



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2022

PRONOUNCED ON : 18.02.2022

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

S.A.No.1167 of 2002

1.G.Savithriammal

2.Ravikumar

..

Appellants/Plaintiffs

Vs.

1.Murugesan

2.Paramasivam(deceased)

3.Sambandam

4.Ravindran

5.Ravi Shankar

6.Tamilselvi

7.P.Priya (Minor)

8.P.Priyanka (Minor)

..Respondents/Defendants

(Minors 7 and 8 are rep by R6 Tamilselvi)

(R6 to R8 brought on record as LR's of the deceased R2 vide Order dated 09.04.2018 in CMP No.1068 to 1070/2010 dated 09.04.2014.)

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 22.02.1996 passed in A.S.No.153 of 1995 on the file of the Principal District Judge, Nagapattinam-Quaide Milleth District, confirming the Judgment and Decree dated 20.10.1994 passed in O.S.No.45 of 1992 on the file of the District Munsif, Nannilam.

For Appellants : Mr.P.Premkumar

For Respondents : Mr.S.Sounthar for R1

Mr.B.Manivannan for R4 & R5

R2 - died

No appearance for R3, R6



JUDGMENT

Challenge in this second appeal is to the Judgment and Decree dated 22.02.1996 passed in A.S.No.153 of 1995 on the file of the Principal District Judge, Nagapattinam, confirming the Judgment and Decree dated 20.10.1994 passed in O.S.No.45 of 1992 on the file of the District Munsif, Nannilam.

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

3.The plaintiffs are the appellants in the second appeal. The plaintiffs filed the suit in O.S.No.261 of 1988 seeking the relief of recovery of possession of B schedule property from the defendants and also for the relief of mesne profits. The suit was dismissed by the trial Court on 03.10.1994. Challenging the same, the plaintiffs filed the first appeal in A.S.No.153 of 1995. By judgment dated 22.02.1996, the first appellate Court confirmed the judgment of the trial Court, thus, confirmed the dismissal of the suit by the trial Court. Aggrieved by the dismissal of the same, the plaintiffs filed the second appeal.

4.At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

“(1).Whether the Courts below are correct in holding defendants have acquired title by adverse possession in respect of the suit B-Schedule property and possession of the same for 50 years in the absence of any evidence to that effect?

(2).Whether the 1st Appellate Court is correct in deciding that the identity of the suit property has not been made out by the Commissioners Report Ex.C1 and others in the light of the categoric finding given by the learned Trial Judge that there is no dispute about the identity of the suit property and the B-schedule property given in the plaint which is the suit property is on the southern side with the measurements and extent as mentioned in the plaint?”

5. Heard the learned counsel for the appellant and the learned counsel for the respondents 1, 4 and 5.



6. The plaintiffs claim title to the property by virtue of the sale deed dated 19.05.1968. The property in the plaint consist of two schedules A and B, in which, B is the suit property. B schedule property is described as part of southern portion of A schedule property. It is the case of the plaintiffs that the defendants has encroached upon the B schedule property in the year 1987. A schedule is an extent of 0.40 cents with the coconut trees. The B schedule property is an extent of 2915 squire links. The case of the plaintiffs is that the defendants encroached upon the suit property in the year 1987 and that made the plaintiffs to issue a notice calling upon the defendants to vacate and hand over possession. As this demand was not complied with, the plaintiffs filed the suit for recovery of possession.

7. The case of the defendants is that the plea of trespass is false and they were in possession and enjoyment of the property for more than 50 years and that the possession was continuous, hostile and with an animus to enjoy the property and therefore, in any event the defendants have prescriptive title by adverse possession. The plaintiffs' case is resisted on the plea of adverse possession.

8. The trial Court has disbelieved the theory of trespass, as spoken to by the plaintiffs by giving a finding that even from the year 1985, the first defendant had obtained electricity connection to the property and therefore, the theory of trespass in the year 1987 cannot be true. The Court has also relied upon the voter's list, the existence of the first defendant's mother's house to the south of the defendants' house, a ration card and the house tax receipts to come to the conclusion that the defendants have been in possession and enjoyment of the suit property. After upholding the rights of the defendants through title by adverse possession, the Court has declined the relief of recovery of possession and mesne profits to the plaintiffs.

9. So far as the first appellate Court is concerned, the Court has come to the conclusion that the defendants have prescribed title by adverse possession, but while giving such a finding, the Court has discussed about the identity of the suit property and the finding is that the Commissioner in his report has mentioned that both the plaintiffs and the defendants failed to show the boundaries. The Commissioner has stated that he was not able to identify the location of B schedule property.

10. Pointing out the same, the learned counsel for the appellants would contend that when the property itself is not



identifiable even as per the report of the Commissioner, then the first appellate Court is not right in granting a decree of adverse possession. The further contention is that once the property itself is unidentifiable then the decree becomes inexecutable and therefore the decree as passed by the Courts below is liable to be set aside. Based on this substantial question of law, the second appeal itself has been admitted.

11. The property has been described in the plaint by two schedule, namely, A & B. According to the plaintiffs, B schedule is the suit property, which is part of A schedule property. The description of the property is supported by the sale deed filed by the plaintiffs. The description of the property is also spoken to by the witnesses on the side of the plaintiffs as well as by the defendants. The first appellate Court has expressly extracted the description of the suit property by mentioning that it is 265 extent of links east-west that is eastern side 10 links, western side 12 links. With regard to the identity of this property, the first appellate Court has extensively relied upon the evidence of PW1, where he has spoken about the location of the coconut trees and the approximate age of those trees. The Court has extensively placed reliance upon the payment of house tax receipts for the year 1980 to 1992 and the electricity service connection in respect of the suit property. Therefore, just because the Commissioner has stated that he did not show the demarcation of A and B schedule property cannot be an impediment for the Courts to arrive at the conclusion regarding the location of the suit property based upon the available oral and documentary evidence placed before the Court.

12. Rightly the first appellate Court has also pointed out the fact that the application for appointment of Commissioner was not taken at the initial stage and that it has been taken out at a later point of time. Even by remanding the matter, no purpose would be served at this stage because of the alterations or natural factors causing variations in the boundaries of the suit property. The case is pending consideration in several Courts for three decades. When the available evidence is sufficient to dispose of the issue, it is not necessary to exclusively rely upon the Commissioner's inadvertent finding.

13. The main contention of the appellants/plaintiffs that the Courts below has given a finding with regard to adverse possession in the absence of any evidence, which is not correct and the Courts have consistently relied upon various documents to prove the nature and possession by defendants. Even though the trial Court has mentioned that the possession is not continuous,



it does not appear to be correct having regard to the continuous and long possession and the tax receipts filed in support of the same.

14. In this case, the starting point of possession is of the year 1985 and therefore, the conclusion that the defendants have prescriptive title by adverse possession is correct and that the findings does not warrant interference at the hands of this Court.

15. In the result, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

RR

To

1.The Principal District Judge,
Nagapattinam-Quaide Milleth District.

2.The District Munsif, Nannilam

3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.P.Premkumar, Advocate SR.No.10443

S.A.No.1167 of 2002

SPD(CO)
CB(16/03/2022)