



S.A. No. 684 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 684 of 2013

L.Narayanan,
S/o. T. Lingai Gowder

... Appellant

Vs.

1. K.Chella Alias Selvaraj,
S/o. Karia Gowder

2. K.Rudran,
S/o. Karika Gowder

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 15.09.2012 passed in A.S.No. 55 of 2011 on the file of court of Subordinate Judge and Appellate Authority of the Nilgiris at Uthagamandalam confirming the judgment and decree dated 12.09.2011 made in O.S.No.370 of 1994 on the file of the Court of District Munsif, Uthagamandalam.



S.A. No. 684 of 2013

For Appellant : Mr.S.Mukunth for
M/s. Sarvabhauman Asso.

For Respondents : Mr.S.Elambharathi

JUDGMENT

The appellant herein is the plaintiff in the suit in O.S.No.370 of 1994 on the file of District Munsif, Uthagamandalam filed against the respondents/defendants for the relief of permanent injunction in respect of suit property in S.F. No.1/3 to an extent of 21 cents with four boundaries as described in the plaint schedule absolutely belong to him by way of purchase and he is in possession and enjoyment of the same by cultivating the said land. The defendants have no right over the same, but being a neighbour, they have caused interference. Hence, the suit.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.



S.A. No. 684 of 2013

WEB COPY

3. The defendants denied the plaintiff's right over the suit property stating that the property as described in the plaint schedule neither belongs to the plaintiff nor belongs to their vendor/predecessors in title and the boundaries of the suit property also not correct, on the other hand, the suit property along with total extent of 1.60 acres in S.F.No.1/3 belong to these defendants by way of purchase much prior to the plaintiff's purchase and they enjoyed the suit property along with their other properties.

4. Before the trial court, issues were framed and evidence on both sides adduced and on considering evidence as well as records, the trial court dismissed the suit concluding that the boundaries as well as the extent of property have not been correctly proved by the plaintiff and they are not entitled to claim right over the suit property, on the other hand, the defendants are in possession and enjoyment of the suit property. Aggrieved over the said findings, the plaintiff preferred an appeal in A.S.No. 35 of 1996 before the Sub-Court, Uthagamandalam



S.A. No. 684 of 2013

and the same was also dismissed. Aggrieved over that, the plaintiff preferred a Second Appeal in S.A.No. 1452 of 1997 before this court and the said appeal was allowed on 29.03.2006 permitting the plaintiff to amend the plaint for the relief of declaration and granted permission to the defendants to file their additional written statement and also permitted both parties to adduce their evidence. Accordingly, the matter was remanded back to the trial court and the amendment was carried out and the Advocate Commissioner was also appointed as per the direction and the reports Ex.C1 and C2 also submitted before the court. The defendants also filed their additional written statement and they claimed right over the property based upon adverse possession. On the side of plaintiff, Surveyor was examined as P.W.5 and the documents were also marked. After evaluating the oral and documentary evidence, again, the trial court dismissed the suit. Aggrieved over that, the plaintiff preferred an appeal in A.S.No.55 of 2011, wherein the appellate judge analysed the facts and circumstances and held that the defendants are not entitled to claim right over the property based upon adverse possession. As they have not accepted the title of plaintiff, at the same time, the plaintiff also



S.A. No. 684 of 2013

not proved the extent of 21 cents belong to his vendor and subsequent to his purchase, he enjoyed the suit property as described in the plaint schedule. Accordingly, the appeal was dismissed even though accepted the Commissioner's report Ex.C1 and C2.

5. Challenging the said findings, the plaintiff preferred this Second Appeal submitting that the courts below failed to appreciate the report of Advocate Commissioner, which clearly establish the real facts on grounds and also not appreciated the sale deed of plaintiff's vendor dated 23.12.1992, through which 18 cents of suit property was conveyed to the plaintiff. But, without appreciating the document adduced on the side of plaintiff, both the courts below dismissed the suit as misconception of law and prayed to set aside the same. Accordingly, this Second Appeal is admitted on the following question of law :-

“1. Are the courts below justified in dismissing the suit by misinterpreting Ex.A1 with Ex. B3 sale deed thereby coming to a conclusion that the appellant has not proved title to the property overlooking his vendor's (P.W.4's) evidence which



WEB COPY



S.A. No. 684 of 2013

categorically states that the respondents are in possession of a property to the south of the suit property exclusively belongs to the appellant?

2. Whether the courts below are correct in law in not considering Exs.A1 and A.2 along with Exs.C1 and C2 especially when this Hon'ble Court had remanded the matter only to ascertain the identity of the suit property?

