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S.A.No.194 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2024

PRONOUNCED ON : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.194 of 2012

and

M.P.No.1 of 2012

K. Subathra

...

Appellant

Vs.

Sivakami

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree in A.S.No.51 of 2009 on the file of the Additional Sub Court, Tiruppur, dated 25.11.2011 in confirming the judgment and decree in O.S.No.123 of 2006 on the file of the District Munsiff Court, Tiruppur, dated 30.09.2009.

For Appellant : Mr. V.Srimathi

For Respondent : Mr. S.Frangkelin
For M/s. Sarvabhauman Associates



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JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 25.11.2011 passed by the Additional Sub-Judge, Additional Sub Court, Tiruppur, in A.S.No.51 of 2009, confirming the Judgment and Decree dated 30.09.2009 passed by the District Munsiff, District Court, Tiruppur in O.S.No.123 of 2006.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The plaintiff in the suit in O.S.No.123 of 2006 on the file of District Munsiff Court, Tiruppur, is the appellant in this Second Appeal.

4. The fact of the case is that the suit property originally belonged to the plaintiff's brother-in-law namely K.Sakhivel and the plaintiff purchased the same from him on 06.06.2001. From the date of sale, the plaintiff has been in peaceful possession and enjoyment of the property. Western and Eastern points of the plaintiff northern boundary lie in a straight line. In between the



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two points , there was a low lying area. In order to store water the said portion

was formed. A mud bund was raised around low lying portion. The plaintiff's

predecessor in title, who is his father-in-law, in order to facilitate the irrigation

of his land, i.e., suit property, he had raised bund in the said low-lying portion

and also formed a irrigation channel on the bund. In order to keep the raised

bund stable, he had planted coconut trees east-West line. When the plaintiff

measured the purchased property with the assistance of surveyor, it was found

that the boundary stones on the northern boundary were in a straight line

although the northern east-west boundary was in a curved line, as shown in the

plaint rough plan. Since the defendant was present at the time of measurement,

she had consented the plaintiff to put her in possession of the portion up to her

northern boundary stones, for which, it was agreed by the plaintiff that the

defendant was permitted to irrigate her own fields through the irrigation

channel situates in the disputed portion. But on the ill-advice of the others, the

defendant delayed in handing over he possession of "B" schedule property to

the plaintiff as agreed, whereas, she claimed that she is entitled for the said

portion inclusive of coconut trees therein. In fact, the Defendant is not having

any right over the suit properties. Hence the plaintiff issued a legal notice and

the same was refused by the Defendant. Hence, the plaintiff come forward with

the suit for declaration and recovery of possession with regard to B schedule



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property and permanent injunction with regard to “A” schedule property.

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5. The defendant filed written statement and contested the suit stating that the plaintiff has suppressed so many material facts and filed the suit with false allegations. The averments made in the plaint are false except those are admitted by the defendant. The defendant never accepted the delivery of possession of “B” schedule property to the plaintiff. In fact the defendant is entitled to her properties by virtue of a settlement deed dated 27.04.1988 which was executed by her father and she is in exclusive possession and enjoyment of the same. The plaintiff admits the possession of the defendant in "B" Schedule property. The defendant and her predecessors-in-title have been in long, continuous and uninterrupted possession and enjoyment over the suit property for more than 100 years, thereby the defendant is entitled for adverse possession. As per the plaintiff's title deed no possession was handed over to the plaintiff by the vendor with regard to “B” schedule property. Therefore, the plaintiff's sale deed is not valid with regard to “B” schedule property and prays for dismissal of the suit.

6. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

1. Whether the plaintiff is entitled to the plaint “B” schedule property ?



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2. Whether the defendant has perfected title to the "B" schedule property byway of adverse possession ?

