



S.A. No.270 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.02.2024

Pronounced on: 28.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.270 of 2020

and

CMP. No.5648 of 2020

1.B.Guna
2.Santhi
3.Kalpana
4.mageshwari
5.Prasanna
6.Lavanya
7.B.Ramukuar

...Appellants

Vs.

1.A.K.Dhananjeyan
2.P.K.Dayalan

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgement and decree dated 30.10.2019 made in A.S. No.27 of 2017 on the file of the learned Sub Court, Arakkonam, reversal of the judgment and decree dated 08.03.2017 made in O.S. No.138 of 2009 on the file of the learned District Munsif Court, Sholinghur.

For Appellants : Mr.N.Manokaran for
Mr.P.Krishnan

For Respondents : Mr.A.Gouthaman



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JUDGMENT

The defendant in a suit for declaration, possession and mandatory injunction, succeeded before the Trial Court and suffered reversal findings before the First Appellate Court. The Legal Representatives of the defendant are the appellants herein.

2. The parties are described as per their litigative status before the Trial Court.

3. The case of the plaintiffs is that the western portion of the schedule 'A' property is the ancestral property of the plaintiffs and eastern portion of the schedule 'A' property is the self acquired property of the father of the plaintiffs. According to the plaintiffs, the father sold a portion of the suit property measuring 18 feet East West, 85 feet North South, in all 1530 sq.ft and also another portion 20 feet East West and 54 ½ feet North South, in all 1090 sq.ft, in favour of the defendant, for valid sale consideration and retained schedule 'D' property. However, it is stated that in the sale deed, there was a mistake while describing the boundaries. According to the

plaintiffs, they are retaining the suit property for over the statutory period and are in open continuous and uninterpreted possession to the knowledge of the defendant, insofar as B, C and D properties. As the defendant tried to interfere with the plaintiffs' property and also claimed to have orally purchased the 'B' schedule property. The plaintiffs were constrained to file the suit.

4. The defendant filed a written statement denying the plaintiff averments and resisted the suit claim contending that the plaintiffs are not the owners of the B, C, D properties and the defendant never trespassed into 'B' schedule suit property in any manner and contending that the defendant was having absolute right, title and interest over the suit property and the defendant has been in open, continuous and uninterpreted possession over the statutory period, to the knowledge of the plaintiffs, and the defendant has perfected right over the suit property by adverse possession. The defendant also states that insofar as 'B' schedule, the plaintiffs' father as well as the plaintiffs never objected to the defendant raising a compound wall also when patta was issued in favour of the defendant. Insofar as 'C' and 'D' properties, the defendant claims to have constructed an Asbestos roofed



shed, bath room and Toilet as well as septic Tank, even in the year 1995 and has been in enjoyment of the same for several years, more specifically for over 12 years, being the statutory period to claim the right of adverse possession. The suit was therefore, sought to be dismissed.

5. The Trial Court dismissed the suit, rejecting the plaintiffs' claim. The First Appellate Court, reversed the findings of the Trial Court and allowed the Appeal filed by the plaintiffs. Aggrieved by the reversal findings, the LRs of the defendant have preferred the present Second Appeal.

6. On 06.01.2022, the above Second Appeal was admitted on the following three substantial questions of law:-

“i) Whether the First Appellate Court is right in decreeing the suit by placing the negative burden on the defendant, particularly when the burden of proof is always lie upon the plaintiffs, and they cannot take advantage of the weakness in the defense?

ii) Whether the First Appellate Court has erred in ignoring the linear measurements given to the suit property conveyed under the sale deed dated 30.01.1984, when the plaintiffs are debarred from raising any such dispute in the absence of any challenge made to Exhibit A2 sale deed by the vender?

iii) Whether the First Appellate Court committed an error in rejecting the defense plea of adverse possession on the ground that the defendant cannot plead title and adverse possession together, when there is no legal impediment to take any number of defenses or even



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taking inconsistent defenses?”

7. I have heard Mr.N.Manokaran, learned counsel for Mr.P.Krishnan, learned counsel for the appellants and Mr.A.Gouthaman, learned counsel for the respondents.

