



S.A No.507 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08. 2023

CORAM:

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

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- 1.Saradambal
- 2.N.Venkatesan
- 3.Vijayalakshmi
- 4.Nirmala(died)
- 5.S.Sekar
- 6.S.Baskar
- 7.S.Praveen Kumar

(Appellants 5 to 7 brought as legal heirs of deceased 4th appellant vide order dated 28.06.2019 made in CMPs No. 12200 to 12202 of 2019 in S.A No. 507 of 2013)

... Appellants

Vs.

- 1.Krishnamurthy
2. Santha
- 3.Prema
- 4.Sagunthala
- 5.Indira
- 6.Mahalakshmi

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 24.09.2012 made in



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A.S No. 16 of 2011 on the file of the Sub Judge, Vellore, confirming the judgment and decree dated 27.10.2010 made in O.S No. 765 of 1985, on the file of the Principal Munsiff, Vellore and dismiss the said suit in O.S No. 765 of 1985, on the file of the Principal Munsiff, Vellore, with exemplary costs.

For Appellants : Mr.P.Elayaraj Kumar

For Respondents : Mr.V.Raghavachari

JUDGMENT

This second appeal has been filed to to set aside the judgment and decree dated 24.09.2012 made in A.S No. 16 of 2011 on the file of the Sub Judge, Vellore.

2. The appellants 1 to 4 herein are the original plaintiffs in Suit O.S No. 765 of 1985, on the file of the District Munsif Court, Vellore, since fourth appellants died his legal heirs were impleaded as appellants 5 to 7.

3. For the sake of convenience, the parties denoted as per the suit O.S No. 765 of 1985. Originally the suit was filed by the plaintiffs for the relief of declaration and permanent injunction pertaining to the suit property more particularly 84 square feet suit lane. The suit lane originally



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belongs to the plaintiffs in which the defendants caused interference. Hence the suit.

4. The defendants denied the plaintiffs' claim stating that their predecessor in title enjoyed the suit lane annexed with property, after the purchase from their predecessor they enjoyed the suit lane from the year 1968 onwards. After the purchase they enjoyed the same till date as their property and also perfected title by way of adverse possession. Hence he prays to dismiss the suit.

5. The Trial Court appointed the Advocate Commissioner, and his report was filed. Thereafter considering the oral and documentary evidence the Trial Court held that suit property is not under the enjoyment of the plaintiff and also as per the Advocate Commissioner's report the suit property is Municipality lane with survey No. T.S No. 661. Accordingly dismissed the suit.

6. Aggrieved over the same, the plaintiffs' preferred an appeal before the Sub Court, Vellore, which independently analysed the facts and evidence concluded that suit lane is forming part fo the Municipality lane in T.S No. 661 and it is not under the separate possession of the plaintiffs nor specifically belongs to the defendants and dismissed the appeal.



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Challenging the said findings the plaintiffs' preferred this second appeal.

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7. The learned Counsel for the appellant submitted that both the Court below failed to take note of the fact that as per Ex.A3 as well as Ex.C3 clearly shows that the suit scheduled property is comprised in T.S No. 677 but the the court below erroneously dismissed the suit by stating that suit property is Municipality lane as such is erroneous and liable to be set aside. Further he stated that the Court below failed to take note of the fact that the the plaintiff the left the suit property as vacant land for the purpose of enjoying free light and air and that beyond the said property the defendants property is situated which is bounded by the constructed wall. The plaintiff had further pleaded and proved that the defendants trying to encroach upon the suit property and put up construction over the same and therefore the findings of the Court that plaintiff did not establish the short fall in the extent of land is not acceptable and liable to be set aside. Hence the Court below without considering the oral and documentary evidence dismissed the suit as such is unfair and liable to be set aside and prays to allow this second appeal.

8. This court admitted the second appeal with the following substantial questions of law:



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1. Whether the Courts below were right in rejecting the plea of declaration of title when the defendants had themselves pleaded adverse possession thereby admitting the title of the plaintiff in the suit?
2. Whether the courts below were right in placing reliance on oral evidence contrary to the contents of the documents. When the documentary evidence clearly establishes the title, can the courts below merely refer to the oral evidence and negate the proving of fact by document as primary evidence?
3. Can the report of the Advocate Commissioner referring to the title to the property be relied by the court when the said Advocate Commissioner was appointed only for the purpose of noting down the physical features of the suit schedule property?