3. Whether the plaintiff is in possession and enjoyment of the "A" schedule property ?

4. Whether the plaintiff is entitled to the declaration as prayed for?

5. Whether the plaintiff is entitled to recovery of possession as prayed for?

6. Whether the plaintiff is entitled to the permanent injunction as prayed for?

7. To what other reliefs ?

7. The Trial Court also framed the following additional issue:-

1. Whether the suit is barred by limitation ?

8. Before the Trial Court, in support of the plaintiff's case plaintiff examined herself as P.W.1 and her husband was examined as P.W.2 and 7 documents have been marked as Ex.A1 to Ex.A7 . On the side of defendant, the defendant examined himself as DW1 and one document has been marked as



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Ex.B1. Ex.C1 to Ex.C3 were also marked.

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9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Trial Court dismissed the suit by a judgment and decree dated 30.09.2009. Aggrieved over the same, the plaintiff had preferred an appeal in A.S.No.51 of 2009 before the Additional Sub Court, Tiruppur. The First Appellate Court, after considering the entire materials, vide judgment and decree dated 25.11.2011, partly allowed the appeal in respect of the relief of injunction with regard to “A” schedule property excluding the “B” schedule property and dismissed the relief of declaration and recovery of possession in respect of “B” schedule property. Now, challenging the same, the present Second Appeal has been filed by the plaintiff.

10. The second appeal has been admitted on the following substantial question of law :

1. Whether the Courts below are justified in rejecting the suit for declaratory relief in the absence of defendant's title and possession for over statutory period over the “B” schedule property ?



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2. Whether the plaint framed under Article 64 of Limitation Act is barred by the rule of limitation in the absence of proof of 'animus possessendi' ?

11. The learned counsel for the appellant submitted that the First Appellate Court failed to appreciate the fact that the defendant is in possession of the “B” schedule property on express permission granted by the plaintiff for taking water from the bund to the defendant's land. The finding of the Courts below that the standing trees in the “B” schedule property belonged to defendant is erroneous one. The First Appellate Court failed to consider the revenue records under Ex.A2 to Ex.A4, would establish the title and possession of the plaintiff in respect of the suit land including coconut trees. The plaintiff is the owner of the property as per the sale deed Ex.A1 and the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out the hostile animus of holding possession as against the plaintiff. The defendant's claim of title over the “B” schedule property under Ex.B.1 is not maintainable. There is no evidence to show that the defendant was in enjoyment of the B schedule property for more than 100 years. There is no plea in the written statement for claiming adverse possession over the B schedule property. The Court below erroneously relied



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upon the Commissioner's Report and found that the Government also allowed to B schedule property wholding to the defendant, which is erroneous one.

The Court below considered irrelevant fact and declined the prayer of the plaintiff for possession and reiterated the other grounds raised in the grounds of appeal and thus, pleaded to allow the appeal.

12. The learned counsel appearing for the respondent supported the judgment of the First Appellate Court and contended that the defendant is in possession and enjoyment of the “B” schedule property for more than 25 years and it is evidenced by the Commissioner's Report. Further, in the Ex.A.1. Sale deed, there is no mentioning of vaikkal or coconut trees enjoyed by the plaintiff. Under these circumstances, it is evidenced that the defendant is in possession and enjoyment of the B schedule property and proved his title by adverse possession and the First Appellate Court has rightly come to the conclusion and rejected the plaintiff's claim in respect of “B” schedule property and thus there is no ground for interference with the finding of the First Appellate Court and no substantial question of law involved in this Second Appeal and pleaded to dismiss the second appeal.



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13. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records carefully.

14. On perusal of the records, it is seen that the suit is filed by the plaintiff for declaration and recovery of possession with regard to the plaint B schedule property and permanent injunction with regard to the A schedule property with cost. The Trial Court, vide its judgment and decree dated 30.09.2009, dismissed the suit, against which, the plaintiff filed an appeal in A.S.No.51 of 2009 before the Additional Sub Court, Tiruppur. The First Appellate Court partly allowed the appeal by granting the relief of permanent injunction with regard to “A” schedule property excluding the “B” schedule property and dismissed the suit with regard to the relief of declaration and recovery of possession in respect of “B” schedule property. According to the plaintiff “B” schedule property is part of “A” schedule property.

