



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
24.11.2021

Date of Pronouncing Judgment
17.12.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.376 of 2012
and
C.M.P.Nos.20885 & 19152 of 2017

1.Chinnathambi (Deceased)

2.Sivamalai

3.Sembaiyan

4.Sankar

5.Elavarasan

.. Appellant

(Appellants 2 to 5 brought on record as LR's of the deceased sole appellant viz., Chinnathambi vide order of Court dated 24.06.2016 made in M.P.No.1 of 2015 in S.A.No.376 of 2012.

Vs.

Govindaraju

.. Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against judgment and decree of the learned Subordinate Judge, Ariyalur dated 10.11.2011 passed in A.S.No.27 OF 2007, allowing the appeal, dismissing the judgment and decree of the learned Principal District Munsif Court, Ariyalur, in O.S.No.17 of 2005 dated 29.12.2006.

For Appellant : Mr. V. Prakash, Senior Advocate
for Mr.K. Krishnamoorthy

For Respondents : Mr.A. Tamilvanan

J U D G M E N T

The 1st appellant herein is the plaintiff and appellants 2 to 5 are legal heirs of the 1st appellant/plaintiff. For the sake of convenience, parties are referred to, as per the litigative status, before the trial Court.



2. The plaintiff filed a suit in O.S.No.17/2005. Pending second appeal, the original plaintiff died and legal representatives are brought on record. The original plaintiff-Chinnathambhi, filed suit in O.S.No.17/2005, on the file of Principal District Munsif Court, Ariyalur, for the relief of declaration of title and for permanent injunction. The suit was decreed and on appeal in A.S.No.27/2007, the same was allowed and hence, the second appeal.

3. The above second appeal is admitted on the following substantial questions of law.

1. Whether the lower appellate Court committed grave irregularity in proceeding with the appeal and giving a finding without framing any appropriate specific issues in respect of the dispute involved in the suit between the parties?

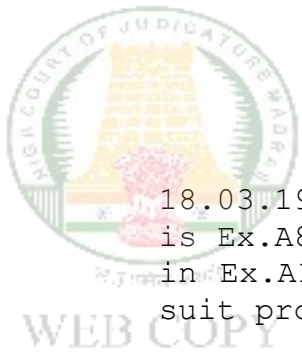
2. Whether the lower appellate Court was right in law in stating that the appellant / plaintiff has not produced any documents prior 1987 to prove adverse possession on the face of Exs.A1 to A8 filed by the appellant / plaintiff to prove adverse possession and enjoyment of suit property by the appellant / plaintiff for well over statutory period of 12 years from 1987 to 2005?

3. Whether the lower appellate Court has erred in interpreting Ex.A1 and Ex.A11 in respect of property boundaries resulting in erroneous findings contrary to the detailed cogent reason given by the lower trial Court and that too without any reasons to disagree with the findings of the trial Court or giving any reasons as to any aspect to disagree with reasons of the trial Court?

4. Pending second appeal, injunction was granted in favour of the appellant/plaintiff in M.P.No.1/2012. C.M.P.No.20885 of 2017, is filed to receive additional documents.

5. The plaintiff filed the above suit, seeking declaration of title on possession. He derives title on possessory right.

6. Per contra, the defendant claims title to the property under Ex.B2/Settlement Deed said to have executed by the grandfather, Duraisamy Konar. The suit property is measuring about 18 cents in S.No.145/8.



7. The plaintiff filed Ex.A2/Government Patta, dated 18.03.1996 and Kist receipts are marked as Exs.A3 to A7, Adangal is Ex.A8. Based upon which, he has also given Computerised Patta in Ex.A1, to show that he is in possession and enjoyment of the suit property for more than statutory period. Also filed Ex.A9.

8. During the cross examination of D.W.1, first defendant at the instance of the Court, it appears that Exs.A10 and A11, F.M. Sketch in S.Nos.145 and 146, respectively, were marked.

9. The defendant claims rival title based upon Ex.B2/Settlement Deed executed by his grandfather Duraisamy Konar and also marked Ex.B1/Sale Deed, to show that what was purchased by the plaintiff is different land as mentioned in Ex.B1. Ex.B3 is the Jamabandhi Patta.

