



S.A.No.697 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.697 of 2005

Rasulingam

... Appellant

vs.

1.Kalimuthu (Died)

2.Dhanam

3.Sundramoorthy

4.Sumathi

... Respondents

(Respondents 2 to 4 were brought on record as LR's of deceased sole respondent vide order dated 26.02.2021 in M.P.Nos.1 to 3 of 2014)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 02.12.2004 in A.S.No.15 of 2004 passed by the learned Sub Judge, Chidambaram, dismissing the appeal against the judgment and decree dated 29.09.2003 in O.S.No.147 of 1999 passed by the learned District Munsif cum Judicial Magistrate, Parangipettai.

For appellant : Mr.R.Sunil Kumar

For respondent 1 : Died

For respondents 2 to 4 : Mr.G.Pugazhenthir



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J U D G M E N T

The appellant herein is the plaintiff before the Trial Court and the first respondent herein is the defendant before the Trial Court. After the demise of the first respondent, his legal heirs were impleaded as respondents 2 to 4.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

The brief facts, which gave rise to the instant Second Appeal, are as follows:

3. Originally, the suit property was purchased by the plaintiff's father one Chinnayan, from one Pachiammal by virtue of the sale deed dated 16.04.1951. According to the description of the property, during 1951, the plaintiff had purchased an extent of 3,327 sq.ft. After that, on the south-east portion abutting the above extent, he had also occupied an extent of 545 sq.ft. Thus, the plaintiff's father became the absolute owner



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of the property to an extent of 3,872 sq.ft. It is also the contention of the plaintiff that Pachiammal's daughters viz., Kuppammal and Anjalai, subsequently, raised some issues with the plaintiff's father, which necessitated the plaintiff's father to obtain two release deeds in Ex.A19 & A20, during 1968 and 1971, respectively. According to the plaintiff, these documents would further vindicate the rights of the plaintiff. Hence, the plaintiff has filed the suit for declaration and for mandatory injunction to remove the hut put up by the defendant.

4. The said suit was resisted by the defendant by contending that the plaintiff is only entitled to an extent of 3,327 sq.ft. Beyond that, he cannot claim any right and apart from that, the boundaries referred to in the documents relied on by the plaintiff do not tally with the existing boundaries and that the Revenue records are also not in favour of the plaintiff to prove his adverse possession. Hence, he prayed to dismiss the suit.

Documents and evidence:

5. Before the Trial Court, on behalf of the plaintiff, the



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plaintiff was examined as P.W.1 and two more witnesses viz., Jaali and Uthrapathi, were examined as P.W.2 and P.W.3, respectively and 18 documents were marked as Exs.A1 to A18. On behalf of the defendant, the defendant was examined as D.W.1 and one more witness was examined as D.W.2 and 8 documents were marked as Exs.B1 to B8.

6. Before the First Appellate Court, on behalf of the plaintiff, Exs.A19 to A27 were marked.

Findings of the Courts below:

7. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that the plaintiff did not have any right beyond what he had purchased and the Trial Court has also found that the boundaries referred to in the documents do not tally with the suit property. The Trial Court has further arrived at a conclusion that the plaintiff failed to prove his adverse possession.

8. Aggrieved by the same, the plaintiff has filed an appeal before the First Appellate Court. The First Appellate Court concurred



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with the findings of the Trial Court and dismissed the appeal.

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9. Not satisfied with the judgment of the First Appellate Court, the plaintiff has approached this Court with this Second Appeal.

Substantial questions of law:

10. At the time of admission of this Second Appeal, the following substantial questions of law have been framed:

“1. Whether the Courts below did not err in failing to appreciate that in respect of grammanatham the reference to extents in the title deeds were alone relevant and proved the plaintiff's title and possession in respect of 3872 sq.ft?

2. Whether the Courts below did not err in refusing the relief of mandatory injunction against the defendant who failed to prove better title against the plaintiff by filing any documents to discredit the evidential value of title deeds namely Exs.A2 and A19 to A27?

3. Whether the Court below did not err in drawing an adverse inference against not making Angalamman temple as a party to the suit, failing to note that the plaintiff as a



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dominus litus was entitled to sue against only the party who caused an encroachment and the plaintiff had set out sufficient facts to disclose the cause of action only against the defendant?”

Submissions:

11. Heard both sides. The sum and substance of the arguments of the learned counsel for the appellant/plaintiff is that since the plaintiff's father had purchased an extent of 3,327 sq.ft. by virtue of the sale deed in Ex.A1 during 1951, and subsequently, by obtaining the release deeds in Exs.A19 and A20 from Pachaiammal's daughters, he became the owner of the property to an extent of 3,872 sq.ft., wherein, an extent of 545 sq.ft., the defendants have encroached. Therefore, such encroachment is to be removed. Hence, he prays to allow this Second Appeal.

12. At this juncture, it is pertinent to mention here that originally, the plaintiff's father had purchased only 3,327 sq.ft. and he had started to use the south-east portion of an extent of 545 sq.ft.



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Therefore, according to the plaintiff, initially, the plaintiff's father did not have any right or title on the land to an extent 545 sq.ft. except his possession.

13. It is the case of the plaintiff that for the extent of 545 sq.ft., he obtained two release deeds in Exs.A19 and A20. Ex.A19 from Pachiammal's legal heir *viz.*, Anjalaiaammal releasing her right from the property purchased from Pachiammal of an extent of 3,327 sq.ft. Therefore, Ex.A19 will not confer any rights in respect of any other property, except the property referred to in Ex.A1. In Ex.A20/release deed, some other property has been referred to, and according to the plaintiff, it is the property which was encroached by the defendants qua an extent of 545 sq.ft.

14. Even while seeing this document, it stated that the said Anjalaiaammal has released her right. In order to have a release deed, the relesee must have pre-existing right over the property, otherwise through such document, no right or title will confer upon the relesee. In respect of the property referred to under Ex.A20, the plaintiff's father,



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admittedly, did not have any right. Therefore, Ex.A20 will, in no way, confer any right upon the plaintiff's father in respect of an extent of 545 sq.ft.

15. Apart from that, the next limb of the argument of the learned counsel for the appellant is that the plaintiff has perfected title by virtue of adverse possession. Further, there is a finding of fact recorded by the Trial Court that through the Revenue records, there is no proof to show that the plaintiff has been in continuous possession, adverse to the right of real owner for a statutory period of 12 years. Therefore, taking into consideration of all these aspects, the Trial Court has rightly arrived at a conclusion that the plaintiff has not proved his case and ultimately, dismissed the suit.

16. The learned counsel would put forth his arguments based upon the fact that the suit property is a Grama natham. This Court, through the discussion made herein above, has arrived at a conclusion that Ex.A20 will not confer any right upon the plaintiff's father. In view of the above finding, the submissions made by the learned counsel for



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the appellant that the plaintiff, being in possession of the suit property, became the owner of the same, as the suit property was classified as grama natham cannot be countenanced. Therefore, this Court is of the firm view that from the submission of the appellant, no ground emerged so as to interfere with the well merited finding of both the Courts below.

17. Therefore, in view of the above discussions, all the substantial questions of law are answered in favour of the respondents.

18. In the result, this Second Appeal is dismissed. Connected miscellaneous petition, if any, is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

apd

To

1. The Sub Judge, Chidambaram.

2. The District Munsif cum Judicial Magistrate, Parangipettai.



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3.The Section Officer, V.R.Section, High Court, Madras.

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C.KUMARAPPAN,J.

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