15. The plaint schedule properties were purchased by the plaintiff on 06.06.2001 from one Sakthivel, which is evidenced by Ex.A.1 Sale deed. After purchase, the plaintiff surveyed the land with the help of surveyor and found



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that the defendant is in possession and enjoyment of the “B” schedule property.

According to the plaintiff, the defendant accepted to hand over the encroached possession. Since the defendant denied to hand over the possession and disturbed the plaintiff's possession, the suit has been filed by the plaintiff.

16. Admittedly, with regard to the “A” schedule property, there is no dispute between the parties. With regard to the “B” schedule property, the defendant disputed the title of the plaintiff and claiming title by adverse possession by long enjoyment.

17. On perusal of the plaint, it is noticed that the plaintiff fails to note down the extent of “B” schedule property and failed to mention clearly about the extent of encroachment made by the defendant. The physical features of the “B” schedule property is not clear in the plaint schedule property. In this case, Advocate Commissioner inspected the property and measured the same with the help of Surveyor and the plan of the Advocate Commissioner were marked as Ex.C1 & Ex.C2 respectively. The Surveyor's plan was marked as Ex.C3. Surveyor measured the “B” schedule property and noted as 20 ¼ cents. This is noted by the Commissioner as ABCD portion in the Commissioner's plan. The Surveyor also in his plan, Ex.C3 marked it in blue colour. It is also



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to be noted that the plaintiff had not filed any objection with regard to the extent mentioned in the Commissioner's Report , i.e. 20 ¼ cents. Therefore, the plaint “B” schedule property is measured as 20 ¼ cents as per the report of the Commissioner and the Surveyor. Further, on perusal of the Commissioner Report Ex.C.1, it is noticed that there is a East West bund between the Survey Nos.1146 and 1161 and the boundary line is in curved shape, in which 10 coconut trees are there. The level of the plaintiff land is less than that of the defendant's land. Further, the age of the coconut trees are mentioned as 20 years.

18. According to the defendant, the defendant is enjoying the same for the past 20 years even prior to the plaintiff's purchase, i.e. on 06.06.2001. Further in the sale deed Ex.A.1, there is no mentioning about the 20 years old coconut trees. There is no prior pleading and evidence in this regard. Further, the plaintiff in his pleading in paragraph 7 stated that the defendant was permitted in “B” schedule property and his possession is a permissive possession. But through evidence, the plaintiff failed to prove that the defendant is in permissive possession of “B” schedule property and defendant through his evidence proved that he is in possession of the “B” schedule property for more than 20 years and he is in enjoyment of the same with 20



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years old coconut trees. Therefore, the First Appellate Court, based upon the evidence and the reports of the Commissioner and the Surveyor, found that the defendant proved her title over the “B” schedule property and the plaintiff failed to prove her plea of permissive possession and rightly declined to grant the relief of recovery of possession with regard to “B” schedule property and granted permanent injunction pursuant to the “A” schedule property excluding the “B” schedule property since “B” schedule property is within the survey number of “A” schedule property. The finding of the First Appellate Court is only based upon the evidence on record and there is no irrelevant consideration of any fact and no evidence is misconceived. Hence, it cannot be termed as erroneous one and answered the substantial question of law as stated and the second appeal fails.

19. In the light of the abovesaid factors, it is found that the First Appellate Court, on a proper appreciation of the materials placed on record, both oral and documentary evidence adduced by the respective parties and the principles of law governing the same, had correctly decided the issues and the findings of the First Appellate Court is legally valid and I find no merit in this Appeal and the substantial questions of law formulated in the second appeal is, accordingly, answered against the plaintiff/appellant.



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20. For the aforesaid reasons, the second fails and accordingly, is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No

Internet : Yes / No

mrp

31.07.2024

To

1. The Additional Sub Court,
Tiruppur.

2. The Munsiff Court,
Tiruppur



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V.SIVAGNANAM, J.

mrp

Pre-Delivery Judgment made
in S.A.No.194 of 2012

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