



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
22.12.2021	11.04.2022

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.1011 of 2015

and

M.P.No.1 of 2015 and C.M.P.No.10567 of 2019

1.Karpaagammal

2.Arumugam

... Appellants

Versus

1.Suseela

2.Easwari

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the learned Subordinate Judge, Tiruttani, dated 17.10.2014 made in A.S.No.28 of 2013 reversing the judgment and Decree dated 30.08.2012 made in O.S.No.283 of 2008 by the learned District Munsif Judge, Tiruttani and consequently restore the decree passed in the suit in O.S.No.283 of 2008 by allowing the above second appeal.

For Appellants : Mr.R.Munusamy

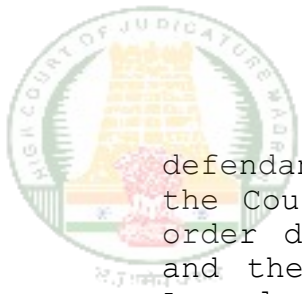
For respondents : Mr.S.Pushpakaran

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience parties are referred to as per their ranking before the Trial Court.

3. The plaintiffs have filed a suit in O.S.No.283 of 2008, before the District Munsif at Tiruttani, for declaration of their right and title over "B" Schedule property, consequential injunction against the defendant and the said suit was decreed by an order dated 30.08.2012. Aggrieved over the same, the



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defendant has filed an appeal suit in A.S.No.28 of 2013, before the Court of the learned Subordinate judge, Tiruttani and by an order dated 17.10.2014, the learned Judge has allowed the same and thereby, the plaintiff was non suited. Hence, the Second Appeal.

4. After hearing both the parties notice of motion was ordered on 05.11.2015 and the above second appeal was admitted on the same day viz., 05.11.2015 on following substantial questions of law:

a. Whether the decree and judgment of the Lower Appellate Court is liable to be interfered with since the Lower Appellate Court has failed to frame points of consideration as mandatory under Order 41 of CPC?

b. Whether the Lower Appellate Court was right in reversing the decree and judgment of the trial Court by holding that the defendants have not filed any document to show that they have got title for "B" schedule property? and

c. Whether the Lower Appellate Court was right in reversing the judgment of the trial Court by simply based on the Commissioner's Report and the Banana Trees raised thereon?

5. The plaint proceeds on the basis that the first plaintiff had purchased the property by way of a sale deed under Ex.A1 on 02.01.1989 and second plaintiff is the husband of the first plaintiff and they have annexed Gramanatham land, which was described as "B" Schedule property and obtained Gramanatham land, which was issued to them by the Government under Ex.A2 on 29.03.1994. According to the plaintiffs they are in possession and enjoyment of the property after patta has been issued to them. Title of the plaintiff with regard to "A" Schedule property is not in dispute. The defendant in the written statement raised a plea that the he is enjoying "B" Schedule property by planting Neem, Papaya trees, a complete compound wall has been laid by the plaintiff alone for under "A" Schedule property.

6(a). On perusing the pleadings and the documentary evidence the admitted factual matrix is that the first plaintiff is the owner of the "A" Schedule property and the defendants are the adjacent land owners. It is alleged by the plaintiff that they are also using "B" Schedule property as backyard, which is disputed by the defendants. Since Ex.A1/Sale Deed is not disputed, both the Courts below have rightly come to the conclusion that the plaintiffs are owners of "A" schedule property and the dispute is relating to "B" schedule property.



6(b). The suit property is a Gramanatham. For the Gramanatham land there cannot be any document of title, it is issued based upon the enjoyment and possession. Ex.A2 has been assigned to the second plaintiff and the second plaintiff has been assigned suit property for the first time. Exs.A3 to A5/House Tax receipts relating to the property building standing in the "A" Schedule property.

7(a). In view of the dispute before the Trial Court, an Advocate Commissioner was appointed and Exs.C1 & C2 were also marked and in his report, it is stated that "B" schedule property is found to vacant plot with 14 Banana Trees, Kitchili trees, Neem trees and papaya trees and thorn bushes. Objections by none of the parties are not found in the Lower Appellate Court records.