8. The learned counsel for the appellants Mr.N.Manokaran would submit that the Courts below have failed to see that the plaintiffs having come to Court seeking relief of declaration, possession and mandatory injunction, ought to have established their case, without drawing any assistance from the alleged weaknesses in the defence set up by the appellants. The learned counsel would also refer to the vague and incomplete pleadings in the plaint regarding the alleged trespass and he would also refer to Ex.B3 Patta, issued way back on 23.06.1995 and the fact that defendant had established their possession, the Trial Court rightly found that the plaintiffs having failed to establish their title, the defendant acquired right by adverse possession. He would also challenge the findings of the First Appellate Court that the defendant cannot take contradictory stands viz., oral sale as well as adverse possession. He would also contend that the First Appellate Court has wrongly placed the burden of proof on the



defendant, when it should have been cast only on the plaintiffs.

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9. The learned counsel would also contend that the First Appellate Court has not discussed the plaintiffs' case at all and failed to see that the plea of oral sale was only with regard to the schedule 'B' property. He would also refer to Section 31 of the Indian Evidence Act, 1872 (in short 'Act'). With regard to plea of oral sale, he would refer to cross examination of P.W.1, where the plaintiff admitted that they did not have any patta to establish their possession. The learned counsel for the appellants would also state that even though a pre-suit notice was issued, there was nothing stated about item 'C' and 'D'. He would also invite my attention to cross examination of D.W.1, where suggestions have been put to D.W.1 by the learned counsel for the plaintiffs that in 'D' schedule property, the defendant has put up a septic Tank and that in 'C' and 'D' properties, he has put up construction in the years 1984 and 1985 itself. Even with regard to 'D' schedule property, where the plaintiffs have not been able to elicit any favourable answers in their favour from D.W.1. In fact, a further suggestion has been put to D.W.1 that he has constructed a compound wall in June 1984 and that abutting big street, he has put up a storeyed house in the year



1989 and also put up a septic tank.

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10. Per contra, the learned counsel for the respondents would submit that though sale in respect of F & E properties has been admitted, the plaintiffs sold only 85 feet and retained the balance. According to the learned counsel, oral sale has not been proved in respect of 'B' schedule and in view of Sections 9 & 54 of the Transfer of Property Act, 1882, the defendant not having established the factum of being put in possession, cannot plead oral sale. It is also further stated that in the written statement, the defendant has not even denied the title of the plaintiffs and the defendant has no right in either 'B' schedule property or 'C' & 'D' properties. According to the learned counsel, construction was only in 2008, prior to the suit and therefore, the plea of adverse possession would not arise at all, much less to be held in favour of the defendant.

11. I have carefully considered the rival submissions advanced by the learned Counsel on both sides. I have also gone through the pleadings, oral and documentary evidence and the judgments of the Courts below, besides also the decisions on which reliance has been placed by the learned



Counsel on either side.

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12. The learned counsel for the appellants apart from the submissions regarding facts of the case, would also place reliance on the following decisions:-

(i) *Union of India and others Vs. Vasavi cooperative Housing Society Limited and others*, reported in (2014) 2 SCC 269;

(ii) *Smriti Debbarma (Dead) Through Legal Representatives Vs. Prabha Ranjan Debbarma and others*, reported in (2023) SCC Online SC 9; and

(iii) *Krothapalli Satyanarayana V. Koganti Ramaiah and others*, reported in AIR 1983 SC 452.

13. The learned counsel for the respondents places reliance on the following decisions:-

(i) *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs. and Others*, reported in AIR 2008 SC 2033

(ii) *Ravinder Kaur Grewal and Others Vs. Manjit Kaur and others*, reported in 2019 (6) ABR 57.

14. It is seen even in the plaint that the plaintiffs state that properties 'C' and 'E' originally belonging to Kanthammal and her son Kannayya Naidu, and the same was sold to the plaintiffs in the year 1973. It is further



contended that in the sale deed, North South measurements are mentioned as 85 feet. However, according to the plaintiffs, the actual measurement is 107 feet and not 85 feet. Admittedly the plaintiffs have not taken any steps to have the said alleged mistake corrected by way of any rectification deed or by filing any suit against their vendors. Further, the plaintiffs have chosen to state that they have retained the 'D' schedule property, after sale of property to the defendant in the year 1984. According to the plaintiffs, even in the sale deed dated 30.01.1984 in favour of the defendant, the boundaries were incorrectly mentioned. However even to this, the plaintiffs have not taken any steps to rectify the error excepting for raising the issue for the first time by way of the suit in the year 2009.

