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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1002 OF 2001

1.Jayaprahas

2.Rathinamalai Ammal(died)

3.Lalithamani(died)

4.Vijayamani

5.Premalatha

6.Niranjana Devi :Appellants/Appellants/Plaintiffs

(Second appellant died and appellants 3 to 6 who are already on record are the Legal representatives of the deceased second appellant is recorded vide memo in U.S.R.NO.2671 if 2017, dated 14.6.2017 vide order of this Court made in C.M.P(MD)Nos.7631 to 7633 of 2017 in S.A.No.1002 of 2001, dated 25.10.2017)

.VS.

1.Mavelraj

2.Ramamurthy

3.Rama Sethu

4.Krishnasamy

5.Pudupatti Kammavar Sangam,
represented by its President,
Pudupatti,
Vilathikulam Taluk.

6.S.Mani Pandian(died)



7.M.Mani Mala

8.Nirmala

(Respondents 6 to 8 are brought on record as legal representatives of the deceased third appellant as per order of this Court made in C.M.P(MD)Nos.7631 to 7633 of 2017 in S.A.No.1002 of 2001)

:Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.246 of 1998, dated 27.1.2000 on the file of Sub Court, Kovilpatti confirming the judgment and decree made in O.S.No.1 of 1995, dated 20.07.1995, on the file of District Munsif Court, Vilathikulam.

For Appellant-1	:Mrs.Jessi Jeevi Priya
For Appellant 4 to 6	:No appearance
For Respondents 1 to 5	:No appearance
For Respondent-6	:Died
For Respondents 7 and 8	:Mr.S.M.Anantha Murugan

JUDGMENT

The plaintiffs in the suit are the appellants. The suit is for declaration of title, permanent injunction and mandatory injunction. The suit was dismissed by the trial Court. The first appeal filed by the appellants/Plaintiffs also dismissed. Aggrieved



by the concurrent findings, the plaintiffs are before this Court.

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2. According to the appellants/plaintiffs, their father Mari Pandi Nadar purchased the suit item No.1 under a sale deed, dated 19.09.1959. From the date of purchase, the appellants and their predecessor in interest Mari Pandi Nadar have been in possession and enjoyment of the second schedule 'ABCD' compound wall continuously without any interruption and hence, they acquired adverse title over the same. It was claimed by the appellants that the respondents without having any manner of right, had put up construction over the second schedule compound wall in and around 1988. Therefore, the appellants were constrained to file the suit for declaration of their adverse title over the suit second schedule property with the consequential relief of permanent injunction and mandatory injunction. The appellants also claim adverse title over the suit third schedule property shown as 'BCDE' on the west of the second schedule compound wall. The suit was also laid for the relief of declaration of appellants adverse title over the suit third schedule property and for consequential relief of mandatory injunction and for permanent injunction.

3. The respondents herein filed their written statement



denying the right and possession of the appellants over the suit properties. It was claimed by the respondents that they have got right over the strip of land which lies on further west of the suit second schedule compound wall and hence, the claim of adverse title over the suit second and third schedule properties is not sustainable. The respondents also claimed long and uninterrupted possession of the second and third schedule of properties for more than the statutory period. On these pleadings, the respondents sought for dismissal of the suit.

4. Before the trial Court, the first appellant was examined as P.W.1 and one Ramasamy Nadar was examined as P.W.2. On behalf of the appellants/plaintiffs, ten documents were marked as Ex.A1 to Ex.A10. The first respondent was examined as D.W.1 and two other witnesses were examined as D.W.2 and D.W.3. On behalf of the respondents Ex.B1 to Ex.B8 were marked. The Advocate Commissioner's Report, Plan and FMB Sketch relating to Village S.No.94 were marked as Ex.C1 to Ex.C5.

5. The trial Court, on appreciation of both oral and documentary evidence available on record, came to the conclusion that the appellants/Plaintiffs who failed to prove their adverse title over the suit properties, were not entitled for any relief and



dismissed the suit. Aggrieved by the same, the appellants filed an appeal in A.S.NO.246 of 1998, on the file of Sub-Court, Kovilpatti and the same was dismissed, confirming the findings of the trial Court. Aggrieved by the same, the appellants are before this Court.

6.At the time of admission, this Court formulated the following substantial question of law, by order, dated 30.07.2001:

“When the four boundaries of the suit property are well-defined, have not the Courts below erred in law in not applying the principle that when the boundaries are definite and clear, they will prevail over the actual extent?”

7.The learned counsel for the appellants submitted that when four boundaries of the suit properties are well defined under the title documents of the appellants/plaintiffs, the same will prevail over the dispute in extent. The learned counsel submitted that the Courts below failed to take into consideration that the appellants purchased the suit properties under Ex.A1 with four well defined boundaries and therefore, they are entitled to the properties covered under Ex.A1. The learned counsel also by taking this Court to the oral evidence of P.W.1 and P.W.2, submitted that the continuous and uninterrupted possession of the appellants



over the suit properties from the date of purchase under Ex.A1 have been clearly proved by the plaintiffs and both the Courts below over-looked the oral evidence of witnesses.

8.A reading of the plaint prayer would indicate that the appellants sought for declaration of adverse title over the suit second and third schedule properties and for consequential reliefs of permanent injunction and mandatory injunction. It is not the case of the appellants that they purchased the suit item No.2 and 3 under Ex.A1. A perusal of Ex.A1 would suggest that the appellants father Mari Pandi Nadar purchased the properties on the west of Pannaipettai Compound wall. This Pannaipettai Compound wall is described as suit second schedule property. Therefore a perusal of the boundary description in appellants' title documents would suggest that the disputed second schedule compound wall was not purchased by the appellants and it was only shown as eastern boundary of the property covered under Ex.A1. In order to establish the adverse title, the person claiming adverse title should lead unimpeachable evidence to show his or her uninterrupted possession for more than the statutory period. In order to prove the adverse possession, the appellants examined P.W.2, an independent witness and his evidence is not useful to prove the continuous and uninterrupted possession of the



appellants over the suit compound wall. The interested testimony of P.W.1 is not sufficient to hold that the appellants proved adverse title over the suit compound wall. Therefore, I hold that the appellants failed to prove adverse title over the suit second schedule property.

9. Though the learned counsel for the appellants submitted that in view of the boundaries mentioned under Ex.A1, the appellants can claim title over the property which lies on the west of Pannaipettai compound wall, in the plaint averments, the appellants only claimed adverse title over the suit third schedule property. There is no plea by the appellants that they have got title over the suit third schedule property under Ex.A1. But, it is settled law that there cannot be any evidence without plea. The appellants/ Plaintiffs have approached the Court with specific plea that they have got adverse title over the suit third schedule property and now they cannot turn around and say that in view of well-settled proposition that boundaries will prevail over the disputed extent, the title of the appellants shall be upheld on the basis of boundary description under Ex.A1.

10. Thus, both the Courts below came to the factual conclusion that the appellants/plaintiffs failed to establish their



adverse title over suit item 2 and 3 and hence, dismissed the suit.

The appellants are unable to point out any perversity in the said factual conclusion reached by the Courts below.

11. In view of the discussions made earlier, the substantial questions of law formulated is answered against the appellants and as a consequence, the Second Appeal stands fails and the same stands dismissed. There is no order as to costs.

01.04.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Sub-Judge,
Kovilpatti.

2. The District Munsif,
Vilathikulam.

3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1002 OF 2001

01.04.2024