

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2020

Date of Verdict : 02.06.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.544 of 2000 and
CMP.No.4682 of 2000

1.Lakshmi Ammal
2.Gopal Mudaliar
3.Ramamoorthy
4.Dhanasundari
5.Jayanthi
6.EaswariAppellants/Respondents

Vs.

S.Bakthavatsalu Naidu ...Respondent/Plaintiff

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 14.10.1999, in A.S.No.47 of 1999 on the file of Principal District Judge, Chengalpattu, reversing the decree and judgment dated 30.03.1999 in O.S.No.126 of 1985 on the file of the District Munsif Court, Chengalpattu.

For Appellants : Ms.C.R.Rukmani
For Respondent : Mr.M.Ganesan

JUDGMENT

This second appeal is directed as against the judgment and decree dated 14.10.1999, in A.S.No.47 of 1999 on the file of Principal District Judge, Chengalpattu, reversing the decree and judgment dated 30.03.1999 in O.S.No.126 of 1985 on the file of the District Munsif Court, Chengalpattu.

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

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for declaration and injunction.
The suit property originally belonged to one, Savithiri Ammal,

who had purchased the same from Venkatathri by the registered sale deed dated 24.04.1965, who in turn sold the same to the plaintiff under the registered sale deed dated 29.07.1972. Thus, the plaintiff has become absolute owner of the suit property. In addition to his title, his predecessors had been in possession and enjoyment of the suit property and as such he also perfected title to the suit property by adverse possession and prescription. The first defendant is the wife of the second defendant and mother in law of the third defendant. The first defendant owned her property adjacent to the "B" schedule property. While being so, the defendants trespassed into "B" schedule property and also raised crops over there. Though the plaintiff protested the same, the defendants promised to hand over the vacant possession after harvesting the crops. Even then, they failed to hand over the possession of the "B" schedule property. Hence, the suit.

4. Resisting the plaintiff's case, the defendants 1 and 2 filed written statement and stated that the property admeasuring 65 feet east west and 387 feet north south was originally owned by one, Thangathammal and Namasivaya Mudaliar, who sold by the registered sale deed dated 11.12.2019 in favour of one, Manicka Mudaliar, who is none other than the father of the second defendant. Among the family members by the partition, the said Manicka Mudaliar and his three sons were allotted each an extent of 65 feet east to west and 129 feet north to south. The second defendant was allotted southern side of the plot and his younger brother Venkatathri was allotted northern plot. The deceased younger brother Narayanasamy was allotted middle portion between his two brothers. By virtue of partition, three were enjoying their respective shares. To demark their respective shares, they formed ridges and also fixed boundary stones. The plaintiff has purchased the share of the Venkatathri and put up a compound wall. In the said plot, he also constructed rice mill along with tubs, well and drying yard. Therefore, he purchased the property only admeasuring 65 x 129 feet alone from Venkatathri. Now the plaintiff has come with the false case and claiming the property admeasuring 81 x 145 feet without any basis.

4.1 Further stated that the first defendant has purchased the site admeasuring 1.12 acres in survey No.330/3 adjacent to the plaintiff's compound wall by the registered sale deed dated 19.03.1973 from one, Swaminatha Achari and others. Adjacent to the property of the plaintiff on the south one, Arumugha Maistry owned property admeasuring 65 x 75 feet and he also put up life fence on the western side of the property. The first defendant also purchased another plot measuring 65 feet east west x 55 feet north to south out of the extent of 65 feet x 129 feet from the deceased brother Narayanasamy Mudaliar. The remaining share admeasuring 65 x 129 feet is still owned by the second defendant. Thus, the first defendant is in possession and enjoyment of one acre 12

cents and 65 x 55 east to west, north to south from the date of respective purchase. He is cultivating by raising paddy crops, chilly and ragi. While being so, they also have put up a shed for motor pumpset and constructed tubs for feeding their cattle in a portion of grama natham side abutting their property on the south, which is used as pathway. There is a channel which irrigates the lands of the defendants. Therefore, the plaintiff neither at the time of purchase nor at the time of construction has raised any objection for the alleged shortage described as "B" schedule property. Therefore, the plaintiff is not at all entitled for any relief as prayed for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 was examined and five documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.7 were marked. Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.47 of 1999 before the Principal District Court, Chengalpattu. The first appellate Court on appreciating the materials placed on records, allowed the appeal by reversing the judgement and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the finding of the Appellate Court based on a point for consideration wrongly framed by it regarding adverse possession is sustainable in law?

