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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.03.2022
PRONOUNCING ORDERS ON : 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.195 of 2014

Karuppan (died)

1.Ravi ...Appellants/Appellants/Defendant
2.Lakshmi ...Appellants/Appellants/Defendant

vs.

1.T.Marappan ...Respondent/Respondent/Plaintiff
2.Ulaganeethi ..Respondent/Respondent/Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 31.10.2013 made in A.S.No.54 of 2011 on the file of the Subordinate Judge, Namakkal confirming the judgment and decree dated 23.09.2011 made in O.S.No.1391 of 2004 on the file of the Principal District Munsif Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

For Respondents : Mr.C.Jagadish for R1
R2 Given up

J U D G M E N T

The defendants are the appellants in this Second Appeal.

2.The 1st respondent/plaintiff filed the suit seeking for the relief of declaration to declare that the plaintiff is the absolute owner of the 'B' Schedule property in the suit measuring an extent of 6½ cent and for a consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and for compensation towards dismantling the stone revetment that was put up by the plaintiff in his land.



3.The case of the plaintiff is that he and the 1st defendant are brothers. The 2nd defendant is the son of the 1st defendant and the 3rd defendant is the wife of the 1st defendant. The 4th defendant is a close relative of the other defendants. It is stated that there was a partition among the parties which was registered on 27.03.1975 (Ex. A1) and by virtue of this Partition Deed, the 'A' Schedule property was allotted in favour of the 1st defendant and the 'B' Schedule property was allotted in favour of the plaintiff. The suit property is a portion of the 'B' schedule property that was allotted in favour of the plaintiff.

4.The further case of the plaintiff is that the 1st defendant managed to get a patta by including an extra extent of 6½ cents from the property belonging to the plaintiff. Taking advantage of the same, the defendants trespassed in to the property of the plaintiff and dismantled the stone revetment and took away the sand. Aggrieved by the same, the plaintiff filed the suit seeking for the reliefs stated supra.

5.The defendants filed the written statement and took a stand that the parties were allotted the lands under the registered Partition Deed dated 27.03.1975. However, the defendants denied the actual extent of land that was in possession and enjoyment of the parties and according to the defendants, the plaintiff was not in possession of 2.16 acres as claimed by him. A further stand was taken to effect that the revenue records reveals the actual possession and patta was also granted to the respective parties. Therefore, according to the defendants, they were only carrying out the work in their own property and they never encroached upon the property belonging to the plaintiff.

6.Both the Courts below based on the oral and documentary evidence and after considering the report and sketch of the Advocate Commissioner, concurrently held in favour of the plaintiff and granted the relief. Aggrieved by the same, the present Second Appeal has been filed by the defendants.

7.Heard the learned counsel for the appellants and the learned counsel appearing on behalf of the respondents.

8.This Court carefully went through the pleadings and also the findings rendered by both the Courts below based on the evidence available on record.



9. This Court framed the following substantial questions of law:

1) Whether the plaintiff is entitled to the relief of declaration and injunction over the suit property when the plaintiff himself has admitted that the parties are enjoying the properties under Ex.A.1 tentatively? .

2) Whether the defendants have prescribed title to the suit properties by adverse possession on the basis of Ex.A.1 Patta and Partition in their family on 27.11.1985 over the statutory period?

3) Whether the Courts below are right in decreeing the suit relating to compensation without any evidence?

10. The defendants are not disputing the Partition Deed that was marked as Ex. A1. This document specifically provided for the respective shares of the plaintiff and the 1st defendant. As per this document, 2.16 acres was allotted to the share of the plaintiff and 2.09 acres was allotted to the share of the defendants. However, it seems that the defendants were able to get a patta wherein, the extent of the property was shown as 2.12 acres. There are five items of properties that were allotted to the respective parties and the dispute in the present case pertains to the 2nd item in the 'B' schedule. It is in this property, the 1st defendant is alleged to have attempted to encroach upon 6½ cents.

11. Both the Courts below took into consideration the recitals of the Partition Deed wherein, it has been very clearly stated that either party should not make any dispute either in terms of the extent or the physical features found therein. The subject matter of the present suit is a vacant land measuring 6½ cents. Therefore, both the Courts below rightly held that possession will follow title and the title is derived from the Partition Deed dated 27.03.1975. The patta that was relied upon by the defendants will not come to their aid, since patta is not a document of title. Both the Courts below therefore, rightly held that the plaintiff had proved his title and possession over the suit property. There is absolutely no perversity in those findings of both the Courts below.

12. An Advocate Commissioner was appointed during the pendency of the suit and both the Courts apart from the report



and sketch filed in the present case, also took into consideration the Commissioner's report pertaining to the connected suit in O.S.No.1678 of 2004 which was marked as Ex.A15. The Courts understood the report of the Commissioner based on the description of the property as shown in the Partition Deed along with boundaries. On assessment of the same, both the Courts below came to a conclusion that the suit property absolutely belongs to the plaintiff. This finding was also given based on the evidence available on record.

13.Having come to such a conclusion, both the Courts found that the stone revetment that was available in the portion belonging to the plaintiff was dismantled by the defendants. The defendants have taken a stand that they had undertaken the work by thinking that it fell within their property. Accordingly, both the Courts below have granted the compensation as claimed by the plaintiff with interest.

14.In the considered view of this Court, the plaintiff has not let in any evidence with regard to the actual loss suffered by the plaintiff due to the dismantling of the revetment. Both the Courts below granted the compensation as claimed by the plaintiff without any discussion and infact the Appellate Court did not even discuss this issue in detail. Therefore, the judgment and decree of the trial Court as confirmed in the appeal is liable to be interfered insofar as the relief of compensation is concerned. For the other reliefs claimed by the plaintiff and granted by both the Courts below, the same does not warrant any interference.

15.The property in question is a vacant land and possession follows title. That apart, the Partition Deed itself makes it clear that the parties will not dispute the extent of land that was allotted to them. In view of the same, the plaintiff will be entitled for the relief of declaration and injunction as prayed for. The first substantial question of law is answered accordingly.

16.The defendants have not fulfilled any of the requirements to prove the defence taken by them as if they have perfected their title in the suit property through adverse possession. This issue has been dealt with extensively by the trial Court and a finding has been rendered. Hence, the second substantial question of law is held against the appellants.

17.This Court has already held that the compensation has been granted in favour of the plaintiff without sufficient



evidence. Therefore, the third substantial question of law is held in favour of the appellants.

18. In the result, the Second Appeal is partly allowed. The Judgments and Decrees of both the Courts below is confirmed insofar as the relief of declaration of title and permanent injunction is concerned. With respect to the relief of compensation, the same is set aside. To that extent the Judgments and Decrees of both the Courts below shall stand modified. Considering the facts and circumstances of the case, there will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr

To

1. The Subordinate Judge, Namakkal.

2. The Principal District Munsif Court, Namakkal.

+1 CC to Mr. T. Dhanyakumar, Advocate sr 15161.

S.A.No.195 of 2014

JPL (CO)
SP (08/06/2022)