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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.04.2022

PRONOUNCING ORDERS ON : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NO.1153 OF 2014
AND MP NO.1 OF 2014

Ulaganathan

..1st Defendant/
Appellant/Appellant

..Vs..

1.Purushothaman

..Plaintiff/
1st Respondent/1st Respondent

2.Mr.Mani Mudhaliyar
Thirugnanasambandam (Died)

... Defendant2/
Respondent2/Respondent 2

3.T.Dhanushkodi

4.T.Vaithiyanathan

..3rd party/
Respondents 4 & 5 (LRs of 3rd defendant)/
Respondents 3 & 4

Prayer:

Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 16.7.2014 made in A.S.No.2 of 2011 on the file of the Court of the Principal Subordinate Judge, Mayiladuthurai, confirming the judgment and decree dated 29.7.2010 made in O.S.No.52/2005 on the file of the Court of the District Munsif, Sirkali.

For Appellant : Mr.P.Anbarasan
Mr.A.Karthikesan

For Respondents : Mr.A.Muthukumar
for R1



J U D G M E N T

The 1st defendant is the appellant in this Second Appeal.

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2. The 1st respondent/plaintiff filed a suit seeking for the relief of recovery of possession of the "B" schedule property after the removal of the compound wall put up by the defendant.

3. The case of the plaintiff is that the "A" schedule property was purchased by his grandfather Gopal through a registered sale deed dated 2.1.1986, marked as Ex.A1. The grandfather of the plaintiff thereafter executed a settlement deed dated 21.4.1986, marked as Ex.A2 in favour of the plaintiff. The "A" schedule property measures 2520 Sq.ft.

4. The grievance of the plaintiff was that the 1st defendant encroached upon a portion of the property to the extent of 220 Sq.ft., and put up a compound wall in the year 2003 and this came to be known to the plaintiff in the year 2005. This encroached portion has been described as the "B" schedule property. A legal notice dated 9.2.2005 was sent to the 1st defendant and the same was received by the 1st defendant. The notice and the acknowledgement was marked as Exhibits A3 and A4. On receipt of the notice, the 1st defendant gave a reply, which was marked as Ex.A5 and according to the plaintiff, he made untenable claims and only at that point of time, the plaintiff came to know that the 1st defendant had purchased the property adjacent to the suit property from the common vendor on 7.5.1986. Since the compound wall was not removed, the suit came to be filed seeking for the relief of recovery of possession of the B schedule property after removing the compound wall.

5. The 1st defendant filed the written statement and he took a stand that he purchased his portion of the property in the year 1986 and had put up the compound wall in the same year. It was further stated that the plaintiff and his grandfather were aware about the compound wall put up by the 1st defendant and they never raised any objections. Therefore the defendant raised a preliminary objection that the suit is barred by limitation.

6. The 1st defendant also took an alternative plea to the effect that even if the "B" schedule property is admitted to



belong to the plaintiff, the 1st defendant had perfected his title in the "B" schedule property through adverse possession for more than 19 years. The 1st defendant accordingly sought for the dismissal of the suit.

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7. Both the Courts below on considering the facts and circumstances of the case and after appreciation of the oral and documentary evidence, concurrently held in favour of the plaintiff and decreed the suit. Aggrieved by the same, the 1st defendant has filed this Second Appeal.

8. When the Second Appeal was admitted, the following substantial questions of law were framed by this Court:

1. Whether the Courts below were right in granting a decree for recovery of possession after removal of the compound wall in the absence of any proof by the plaintiff to show that the plaintiff was in possession of the property within 12 years prior to the filing of the suit.

2. Whether the Courts below were right in assuming that the compound wall was constructed in 2003 as claimed by the plaintiff merely because the defendant had not produced the building plan overlooking the fact that the building plan for the house was produced as Ex.B2 and no plan is required for construction of a compound wall.

9. Heard Mr.P.Anbarasan, learned counsel for the appellant and Mr.A.Muthukumar, learned counsel for the 1st respondent/plaintiff. This Court also carefully considered the materials available on record and the findings of both the Courts below.