7(b). The Trial Court has taken the view that the normally trees grown on their own accords and it is not necessary to plant trees and pour water for growing and in view of the non mentioning of the trees by the plaintiff will not be a ground for rejecting the plaintiff's case and accordingly decreed the suit. The defendant also relied upon Ex.B7/sale deed executed by Nayagamma in favour of the Duraisamy Reddy, wherein the suit property was referred to that of the defendant property. The Trial Court above analysis decreed the suit.

8. In the Lower Appellate Court as observed that the Banana Trees, Kitchili trees, Neem trees and Papaya trees and thorn bushes, said to have been present in the "B" Schedule property, was not described in the schedule property and they are all cultivable trees and cannot grow on their own and accordingly accepted the case of the defendant and reverse the judgment passed by the Trial Court.

9. The learned counsel for the appellant draw my attention to the fact that Ex.A1/Sale Deed is relating to "A" Schedule property and "B" Schedule Property is relating to Ex.A2. Gramanatham Patta No.28 standing in the name of second plaintiff in respect of "B" Schedule Property, usage of the "B" Schedule property. The plaintiff has covered all the three sides with compound wall and there is a well in the rear side of the house, through a hole, the plaintiff is sending drainage water into the "B" Schedule Property.

10. The Lower Appellate Court has placed reliance on Ex.B7/certified copy of sale deed dated 07.08.1967 executed by Nayagamma in favour of Duraisamy Reddy. Besides there is no survey number mentioned in the suit document a mere total extent of property is similar in nature and relied upon the above decision.



11. The learned counsel for the appellant would contend that the recital in the Advocate Commissioner Report viz., Exs.C1 & C2 about 14 Banana trees are situated in the patta land covered by the defendant not in the "Patta land covered by the plaintiff under Ex.A2. In view of the measurement mentioned in the Commissioner's Report, the disputed "B" Schedule property does not have any Banana trees as observed by the Lower Appellate Court. Though 14 Banana trees are situated on the side of the defendant land, which is not the subject matter of the suit. Hence, he would contend that the sole point considered by the Lower Appellate Court as to the growing of the trees is on the wrong interpretation of Advocate Commissioner Report.

12. On perusal of Exs.A1 and A2 patta granted to the property of the plaintiff in respect of house sites and also the Grama Natham land and also on comparison of Ex.A2 and B2, I find that the respective parties have been granted patta on the very same date, viz., 29.03.1994.

13. On a close perusal of Exs.A1, A2 and B2, I find that after purchasing of the respective land by the plaintiff and the defendant, the Grama Natham land behind the respective parties have been annexed by them and the revenue authorities considering their possession, granted patta for the suit property to the plaintiff. It is also stated that patta in respect of B-schedule property was not granted to the defendant. Though the defendant claims adverse possession, he has miserably failed to prove the same.

14. For the sake the continuity, the relevant paragraphs are extracted from the typed set of papers.

'Exhibit-A2 plaintiffs patta in respect of suit A & B Schedule property and Exhinit-B2 the defendants patta in respect of the property situated on the north of the plaintiffs property were granted simultaneously on the same day and the defendants have not challenged the same as incorrect at any point of time.

As per the Exhibit-B2 patta for in Survey No.473/16 of the property of the defendants which includes the backyard of the defendants's property. For the said property the southern side boundary of the was shown as plaintiffs property in Survey No.473/17 which is the plaintiffs 'A' and 'B' Schedule property for which Ex.A2 patta was issued to the plaintiffs.'

15. The trial Court accepted the case of the plaintiff and decreed the suit and the first appellate Court reversed the judgment of the trial Court based upon the bound recitals found in Ex.B7/ sale deed executed by Nayagammal in favour of Duraisamy Reddy.'