15. I also do not find any specific allegations with regard to the construction after trespass made by the defendant. In fact, the plaintiffs admit that the patta in favour of the defendant was in respect of a larger extent. It is seen from the evidence of D.W.1, especially cross examination that the defendant has been in possession right from the year 1984 onwards and has been exercising absolute right, title and interest over the suit property. Vaguely, in the plaint and that too, in the cause of action



paragraph, without any pleading to substantiate the same in the body of the
plaint, the plaintiffs have stated that the cause of action for the suit arose
six months ago, when the defendant trespassed into the suit property and
constructed a compound wall and also put up superstructure.

16. In the light of the evidence of D.W.1, especially answers elicited
by way of suggestions put by the plaintiffs, the very case of the plaintiffs
stand virtually extinguished and demolished. By their own questions and
suggestions, the plaintiffs have brought out in evidence that the defendant
has constructed the compound wall in the year 1984 itself and soon
thereafter, he has constructed the Asbestos roof shed and also septic tank.
Unfortunately, the First Appellate Court without noticing the vital material
evidence in this regard, has erroneously shifted the burden on the defendant
to prove oral sale and without even discussing the manner in which the
plaintiffs have substantiated the title over the suit property, especially in a
suit for declaration filed by them, proceeded to reverse the well considered
finding of the Trial Court. On perusal of the judgment of the Trial Court, I
also find that the Trial Court has independently arrived at proper findings
based on facts available before the Court and on proper application of law.



Unfortunately, the First Appellate Court has overturned the same, on erroneous considerations.

17. As rightly held by the Hon'ble Supreme Court in *Union of India's*, case, referred herein supra, in a suit for declaration and possession, the burden is always on the plaintiff to establish his title, irrespective of whether the defendant prove his case or not. For similar proposition, the learned counsel for the appellants have also relied on the Hon'ble Supreme Court's decision in *Smriti Debbarma's* case. In *Krothapalli Satyanarayana's* case, referred herein supra, the Hon'ble Supreme Court held that when the relief of mandatory injunction is sought for, the plaintiffs have to approach the Court at the earliest point of time and when they had approached the Court after nine years, after getting knowledge of construction of wall, the prayer cannot be granted because the plaintiff would be guilty of acquiescence.

18. Applying these judgments to the facts of the present case, it is clear, especially from the suicidal suggestions put to D.W.1, the plaintiffs admit possession of the defendants and also their putting up of construction



right from 1984 and 1989 onwards. However, the suit has been filed only in 2009, as if the encroachment was six months prior to the filing of the suit.

The suggestions put to D.W.1, falsify the case pleaded in the plaint. Further, there is no quarrel with regard to proposition laid down by the Hon'ble Supreme Court in *Anathula Sudhakar's* case as well as *Ravinder Kaur Grewal's* case, which relates to adverse possession being not only used as a shield but also as a sword. However, the ratio laid down by the Hon'ble Supreme Court in these two cases do not apply here, in view of the discussions made herein above. The plaintiffs have miserably failed to establish their title and by their own statements in the plaint, they have admitted that the boundaries as well as measurements are incorrect and patta issued to the defendant was for a larger extent. Further even in evidence they have not able to substantiate their right and entitlement to the suit properties. The First Appellate Court therefore, rendered illegal and perverse findings, which are contrary to law and without reference to material evidence available on record. Thus the same requires interference under Section 100 of the Code of Civil Procedure, 1908. The substantial questions of law are answered in favour of the appellants.



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19. In fine, this Appeal is allowed. The judgment and decree dated 30.10.2019 made in A.S. No.27 of 2017 on the file of the learned Sub Court, Arakkonam is set aside and judgment and decree dated 08.03.2017 made in O.S. No.138 of 2009 on the file of the learned District Munsif Court, Sholinghur is restored. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

28.03.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp
To

1. The Sub Judge, Arakkonam,
2. The District Munsif Court, Sholinghur



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P.B.BALAJI, J,

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Pre-delivery Judgment in

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