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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1674 of 2008

and

M.P.No.1 of 2008

The Executive Officer,
Anthiyur Town Panchayat,
Anthiyur, Bhavani Taluk,
Erode District

...Appellant/3rd Respondent/3rd Respondent

Vs.

1. Indiramani

...1st Respondent/Appellant/Plaintiff

2. The District Collector,
Erode District, Erode.

3. The Tahsildar, Bhavani Taluk,
Erode District.

4. T.K. Nanjappan

5. T.E. Perumal

...Respondents 2 to 5/ Respondents 1,2,4,5/
Respondents 1,2,4,5

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.09.2008 passed in A.S. No.5 of 2007, on the file of the Additional District Court / Fast Track Court No.IV, Bhavani, Erode District, reversing the decree and judgment dated 18.06.2004 passed in O.S. No.283 of 2004, on the file of the First Additional District Munsif Court, Bhavani, Erode District.

For Appellant	: Mr.R. Darshan for Mr.N.Manokaran
For R1	: Mr.S. Sridharan
For R2 & R3	: Ms.S.V.Supraja Government Advocate
For R4 and R5	: Ms. K. Ponmani for Mr.V.Rajesh



JUDGMENT

The appellant is the third defendant in O.S.No.283 of 2004 on the file of the First Additional District Munsif Court, Bhavani, Erode District. The first respondent, Indirani, filed the said suit for a declaration of her title to the suit property and also for a permanent injunction restraining the present respondents and the appellant from interfering with her peaceful possession and enjoyment of the suit property.

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

3. The minimum facts that are required for the disposal of this second appeal are as follows:

3.1. The suit property is described in two parts in the plaint schedule and the entire suit property is a vacant site in new survey Nos.1964/7 and 1964/8 (old survey No.1506/4) of Thavuttupalayam, Anthiyur Village measuring 1600 sq.ft). The plaintiff Indirani (P.W.1) claims title and possession over the suit property by means of a sale deed dated 20.11.1998 (Photostat copy of which is marked as Ex.A2) executed by one Valliammal and Kuppusamy Gounder.

3.2 The case of the plaintiff is that the suit property was originally owned by one Kaliyammal, who executed a settlement deed dated 15.09.1956 (Ex.A1) in favour of her two daughters Valliammal (one of the vendors of the plaintiff) and Kaliyammal and that since Kaliyammal (sister of Valliammal) died, Valliammal became the absolute owner of the suit property. According to the plaintiff, she is in possession and enjoyment of the suit property ever since the date of purchase and that the Executive Officer, Anthiyur Town Panchayat (present appellant), is frequently disturbing her peaceful possession and enjoyment over the suit property. According to her, she has perfected her title by adverse possession and prescription.

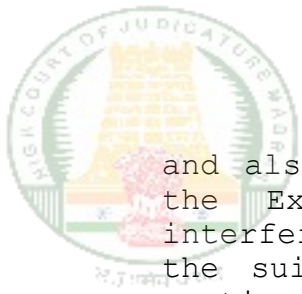
4. The defendants 1 to 3 in their written statements have denied the title of the plaintiff to the suit property. According to them, the suit property is a Government land and that the plaintiff alone attempted to encroach the suit property and also tried to close the well meant for public usage. The defendants 4 and 5 in their written statement had contended that the plaintiff had already filed a suit in O.S. No.75/2001 in respect of the same suit property before the Sub Court, Bhavani, against them and others in order to legalise her claim as the suit property is a Government land.



5. The trial court after framing necessary issues and after full contest dismissed the suit vide its decree and judgment dated 18.06.2004 on the following grounds.

