declaration and consequential relief of permanent injunction should prove his case to the hilt by adducing acceptable evidence and in the instant case, the plaintiff, mainly relying on the measurements found in the sale deed of the first defendant (Ex.B1), is contending that the defendants had encroached upon the plaintiff's land.
- 2) The plaintiff did not clearly mention the measurements of suit Item No.1 by indicating the property conveyed to him through Ex.A2 sale deed dated 09.09.1957.
- 3) The Advocate Commissioner's report also is not clear as to the area of the house of the plaintiff on ground in Item No.1 mentioned in Ex.A2 sale deed.
- 4) The plaintiff did not mention the North-South measurements of his house as per Ex.A2 in his rough sketch appended with the plaint and on the contrary, he had mentioned the measurements of the defendant's property in the rough sketch and seeks for a decree of declaration. Such a contention of the plaintiff cannot be accepted. As per Ex.A2 sale deed, the plaintiff can claim title only to an area measuring 44' East-West. The Advocate Commissioner's report shows that the plaintiff is in possession of 46'.7".



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- Therefore, it is clear that the plaintiff is enjoying more area than what he is entitled to.
- 5) The plaintiff not only has not established that suit Item No.2 actually existed on ground but also did not take steps to measure his property on the northern side of suit Item No.2 so as to find out the exact extent of encroachment made by the defendant in the said property.
 - 6) The FMB sketch (Ex.X1) admittedly does not give much light with regard to the measurement of survey No.376/1 and therefore, is not useful to the case of the plaintiff.
 - 7) It is seen from the Advocate Commissioner's report that the plaintiff has constructed his house without leaving any space on the western side.
 - 8) Though the plaintiff contends that the lane found on the eastern side of suit Item No.1 is mentioned in Ex.A2 sale deed, the same has not been indicated in the rough sketch. The plaintiff has not also given the measurements of the said lane though during the course of cross examination he has deposed that the width of the lane is 10'.
 - 9) The plaintiff in his evidence also admitted that he did not verify the measurements found in the sale deed even after seeing the measurements indicated by the Advocate Commissioner in his report and plan Ex.C1 and Ex.C2.
 - 10) The plaintiff did not mention the trees found in the second item of the suit property indicated as DEFG in the Advocate Commissioner's plan Ex.C2. As per the report of the Advocate Commissioner, the second item of the suit property is in possession of the defendant and the plaintiff has also admitted that the compound wall is constructed below the Point-C in the plan in Ex.C2.

6. Aggrieved over the decree and judgment dated 11.08.1995 passed by the learned District Munsif, Jayamkondam, the plaintiff preferred an appeal before the Subordinate Court, Ariyalur, in A.S. No.165/95. During the pendency of the appeal suit, the sole defendant died and his legal heirs were impleaded as defendants 2 to 6. The Subordinate Judge, after analysing the evidence on record, dismissed the appeal and upheld the findings recorded by the trial court.



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7. Now this Second Appeal is filed by the plaintiff on the following substantial questions of law.

- 1) "Whether in law the Courts below are right in omitting to see that possession follows title and that when Exs.A2 and B1 are admitted to be true, the parties were entitled to possession only as per their title deeds?
- 2) Whether in law the Courts below are right in overlooking the admission of the defendant that he was entitled to enjoy only the extent he had purchased and dismissing the suit?"

8. At the outset, it may be observed that while suit Item No.1 is described as an area measuring north-south 128' and east-west 2', suit Item No.2 is indicated as East-West 39' and north-south 2'. The Advocate Commissioner appointed by the trial court has indicated suit Item No.1 in his rough sketch as ABCD and suit Item No.2 as EFGD. The plaintiff, in order to prove his title over suit Item Nos.1 and 2, relied on Ex.A2 sale deed dated 09.09.1957. In Ex.A2, the north-south and east-west measurements of Item No.1 is indicated as 130' x 44'. As far as Item No.2 is concerned, the measurements are indicated as east-west 39', north-south 4'. The Advocate Commissioner, in his rough sketch(Ex.C2) has indicated east-west measurement of the plaintiff's property from point A to point L as 45'. Similarly, north-south measurement of suit item No.1 is indicated as B to C = A to D = 134'.6". No objection was raised by the plaintiff with regard to the measurements indicated by the learned Advocate Commissioner. As rightly observed by both the Courts below, the plaintiff did not aver in his plaint that he is enjoying more area than what is indicated in his sale deed. However, the plaintiff, in paragraph 8 of the plaint, has contended that since the plaintiff and his father have been enjoying suit Item Nos.1 and 2 for more than 12 years, they have prescribed title to the suit properties by adverse possession and prescription. At the same time, the plaintiff also pointed out the defendant's sale deed Ex.B1 and contended that the defendant is enjoying more area than what was conveyed to him.

9. It is settled law that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is also settled principles of law that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.



10. Mr.P.Valliappan, learned counsel appearing on behalf of the respondents pointed out that the plaintiff has taken inconsistent stands with regard to his title over the suit properties and that he has also miserably failed to prove his possession over the same. Inconsistent pleas cannot be taken by the plaintiff when claiming title by way of adverse possession i.e. he cannot claim his ownership over a property on the basis of a title and by way of adverse possession simultaneously as both such pleas are mutually inconsistent. Another claim of the plaintiff is that the defendant is enjoying the area, to which he is not entitled and in this regard, the measurements found in the sale deed dated 08.06.1980 (Ex.B1) was mainly relied upon by the plaintiff. It is settled law that the plaintiff should prove his case to the hilt and cannot pick holes in the defendant's title and on that score seek for a relief of declaration and injunction. In the instant case, both the courts below had recorded concurrent findings that the plaintiff has not established his title and possession over the suit property by adducing acceptable evidence. In fact, the learned District Munsif, Jayamkondam, has analysed the evidence on record in a threadbare manner and also has given cogent reasons for dismissing the suit filed by the plaintiff. All the observations made by the trial court are perfectly in order and this Court does not find any reason to interfere with the same. Hence, the substantial questions of law 1 and 2 are answered against the appellants.

In the result, the second appeal is dismissed and the findings of both the courts below are upheld. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-ordinate Court, Ariyalur.
2. The District Munsif Court, Jayamkondam.
3. Section Officer, VR Section, High Court, Madras

S.A.No.764 of 2008

VBM (CO)

K.RK. (18.11.2021)