10. The trial Court has considered the rival claims of the parties and decided in favour of the plaintiff, based upon Ex.B2. While lower appellate Court has revised the said finding of the trial Court based upon Ex.B1.

11. Mr.V.Prakash, learned Senior Advocate, appearing for the appellants, drew my attention to schedule of the property in Ex.B1/Sale Deed, and the plaint schedule property.

12. On comparison, I find that Ex.B1 schedule of the property does not relate to suit property. On comparison of the above two documents, I find that the property referred to under Ex.B1 is situated on the south of the schedule property herein. The similar finding arrived at by the trial Court appears to be correct.

13. The learned counsel for the defendant, drew my attention to Ex.B2/Settlement Deed and Exs.A10 and A11. Ex.B2 is the settlement deed executed by the grandfather of the defendant Duraisamy Konar, it consisting of 5 properties.

14. On perusing the documents, schedule of the property, I find that the item No.2 of the property is the suit property. However, except the item No.2, (which mentions the survey number), all other properties namely 3, 4 and 5, are clear boundaries. Also creates the doubt, as to why, except the item No.2, in the said Ex.B2, no boundaries were given especially when the defendant claims title over the property. The title claimed by the respondent/defendant under Ex.B2 is not clenching as the said exhibit contains 5 items. Out of which, item no.2 (which



refers to the suit property alone) curiously, has not been described with the boundaries. No patta or adangal or any other document of ancestral title of Duraisamy Konar namely grandfather of the respondent/defendant, for Ex.B2/Settlement Deed is filed.

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15. Yet another point is that on combined reading of Ex.B2/Settlement Deed, (in favour of defendant) coupled with the Village Map, the FM Sketch, under Ex.A10, the items 3 to 5 covers under Ex.B2, are situated on the western side of the suit property of S.No.145/8. On combined reading of the various boundaries especially with regard to items 3 to 5 of the property in Ex.B2, the plaintiff property has been described situated on the eastern side.

16. Thus, I find that on consideration of items 3 to 5 in the B2/ Settlement Deed along with village map, Exs.A10 and A11, F.M Sketch, to go by the recital under Ex.B2, the items 3 to 5, therein is situated on the eastern side of the suit property. Also lends credent to the claim of the plaintiff. Besides, during the cross examination of D.W.1, he had admitted that he filed suit against his cousin brothers under Ex.A9, wherein, all the properties of his grandfather Duraisamy Konar, is described as self acquired property and the suit property does not figure as one of the item of the property, also assumes significance.

17. In view of the factual findings stated above, in respect of the suit property with that of the items 3, 4 and 5 in Ex.B2/Settlement Deed, I find that the suit property is described as one of the boundaries to some of the property in Ex.B2 and the suit property is situated on the eastern side of the said properties and Ex.B2 namely the suit property is without any boundaries in Ex.B2 and hence, I find that the rival claim made by the defendant based upon Ex.B2, has rightly negated by the lower appellate Court.

18. On consideration of Ex.B1 and the property purchased therein, compared with Exs.A10 and A11, I find that the finding rendered by the trial Court that the property covered under Ex.A1, is not the suit property herein, and in view of Exs.A1 to A8, as discussed supra, the possession and enjoyment of the suit property by the appellants stands conclusively proved and the defendant has not filed any document to prove his possession of the suit property and the adangal produced by the plaintiff under Ex.A8, clearly, proves the possession and falsity for the period 1398 to 1413, corresponding to Annual Year 1987-2002, which is well over 12 years period of description and hence, I find that the finding rendered by the trial Court is



just and proper and contra finding rendered by the lower appellate Court is on misreading of the boundaries in Ex.B2.

19. Accordingly, the contra finding recorded by the lower appellate Court, is hereby stands vacated and as that of the trial Court order is restored. Consequently, based upon Exs.A1 to A8, this Court comes to the conclusion that the possassary title of the original plaintiff is established and the appellants are the legal heirs of the original plaintiff and the decree granted in O.S.No.17 of 2005, is hereby restored and the substantial questions of law are answered accordingly.

20. Accordingly, the second appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

AT

To

1.The Subordinate Judge, Ariyalur.

2.The Principal District Munsif Court, Ariyalur.

S.A.No.376 of 2012 and
C.M.P.Nos.20885 & 19152 of 2017

SSV(CO)
CB(19/01/2022)
CB(18/02/2022)