

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.1245 of 2014
and
M.P.No.1 of 2014

1. Rajavel
2. Manonmani ... Appellants / Defendants 1 & 3

- Vs -

1. Rajagopal
2. Dhandapani ... Respondents/ Plaintiffs

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 03.08.2013, made in A.S.No.18 of 2011 on the file of the learned Subordinate Judge, Neyveli confirming the Judgment and Decree dated 11.11.2011, made in O.S.No.132 of 2005 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli.

For Appellants : Mr.S.Kadarkarai

For Respondents : Mr.V.Raghavachari.

J U D G M E N T

The appellants herein are the defendants 1 and 3 in O.S.No.132 of 2005 on the file of the learned District Munsif-cum-Judicial Magistrate, Neyveli in Cuddalore District. The second defendant was one Mr.Ramasamy who remained exparte throughout. The respondents herein are the plaintiffs in the suit. The learned District Munsif by decree and judgment dated 11.11.2011, has granted decree declaring that the second plaintiff is the absolute owner of the suit property and further granted decree for recovery of vacant possession of the property from the defendants in favour of the second plaintiff. As against the same the appellants filed an appeal before the learned Subordinate Judge, Neyveli in A.S.No.18 of 2011. By decree and judgment dated 03.08.2013, the lower Appellant Court dismissed the appeal thereby confirming the decree and judgment of the Trial Court. Challenging the same, the appellants are before this Court with this appeal.

2. This appeal has come up today for admission. I have heard Mr.S.Kadarkarai the learned counsel appearing for the appellants and Mr.V.Ragavachari learned counsel appearing for the respondents as well as perused the records carefully.

3. The case of the plaintiffs is that in a Court auction sale in E.P.No.2053 of 1958 in S.T.C.No.2236 of 1956, the first plaintiff purchased the suit property held on 11.11.1959 and the sale was also confirmed in his favour on 17.12.1959. Subsequently, he has executed a settlement deed in favour of the second plaintiff on 23.11.2006 and thus the second plaintiff is the absolute owner of the suit property. Originally, the plaintiffs claimed that the second plaintiff was in possession and enjoyment of the property. During the pendency of the suit, they filed an Interlocutory Application seeking to amend the prayer by stating that during the pendency of the suit, the defendants trespassed into the suit property. Accordingly, the plaint was amended and the relief of recovery of possession was also added.

4. The case of the defendants is one of adverse possession. According to the first defendant, he was in possession and enjoyment of the suit property for a number of years and then he executed a settlement deed on 30.09.1992 (Ex.B3) in favour of the third defendant and thus the third defendant is the absolute owner. It is also stated that the patta has been transferred in the name of the third defendant and the revenue records stands in the name of the third defendant. Thus, according to the case of the defendants, the third defendant is the absolute owner and she is in possession and enjoyment of the suit property.

5. The Trial Court framed appropriate issues on the above pleadings. On the side of the plaintiffs before the Trial Court, as many as five witnesses were examined and on the side of the defendants three witnesses were examined. Five documents were exhibited on the side of the plaintiffs and on the side of the defendants fourteen documents were exhibited. After considering the oral and documentary evidence, the Trial Court found that the plea of adverse possession taken by the defendants 1 and 3 is not true and the same has also not been proved. The Trial Court relied on the Court auction sale and other documents and held that the first plaintiff was the original owner and by virtue of the settlement deed, the second plaintiff has become the absolute owner. The Trial Court also found that the defendants are in possession and therefore they are bound to handover vacant possession to the plaintiffs.

6. The learned counsel appearing for the appellants would submit that these findings are erroneous.

7. In my considered opinion, on appreciating the oral as well as documentary evidence, the Courts below have concurrently held that the plea of adverse possession raised by the defendants has

not been proved. A perusal of the written statement would go to show that it has not been clearly stated as to when did the first defendant entered into the suit property and whether he continued to have hostile possession. The Courts below have held that mere possession for a longtime would not make a trespasser as the owner. As has been rightly held by the Courts below adverse possession and enjoyment should be to the knowledge of the owner and adverse to his interest. It should be continuous and open. Then only possession will becomes adverse. In the case on hand, the defendants have not even admitted the title of the plaintiffs and they have not stated even in the written statement that their possession is adverse to the interest of the plaintiffs.

8. Thus, the Courts below have held that the defendants have failed to prove the plea of adverse possession. The Courts below have rightly relied on the Court auction sale and have held that the first plaintiff was the owner originally and thereafter on account of the settlement deed executed in favour of the second plaintiff, the second plaintiff has become the absolute owner and therefore the second plaintiff is entitled for recovery of vacant possession. These findings are all based on facts. The learned counsel for the appellants is not in a position to make out any case for framing substantial questions of law warranting admission of this second appeal. Thus, I do not find any merit at all in this appeal warranting admission.

9. In the result, the second appeal fails and accordingly the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Subordinate Judge,
Neyveli.
2. The District Munsif-cum-Judicial Magistrate,
Neyveli.

1 cc to Mr.S. Kadarkarai, Advocate, Sr 1295

S.A.No.1245 of 2014
and M.P.No.1 of 2014

KSJ (CO)

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