10. The specific defence taken by the 1st defendant was to the effect that he had put up the compound wall in the year 1986 itself and not in the year 2003 as claimed by the plaintiff. The plaintiff took a plea that the compound wall was constructed in the year 2003 and the plaintiff became aware of the same only in the year 2005. In view of the specific defence taken by the 1st defendant, an issue was framed to consider if the suit is barred by limitation. Both the Courts below took into consideration the evidence of DW-1, DW-2 and DW-3 and found that they were contradicting each other and the defendant was not able to prove



that the compound wall was put up in the year 1986 as pleaded in the written statement. Even Ex.B2, building plan did not help the 1st defendant to establish that the compound wall was constructed after obtaining the plan and the 1st defendant did not choose to file the building plan sketch to make the Court ascertain the topography of the place and the sanction that was given to the 1st defendant. All the other documents that were filed by the 1st defendant pertained to his property and those documents did not help both the Courts below to give a finding in favour of the 1st defendant with respect to the disputed compound wall. In the facts of the present case, the question of limitation was a mixed question of fact and law and both the Courts found that the suit was not barred by limitation. This Court does not find any perversity in those findings.

11. The 1st defendant had admittedly purchased his property from the common vendor subsequent to the purchase made by the plaintiff. Both the Courts below closely analysed Ex.A1 and Ex.B1 and also the report of the Advocate Commissioner marked as Exhibits C1 and C2. It was found that the grandfather of the plaintiff had purchased an extent of 2520 Sq.ft., through a sale deed dated 2.1.1986. The adjacent property measuring an extent of 2820 Sq.ft., was purchased by the 1st defendant from the common owner on 7.5.1986. The report of the Advocate Commissioner along with the sketch showed that the extent of property of the plaintiff was falling short by 220 Sq.ft., and it was exactly in this portion, the 1st defendant had constructed the wall.

12. Both the Courts concurrently found that the grandfather of the plaintiff had purchased house site no: 46 and the 1st defendant had purchased house site no:32. The common owner Ambujammal was owning 115 feet linear measurement on the south-north of the property. Out of the same, 60 feet on the south-north was sold in favour of the grandfather of the plaintiff. That left only 55 feet on the south-north which could have been conveyed to the 1st defendant. However she had conveyed 60 feet while the 1st defendant purchased house no:32 and both the Courts found that the excess 5 feet on the south-north could not have been conveyed since Ambujammal herself did not have the right or title. It is this portion which was encroached and the compound wall was put up. Therefore, the Courts below found that the 1st defendant cannot claim any independent right or title over the "B" schedule property.



13. Insofar as the plea of adverse possession is concerned, both the Courts found that the 1st defendant did not satisfy the ingredients to claim the said right. It was a factual finding given by both the Courts below and this Court does not find any ground to interfere with the same.

14. The present case cannot be dealt with like a suit where the relief of mandatory injunction is sought for. The plea of acquiescence or delay in seeking for the relief can be an effective defence for the relief of mandatory injunction since it is an equitable relief. That test cannot be applied in a suit for recovery of possession. In those suits, the Court has to primarily determine the right and title over the property and grant the relief. In such suits, adverse possession can be an effective defence provided that all the ingredients are satisfied. In the present case, the 1st defendant did not prove as to when he had exactly constructed the compound wall in the "B" schedule property. Therefore, both the Courts below rightly went by the stand taken by the plaintiff to the effect that it was constructed in the year 2003. While raising the plea of adverse possession, the defendant must establish the following ingredients:

- a) On what date he came into possession.
- b) What was the nature of possession.
- c) Whether the factum of possession is known to the real owner of the property.
- d) How long the possession continued and
- e) Whether the possession was open and undisturbed.

15. Even if one of the ingredients mentioned above is not satisfied, the plea of adverse possession is bound to fail. In the present case, the 1st defendant had failed to satisfy the above ingredients and hence both the Courts below rightly rejected the plea of adverse possession. The substantial questions of law framed by this Court are answered accordingly against the appellant.

16. In view of the above discussion, this Court finds that there are absolutely no grounds to interfere with the Judgment and Decree of both the Courts below and there are no merits in this Second Appeal. In the result, the Second Appeal stands



dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Principal Subordinate Judge,
Mayiladuthurai.
2. The District Munsif,
Sirkali.
3. The Section Officer
V.R.Section,High Court, Madras.

+1cc to Mr.A.Muthukumar, Advocate, SR.NO.24800
+1cc to Mr.P.Anbarasan, Advocate, SR.NO.25225(30/06/2022)

Second Appeal No.1153 of 2014

PL(CO)
PM/02/06/2022