6. The learned counsel for appellant/plaintiff submits that the vendor of plaintiff viz., Elsy purchased the property from one Sabarathkhan and Marthajahan is only 18 cents through Ex.A2 and A4. But, the plaintiff purchased 21 cents through Ex.A1 sale deed and the same was under his possession and enjoyment. Hence, he filed the suit for 21 cents. But, during the advocate commissioner's visit, the property was measured with the help of Surveyor and as per the Commissioner's report, Ex.C1 and C2, now the available extent on ground is only 10 cents as shown yellow and blue colour portion in the surveyor plan attached with the Commissioner's report. The learned counsel for



S.A. No. 684 of 2013

plaintiff further submitted that the plaintiff restricted his claim with regard to 10 cents as shown in the commissioner's report and not insisted to grant relief in respect of 21 cents of the suit property.

7. By way of reply, the learned counsel for respondents/defendants submitted that all these years, the plaintiff approached the court without proper description of property and he was not able to identify the property, which he purchased, on the other hand, the suit property along with other annexed lands with an extent of 1.60 acres belongs to him by way of purchase and the same is under his enjoyment. But, the defendants admit that their vendor entitled only 1.21 cents in S.F.No.1/3, but the remaining extent around 39 cents was enjoyed by their predecessor-in-title Kanniammal for many decades, thereby she perfected title by way of adverse possession. Accordingly, for an extent of 1.60 acres, the property was sold to them through the sale deed dated 23.12.1992 by showing western boundary as Jagathala village. So, the property comes under the said extent of 1.60 acres belong to these defendants and to prove the purchase, their sale deed and their vendor



S.A. No. 684 of 2013

sale deeds marked as Ex.B1 to B3. So, the fact reveals that the vendor of defendants also having title over the extent of 1.21 acres and for remaining 39 cents, he has no title deeds. But, the defendants claimed the said extent by way of adverse possession, but not admitted the title of plaintiff over the suit property. When the defendants not accepted the title of plaintiff, they are not entitled to claim adverse possession. To that effect, the findings rendered by the courts below is just and reasonable, which needs no interference.

8. The case of plaintiff is that he purchased 21 cents from his vendor Elsy and the sale deeds, Ex.A1 and A2 are produced on his side. Admittedly, the boundaries of two documents differs, but the vendor's husband Shankar was examined as P.W.4, who states that long back, the property was purchased and while conveying the property, the boundaries also differs. But, on seeing Commissioner's report, blue colour and yellow colour portion as shown in the plan comes around 10 cents is forming part and parcel of Survey Nos.425/5, 6 and for that, old survey number is 1. The entire extent of property was planted with potato and the property was measured with the help of Surveyor. Admittedly, the



S.A. No. 684 of 2013

defendants property is situated on the eastern side of suit property and there is a footpath demarcating the defendants property and the suit property. At the time of argument, both parties were appeared before this court in person. When this court enquired the plaintiff, he identified the yellow and blue colour portion as shown in the commissioner's report is under his possession and enjoyment, in which he planted potato. The defendants, who appeared in person also admit that in yellow and blue colour portion as shown in the commissioner's report is under the cultivation of plaintiff. Therefore, the plaintiff able to establish that the yellow and blue colour portion of commissioner's report, an extent of 10 cents belong to him and the same is under his cultivation and enjoyment. Though he claimed 21 cents by way of purchase, but on ground only 10 cents available. The claim of plaintiff is larger extent, but as per commissioner's report, lesser extent of 10 cents available, for which, the plaintiff is entitled for the relief of declaration as he prayed for. Hence, the courts below failed to appreciate the commissioner's report and the documents adduced on the side of plaintiff, which needs interference. Accordingly, the question of law (a) and (b) is answered.



S.A. No. 684 of 2013

WEB COPY

9. In the result, this Second Appeal is allowed and the findings of the courts below is set aside. The suit is decreed in respect of blue and yellow colour portion as shown in the commissioner's report along with surveyor plan with an extent of 10 cents in S.F.No.425/5 and 6, Part Old Survey No.1 and 1, 4/1A1. The reports of Advocate Commissioner and Surveyor's plan shall form part and parcel of the decree. No costs.

09.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp
To

Sub-Judge,
Nilgiris at Uthagamandalam.



WEB COPY



S.A. No. 684 of 2013

T.V.THAMILSELVI, J.

rpp

Pre-delivery judgment in
S.A. No. 684 of 2013

09.09.2022