9. Heard the submissions of the learned counsel for the appellants and the learned counsel for the respondents.

10. Admittedly, the relationship between the parties and title of the property is not disputed the only dispute is with regard to the enjoyment of the suit lane as described in the schedule(i.e. 84 feet lane). According to the plaintiff, they claimed suit lane is belongs to them, which is forming part of the T.S No. 677, 655-1B and they enjoyed the same from the date of



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their purchase from their vendor from the year 1966. Thereafter, they made some alterations and improvements in the suit property and left suit property vacant for the enjoyment to enable air light to be free and the rain water as well as drainage water from the house to be drained out through Municipality lane in T.S No. 611. The first defendant is plaintiff's brother's wife purchased the property on the Eastern side of the suit property in T.S No. 657 in the year 1968, as plaintiff and defendant's husband doing their family trade and also buying and selling the Cows they together used the suit property. Thereafter, they got separated from the business and the suit property was exclusively enjoyed by the plaintiffs along with his patta land. But the defendants admitted to put up construction hence the suit was filed.

11. But the defendants totally denied the plaintiff's contention stated that for more than 50 years the suit property has become the part and parcel of her property which was purchased by the defendants in the year 1968 and plaintiff also having separate lane to access their property from the main road and also they are not using the suit property which was exclusively under the possession of the defendant thereby they claiming right over the suit lane by way of adverse possession. The Advocate commissioner was appointed by the Trial Court and he filed his report.



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Further, sale deed belongs to the plaintiffs and the defendants were adduced. Here the dispute is with regard to suit lane which is the subject issue, the parties bound to prove their exclusive possession over the suit lane but as per the Advocate Commissioner report suit lane is forming part of T.S No. 661 which is Municipality lane and was encroached by both parties. Furthermore, the said S.F No. 661 was mentioned as Poramboke land and disputed lane is continuation of the municipality lane and as per the Advocate commissioner's report there is a encroachment by both the plaintiff and defendant from North to South lane by putting up construction even defendants also encroached in S.F No. 661 by putting up road and same was mentioned in the commissioner plan in the commissioner report. Though the plaintiff claiming that said property left out out by him to enable air, light to be free and the rain water as well as drainage water from the house to be drained out through the municipal lane but report of the commissioner reveals that suit property is forming part of T.S No. 661 /Municipality lane. On the other side, the plaintiffs failed to prove the suit property is forming part in T.S No. 677 and 665/1B. The said suit lane also extended beyond plaintiff's and the respondents property and connected with municipal lane, it is true that plaintiff is having accesses from the main



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road. Therefore, neither the plaintiff nor the defendants entitle to the suit lane absolutely, and it is not a exclusive property of both parities and also the defendant's plea claiming by way of adverse possession is rightly negated by the Courts below. So also plea of exclusive title claimed by the plaintiff as such also rightly declined by the Courts below. But the learned counsel for the appellants argued that even in the Advocate commissioner's report defendants encroached small portion of suit lane, but he is also not entitle to put up construction in the suit municipality lane therefore the findings of the Court below needs no interference and which is forming part of the municipality lane. As discussed above, plaintiffs and the respondents are not entitled to claim exclusive possession or right over the suit lane since because it is municipality lane. Accordingly first question of law is answered.

12. It is true that Advocate commissioner's report is not a document to prove the title of the property but with regard to physical feature his report clearly reveals that suit lane is forming part of the T.S No. 661 which classified as Municipality lane **to that extent it can be taken into consideration** same was rightly relied by the Courts below.



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Accordingly question of law 2 and 3 are answered.

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13. Hence, second appeal is dismissed as devoid of merits. No cost. Consequentially connected miscellaneous petition is closed.

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To

1. The District Court, Perambalur.
2. The Subordinate Judge, Ariyalur.
3. The Section Officer,
V. R Section.

SA.No.507 of 2013
& M.P No.1 of 2013

10.08.2023