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S.A. No.1057 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

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

S.A. No.1057 of 2012

and

M.P.No. 1 of 2012

Padma (died)

2. S.Thiruvengadam
S/o. Selvam

3. C.Karthik,
S/o. late Chandru @ Chandrasekar

4. C.Naveen,
S/o. late Chandru @ Chandrasekar

(Appellants 2 to 4 are brought on
record as Legal Representatives of
deceased Sole Appellant vide Court
order dated 02.12.2021 made in
C.M.P.Nos. 15856, 15859 and
15860 of 2021 in S.A.No.1057/2012)

... Appellants

Vs.

S.Sampath

.. Respondent



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PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 29.06.2012 passed in A.S.No.81 of 2011 on the file of Subordinate Judge, Vellore confirming the judgment and decree dated 26.07.2011 passed in O.S.No.499 of 2002 on the file of Principal District Munsif, Vellore.

For Appellants : M/s.P.Veena

For Respondent : Ms.D.Malarvizhi

JUDGMENT

The 1st appellant, who is defendant in the suit in O.S. No. 1057 of 2012, which was filed by the respondent/plaintiff herein against her for the relief of declaration in respect of 'B' schedule property, which form part and parcel of 'A' schedule property claimed as absolute property of plaintiff, in which the defendant encroached a portion, which is shown as 'B' schedule property.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit before the trial court.

3. Before the trial court, both parties have adduced oral and



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documentary evidence, however, the defendant not entered into witness box, but on the side of defendant, D.W.1 to D.W.3 were examined and Ex.B1 letter was marked. On the side of plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A14 were marked.

4. Considering submissions of both sides, the trial judge framed issues and finally held that as per the Commissioner report, the plaintiff is able to establish that the defendant encroached the portion of 'A' schedule property, which is absolutely belongs to plaintiff. On the contrary, the defendant had not shown that she is entitled to the said 'B' schedule portion by way of adverse possession nor produced any relevant document to prove her enjoyment. Aggrieved over the findings of trial judge, the defendant preferred an appeal in A.S.No.81 of 2011 before the Sub-Court, Vellore, wherein the first appellate judge independently analysed all the facts and evidence and finally held that the defendant has not established her claim of adverse possession, on the other hand, the plaintiff proved that 'B' schedule property was encroached by the defendant, which is form part and parcel of 'A' schedule property, thereby confirmed the findings of trial judge and accordingly, the first appeal was dismissed.

5. Challenging the concurrent findings of courts below, the defendant



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preferred this Second Appeal. The learned counsel for appellant argues that both the courts below failed to see that from the evidence of P.W.1, it is made it clear that even on the date of purchase made by him, the defendant has put up construction in the suit property and living there, but without considering the same both the courts below erroneously decreed the suit in favour of plaintiff, as such is erroneous one and the same is liable to be set aside. The learned counsel for appellant also argues that both the courts below failed to appreciate that there is existence of superstructure in the suit property and the same is under her enjoyment. Therefore, the learned Sub-Judge ought to have accepted the claim of defendant as if she perfected her title by way of adverse possession. But without appreciating all those facts, both courts below erroneously decreed the suit based on the Commissioner's report, as such is perverse and the same is liable to be set aside. Accordingly, this Second Appeal is admitted on the following substantial question of law

:-

- “1) Whether the suit as framed without the relief of mandatory injunction is maintainable in law?
- 2) When the plaintiff having not pleaded when the encroachment was made by the defendant and having admitted



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not only possession of suit property, but also the existence of superstructure even prior to his purchase, still is the learned Subordinate Judge right in negating the relief of adverse possession pleaded by the defendant?

3) When the plaintiff admittedly kept quiet for over 20 years in approaching the Court whether the suit as framed is maintainable on the ground of delay, laches and equitable estoppel?”