b) Whether the decision of the Appellate Court which omitted to consider material documents and evidence well considered by the trial court is valid and correct?

c) Whether the decision of the appellate court based on the wrong appreciation of evidence and the finding recorded by it is demonstrably incorrect on the face of document and evidence produced before it and whether it is sustainable in law?

d) Whether the appellate court is not correct in calculating the time of limitation from 1965 onwards, the date of purchase by the plaintiff's vendor?

7. The learned counsel appearing for the defendants and

the plaintiff are present and they are reiterated the averments set out in the plaint as well as the written statement.

8. Heard Ms.C.R.Rukmani, learned counsel appearing for the defendants and Mr.M.Ganesan, learned counsel appearing for the plaintiff.

9. This Court considered the rival submissions made by the learned counsel on either side.

10. Admittedly 'A' schedule property and the property abutting the southern side belonged to one, Thangathammal and her son in the year 1919. They sold the property to one, Manicka Mudaliar and its measurement is 65 x 387 feet. The said Manicka Mudaliar had three sons. The second defendant is the husband of the first defendant. His three sons have divided the property which was purchased by the said Manicka Mudaliar dated 11.12.1919, which was marked as Ex.B.1 along with other properties. The registered partition deed was marked as Ex.A.2. Accordingly, the northern portion was allotted to Venkatathri, middle portion was allotted to Narayanasamy and southern portion was allotted to the second defendant in equal share, namely 65 x 129 feet. The 'D' schedule property in the partition deed comprised in survey No.335/3 Old survey No.592/1 was allotted to the plaintiff's predecessor in title. The plaintiff purchased 'A' schedule property from Venkatathri. On perusal of Ex.A.2, the plaintiff is in possession and enjoyment of the property admeasuring 81 feet in respect of 65 feet on the east which was originally owned by Swaminatha Achari. Therefore, three sons of Manicka Mudaliar have divided the property into equal shares taking each 81 feet east to west and 145 feet north to south. Without considering Ex.A.2, the trial court dismissed the suit.

11. That apart, under Ex.B.2 Swaminatha Achari and others have sold an extent of one acre 12 cents in survey No.335/3 to the first defendant. The boundary of 'A' schedule property shows that the property purchased from Swaminatha Achari shown eastern side of 'A' schedule property and the western side boundary has been given as Savithri's property, who has purchased Venkatathri's share under Ex.A.3. Therefore, 'A' and 'B' schedule property of the suit property was purchased by the plaintiff and the plaintiff is in possession and enjoyment of the suit property. Further on perusal of Ex.A.4 and Ex.A.5, the Narayanasamy Mudaliar, the brother of the second defendant has conveyed the middle portion which was allotted to him to one, Chinnakannammal by the sale deed dated 14.09.1983, which was marked as Ex.A.4, in which the east west measurement is given as 85 feet exceeding 81 feet. The remaining portion was sold to one Muniammal by the sale deed dated 16.07.1957, which was marked as Ex.A.5, wherein the east west measurement is given as 81

feet. The Advocate Commissioner was appointed and the Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2. Accordingly, Manicka Mudaliar purchased the property under Ex.B.1 and thereafter his sons had divided the suit property in the year 1951 under Ex.A.2. Therefore, the title of the plaintiff is proved and the first appellate court rightly reversed the findings of the trial court and decreed the suit.

12. Therefore, this Court does not find any valid reason to interfere with the findings rendered by the first appellate court as such the first appellate court have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and decreed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may. All the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the plaintiff and as against the defendants.

13. Accordingly, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge,
Chengalpattu.

2. The District Munsif Court,
Chengalpattu.

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

S.A.No.544 of 2000

RV(CO)
GN(16/09/2020)