16. The subject matter of land is shown as boundary of the defendant. The learned counsel for the appellant relied upon the reported judgment in 1972 (1) MLJ 317 in the case of V.A.Amiappa Nainar and others and N.Annamalai Chettiar and others and the relevant paragraphs are extracted here under:-

"The question is whether the recitals as to boundaries in the documents not inter parties are admissible in evidence.

Held, the relevant provisions of the Indian Evidence Act, relating to the admissibility of recitals as to boundaries in documents not inter parties are Sections 11, 13, 32, 155 and 157.

When the executant of the document containing recitals as to boundaries upon which reliance is placed, is himself a witness in the case, the recitals can be put to him under Section 157 as a former statement corroborating the deposition and he can be also confronted with the recitals under Section 155.

Thus, recitals as to boundaries in documents not inter parties are inadmissible in evidence under Sections 11, 13 (a), 32(3) and 32(7). The only method by which recital in a document not inter parties could be admitted in evidence is by examination of the executant of the document in which such recitals as to boundaries are found.

17. Thus, the boundary recitals in third party documents are inadmissible and hence, the lower appellate Court committed error in placing reliance upon Ex.B7 and the said finding is erroneous. As per the said judgement of the Division Bench of this Court, the said finding stands vacated.

18. Yet another point is that B-schedule property is the vacant land (Grama Natham), namely, backyard of the plaintiff property and the plaintiff proved his title by letting in evidence, viz., Exs.A1 and A2.

19. A perusal of B2/patta issued to the defendant clearly shows that Ex.B2 does not cover B-schedule property. Consequently, on a combined reading of Exs.A1, A2 and B2 clearly proves the title and the possession of the plaintiff over the suit property, viz., A and B schedule properties.

20. The lower Court records would show that the Advocate Commissioners were appointed and their reports were marked as Exs.C1 and C2. The lower appellate Court held that some Banana Trees, Kitchili Trees and Papaya Trees and thorn bushes said to have been present in the "B" Schedule property were not described in the schedule of the property and they are cultivable trees and cannot grow on their own and accordingly, accepted the case of the defendant.



21. Yet another point is that the fence is available around the A-Schedule property and therefore, B-Schedule property could not belong to the plaintiff. Admittedly, Exs.A2 and B2 were not disputed by either of the parties, which shows that in the rough sketch and the Advocate Commissioner reports - Ex.C1 and Ex.C2, the trees which are on the side of the defendant's land which fall under Ex.B2 and not in Ex.A2, which is rightly omitted by the lower appellate Court.

22. After perusing the Advocate Commissioner's reports - Ex.C1 and Ex.C2 and Ex.A2 and B2, I am of the considered view that the plaintiff has established his possession while the defendant has miserably failed to prove his adverse possession. Accordingly, the substantial question of law is answered in favour of the appellant herein and the substantial question of A does not arise for consideration, in view of the decision in the presiding paragraph and in view of the admitted possession, the substantial question of law B does not arise for consideration and the well settled proposition of law as discussed supra.

23. In view of the admitted evidence, records and the Ex.A1, A2 and B2, C1 and C2, this Court is of the view that the plaintiff has proved the title and possession over the B-Schedule suit property and hence, the judgment and decree passed by the learned Subordinate Judge, Tiruttani, in A.S.NO.28 of 2013 dated 17.10.2015 is hereby set aside and the judgment and decree passed by the learned District Munsif Judge, Tiruttani, in O.S.No.283 of 2008 dated 30.08.2012 is restored.

24. In the result, this Second Appeal is allowed. Consequently, the connected Miscellaneous Petitions are closed. No Costs.

Sd/-
Assistant Registrar(CS I)

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Sub Assistant Registrar

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To

- 1.The Subordinate Judge,Tiruttani.
- 2.The District Munsif Judge,Tiruttani.

+1 cc to Mr.S.Pushpakaran, Advocate Sr.NO.25223
+1 cc to Mr.E.Prabhu, Advocate Sr.NO. 25255

S.A.No.1011 of 2015

VG II(CO)
A.SK(20/05/2022)