6. The case of plaintiff is that he purchased 'A' schedule property on 16.05.1997 from one Gopal, who is son of Thulakkanam. The said Thulakkanam was the original vendor and he has purchased the property on 01.07.1926 from one Gangammal. Thereafter, as a vacant site, the plaintiff purchased the property and he put up a construction and left a portion of property vacant on the southern side for his convenient enjoyment. While so, the defendant, who is a neighbour, having house on the southern side of 'A' schedule property encroached a portion of 'A' schedule property by putting up bathroom, latrine and staircase inspite of objections raised by him. Hence, the suit was filed seeking for a relief of declaration and



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recovery of possession. The contention of defendant is that even prior to the purchase of plaintiff, she put up a toilet and bathroom in 'B' schedule property and for more than 40 years, she was under enjoyment. Even after the purchase of plaintiff, she is enjoying 'B' schedule property, thereby she perfected her title by way of adverse possession and also pleaded her defence stating that from the year of 1983 onwards, she put up a toilet and enjoyed the same. So, on considering her long possession, one Thulakkanam written a letter dated 03.07.1983, which is marked as Ex.B1, through which, he agreed to sell the property to her, but except that document, there is no proof on the side of defendant to show that she possessed and enjoyed the property for more than 40 years even prior to the purchase made by the plaintiff. But, the alleged letter would not confer any title for the reason that it is an unregistered letter, through which, she is claiming herself as a owner of property, which is more than a value of Rs.10,000/-. Therefore, the main contention of defendant is that nearly about 20 years later from the date of purchase, the plaintiff approached the court for the relief of declaration, which itself shows that she enjoyed the 'B' schedule property for more than 40 years, thereby she perfected title by adverse possession, but the trial judge had not appreciated those legal aspects and decreed the suit in favour



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of plaintiff, as such is invalid and the same is liable to be set aside.

7. As rightly observed by the courts below, there is no evidence on the side of defendant that from which specific date onwards, she is in possession and enjoyment of 'B' schedule property in order to prove the claim of adverse possession. It is a settled proposition that to claim adverse possession, the person, who took up a plea of adverse possession, he is duty bound to prove the title and possession, against whom/true owner, he enjoyed the property for more than 20 years, but the case on hand, the defendant not accepted the claim of plaintiff in respect of 'B' schedule property, on the other hand, she contended that the said portion of property was given to him by Thulakkanam, original vendor of the property by executing a letter Ex.B1. Therefore, the defendant ought to have proved whether she is claiming right based on the alleged Ex.B1 document or through adverse possession. The courts below have rightly observed that the defendant has not established both facts. Hence, she is not entitled for her relief. So, the suit filed by the plaintiff as such is maintainable, since he proved that it is his absolute property. Accordingly, the question of law (2) and (3) are answered, thereby the suit as such is maintainable. There is no necessity to seek the relief of mandatory injunction, since because, as per



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Commissioner's report, the plaintiff established the fact that the defendant encroached 'B' schedule property, which comes around 152 sq.m. Even as per the report, bathroom and other fixtures are in the dilapidated condition. Therefore, the plaintiff is entitled to take delivery of possession with a direction to remove the superstructure put up by the defendant. Accordingly, question of law (1) is answered.

8. As per the sale deed filed by the plaintiff, southern boundary of property is shown as property of Padma, who is defendant herein. Hence, upto defendant's property, on the southern side of plaintiff, she is having valid title and the southern boundary of plaintiff clearly reveals that adjacent to defendant's property, he purchased 'A' schedule property. So, there is no existence of any vacant site belongs to the defendant. Moreover, the Commissioner's report also clearly proves that the alleged encroachment of 'B' schedule property comes within the portion of 'A' schedule property. For the said Commissioner's report, objection was not filed on the side of defendant, besides the original defendant Padma not entered into witness box, only her son has given evidence. So, all the facts are fatal to his evidence, which needs no interference. Accordingly, this Second Appeal is dismissed as no merit and the Suit is decreed as prayed for. Three months



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time is granted to the defendant to vacate the premises from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To
The Sub-Judge, Vellore.

T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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