- i. The plaintiff did not establish the fact that the property mentioned in the sale deed dated 20.11.1998 (Ex.A2) and the property mentioned in the settlement deed (Ex.A1) are one and the same as no survey number is indicated in Ex.A1 and the boundary descriptions in both the documents do not match with each other.
- ii. Though in the original plaint, the suit property was indicated as old Natham survey No.1506/3, it was amended subsequently as survey No.1506/4. The plaintiff's explanation in this regard was that, in the sale deed Ex.A2 the property conveyed to her was mentioned as natham survey No.1506/3 only based on an assumption that since her house property adjacent to the suit property is situate in the same survey number i.e Survey No.1506/3.
- iii. There is absolutely no reason as to why the plaintiff did not add the legal heirs of late Kaliyammal, her sister, as the parties to the sale deed since Valliammal had only half share in the suit property as is seen from the settlement deed (Ex.A1).
- iv. It is also not known as to how Kuppusamy Gounder, the brother-in-law of Valliammal was also added as a vendor in the sale deed (Ex.A2).
- v. The plaintiff has not also established adverse possession over the suit property by adducing acceptable evidence.
- vi. The plaintiff did not dispute the genuineness of FMB sketch (Ex.B5) and the Adangal extract issued under the Natham Land Tax Scheme (Ex.B6). These two documents showed that Bajanaikoil in survey No.1964/6 is on the northern side of survey Nos.1964/7 and 1964/8 which are the suit properties. But, in Ex.A2, the eastern boundary is shown as Bajanaikoil. This assumes importance since the plaintiff claims her title and possession in respect of survey Nos.1964/7 and 1964/8 and as per Ex.B5 and Ex.B6 and the Advocate Commissioner's Report (Ex.C1), Bajanaikoil in survey No.1964/6 is situated only on the northern side of survey Nos.1964/7 and 1964/8 and the measurements also vary in all these documents.
- vii. The plaintiff's counsel's arguments that the Government cannot interfere in natham land cannot also be accepted for the simple reason that under Natham Land Tax Scheme, the suit property was classified as Government land and not as natham land.

6. Aggrieved over the decree and judgment passed by the trial court, the third defendant filed an appeal in A.S. No.5/2007 before the Additional District Judge, Bhavani, Erode. The first appellate court after analysing the evidence on record reversed the findings of the trial court on the ground that since the suit property absolutely belonged to the plaintiff by way of a sale deed dated 12.11.1998 (Ex.A2)

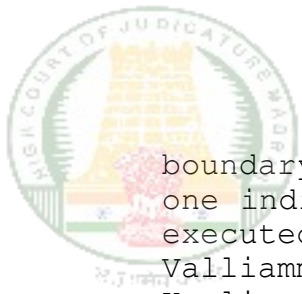


and also the property is a natham land, the third defendant, the Executive Officer, Anthiyur Town Panchayat, cannot interfere with the plaintiff's possession and enjoyment over the suit property. It is further held that the properties mentioned in Ex.A1 and Ex.A2 are one and the same and that the plaintiff has also perfected her title by way of adverse possession and prescription.

7. Now the present second appeal is filed by the third defendant on the following substantial questions of law :

- i. Whether the first appellate court erred in law in granting the declaration relief merely on the basis of Ex.A2 in the absence of any other oral and documentary evidence to prove the prior title of her vendor over the suit property?
- ii. Whether the first appellate court is right in law in decreeing the suit in its entirety in the absence of any evidence or explanation for the entitlement of the entire extent of the suit schedule particularly when the identity of the property has been seriously disputed by the defendants?
- iii. Whether the first appellate court erred in law in not taking into consideration or giving a specific finding on the question whether the suit for declaration of title on the basis of Ex.A2 is maintainable in law especially when the plaintiff has claimed that the suit property is a grama natham and pleaded adverse possession, but both the pleas are mutually contradictory in nature and will not go together?

8. In order to establish title over the suit property, the plaintiff relies on her oral evidence as P.W.1 as well as the sale deed dated 20.11.1998. A photostat copy of the sale deed was marked as Ex.A2. Ex.A4 is the registration copy of the sale deed. Thus the plaintiff did not file the original sale deed. Be that as it may, the property conveyed through Ex.A2 is indicated as Thavuttupalayam natham survey No.1506/3. Though in the original plaint, this survey number is indicated as the suit property, subsequently it was amended as natham survey No.1506/4 of Thavuttupalayam. The plaintiff's contention is that natham survey No.1506/3 was indicated in Ex.A2 only based on an assumption that her house which is situated next to the suit property bears the same survey number. As rightly observed by the trial court, this explanation of the plaintiff cannot be accepted because the plaintiff has purchased the property for a consideration through the original of Ex.A2 and it is not also her case that she was an illiterate. A perusal of the records further shows that she is a teacher by profession and therefore, it is difficult to believe that the plaintiff purchased the property even without verifying the details of the same. Moreover, the



boundary description in Ex.A2 is totally different from the one indicated in the settlement deed dated 15.09.1956 (Ex.A1) executed by Kaliammal in favour of her two daughters Valliammal and Kaliammal. According to the plaintiff since Kaaliammal died, she became the absolute owner of the suit property. However, it is not known as to why the brother-in-law of Valliammal also joined in the execution of sale deed Ex.A2. The recitals of Ex.A2 also show that the property mentioned in Ex.A2 belonged to Valliammal as per "sale deed dated 15.09.1956". It is further mentioned that the property is also a self acquired property of Kuppusamy Gounder. In fact as per Ex.A1 settlement deed, Valliammal is entitled to only half share in the property. Moreover, Ex.A1 settlement deed, the property is mentioned as ancestral property of Kaliayammal. However, the plaintiff did not produce the parent documents.

9. First and foremost, it has to be decided as to whether the properties mentioned in Ex.A1 and Ex.A2 are one and the same. A bare perusal of Ex.A1 and Ex.A2 shows that the boundaries described in both these documents do not tally with each other. An advocate commissioner was appointed by the trial court who filed his Report and plan (Ex.C1 and Ex.C2). The contents of the Advocate Commissioner's report also substantiated the fact that the boundary descriptions in Ex.A2 do not match with Ex.A1. It was concluded by the trial court that there was a deliberate attempt by the plaintiff who was not an illiterate but a school teacher to make Ex.A2 appear like Ex.A1 regarding the property though survey numbers and descriptions differ. This observation of the trial court cannot be found fault with because subsequently also the plaintiff, after filing of the suit, amended the suit schedule as natham survey No.1506/4 when she claims title to the suit property through Ex.A2 sale deed, wherein the property conveyed to her was indicated as 1506/3. She did not also take steps to get a Rectification deed. Moreover, as per adangal extract Ex.B6, survey Nos.1964/7 and 1964/8 are Government lands. The trial court had held that subsequent to the reclassification of the land, the suit property was shown as Government land and not natham land and therefore, the plaintiff cannot contend that the third defendant was not entitled to evict her. On the contrary, the first appellate court without going into the glaring inconsistencies in the documentary evidence adduced on the side of the plaintiff concluded that the plaintiff has absolute title and possession over the suit property. The vendors of the plaintiff have not also been examined by the plaintiff to explain the discrepancies found in Ex.A1 and Ex.A2. As already observed, the description along with the boundaries of the suit property claimed by the plaintiff do not match with Ex.A2. Ex.B5 (FMB) and the description of the property in the advocate commissioner's report (Ex.C1) tally perfectly with each other. This aspect which has been dealt with extensively by the trial court requires no further clarity or interference or



interpretation by this Court. Suffice it to say that all those observations are based on proper appreciation of evidence and sound principles of law.

10. The first appellate court relying on the evidence of D.W.1 (third defendant) had concluded that the plaintiff is in the possession of the suit property and further observed that when the property is a natham land, Government does not have any right over the same. In Ex.B6, the suit property was classified as Government land and not as natham land and the genuineness of Ex.B6 has not also been questioned by the plaintiff.

11. The plaintiff apart from claiming title through Ex.A2, has also claimed title by way of adverse possession and prescription. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor or on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. Where possession of the property could be referred to a lawful title, it will not be considered to be adverse. The reasons being that a person whose possession can be referred to a lawful title, will not be permitted to show that his possession was hostile to another's title. In the instant case, the plaintiff had claimed title through Ex.A2 and also by adverse possession, which is mutually contradictory.

12. The plaintiff who has filed a suit for declaration must establish her title over the suit property by way of adducing acceptable documentary evidence. In the instant case, the plaintiff mainly relies on her sale deed Ex.A2 and the settlement deed Ex.A1. It is already held by this Court that the boundary descriptions do not tally with each other in both these documents. The survey No.1506/3 was also amended as 1506/4 in the plaint and therefore, the plaintiff is also not sure about the property purchased by her.

13. In view of all these reasons stated by me, the substantial questions of law are answered in favour of the appellant.

14. In the result,

i. the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

ii. the decree and judgment dated 11.09.2008 passed in A.S.No.5 of 2007, on the file of the Additional District Court / Fast Track Court No.IV, Bhavani, Erode District, is set aside



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iii.the decree and judgment dated 18.06.2004 passed in O.S.No.283 of 2004, on the file of the First Additional District Munsif Court, Bhavani, Erode District, is upheld.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mtl

To

- 1.The Additional District Court /Fast Track Court No.IV,
Bhavani, Erode District.
- 2.The First Additional District Munsif Court,
Bhavani.
- 3.The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.S.Sridharan, Advocate SR. No.13509
+1cc to Mr.N.Manokaran, Advocate SR. No.13445
+1cc to Mr.V.Rajesh, Advocate SR. No. 12925

S.A.No.1674 of 2008
and M.P.No.1 of 2008

RSV (CO)

PR (29/03/2022)