

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.516 of 2009 & M.P.No. 1 of 2009

1. Neelaveni
2. S.Rajasekar
3. S.Thiagarajan
4. Amsaveni .. Appellants/Plaintiffs

-Vs-

1. Gnanamurthy
2. P.Ramachandran .. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Tirupur dated 25.09.2008 in A.S.No.54 of 2005 confirming the judgment and decree of the District Munsif, Tirupur dated 22.06.2005 in O.S.No.714 of 2004.

For Appellants : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.S.K.Rakhunathan

J U D G M E N T

The plaintiffs in O.S.No.714 of 2004 on the file of the learned District Munsif, Tirupur are the appellants herein. The respondents are the defendants in the suit. The said suit was originally filed by the 1st plaintiff, namely, Mr.P.Sundaram. During the pendency of the suit, he died. Therefore, the plaintiffs 2 to 5 were impleaded as his legal heirs. That was a suit filed for declaration that the 1st plaintiff is entitled to exercise his right of pre-emption relating to the suit properties as against the 1st defendant and for a decree against the 1st defendant to sell the suit properties to the 1st plaintiff for a price as it was at the time of the sale deed dated 14.09.1988 and for other reliefs or in the alternative, to grant a decree for title declaring that the 1st plaintiff has perfected his title by adverse possession and for consequential relief of permanent injunction to restrain the 1st defendant from in any way interfering with his peaceful possession and enjoyment in

the suit properties and further, in the alternative, to grant a decree in favour of the 1st plaintiff against the 1st defendant and to declare that the 1st defendant is not entitled for joint possession of the suit properties and to prevent the 1st defendant from interfering with his possession.

2. The trial court dismissed the suit by decree and judgment dated 22.06.2005. As against the same, the appellants herein filed an appeal in A.S.No.54 of 2005 before the learned Subordinate Judge, Tirupur. By decree and judgment dated 25.09.2008, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. That is how the appellants are before this Court with this Second Appeal.

3. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and the learned Counsel for the respondents. I have also perused the records carefully.

4. The case of the plaintiffs in brief is as follows:

The suit property is a land comprised in Survey No.901/11/6 at Gurunatha Gounder Lane, Tirupur Town and a house situated thereon bearing Door No.32. The suit property and other properties were originally owned by the 1st plaintiff's father Mr.Palanisamy Chettiar. The 2nd defendant is none else than the brother of the 1st plaintiff. Mr.Palanisamy Gounder executed a Will under Ex.A.7 on 09.07.1973 bequeathing his properties to his sons, namely, 1st plaintiff and the 2nd defendant herein. After the demise of Palanisamy Gounder, the Will has taken effect. As per the terms of the Will, according to the plaintiffs, the suit property was bequeathed to the 2nd defendant with a condition that in the event, the 2nd defendant decided to sell the property, the same should be sold only to the 1st plaintiff. But the 2nd defendant has sold the suit property to the 1st defendant on 14.09.1988. The 2nd defendant has no independent right to sell the property to the 1st defendant as per the terms and conditions of the Will. Thus, the sale in favour of the 1st defendant by the 2nd defendant is not binding on the 1st plaintiff and therefore, according to the 1st plaintiff, the 1st defendant is bound to execute the sale deed. It is his further contention that all along, the suit property is in the possession of the 1st plaintiff and thus, P.Sundaram Chettiar has perfected his title by adverse possession. With these averments, seeking the reliefs as narrated above, the suit is filed.

5. It was contended by the defendants that in the Will under Ex.A.7, there was no such condition imposed that the 2nd

defendant should sell the suit property only to the 1st plaintiff. It was also contended that the suit property was absolutely enjoyed only by the 2nd defendant as owner and he has sold away the same to the 1st defendant and thus, the 1st defendant is the absolute owner of the suit property. Further, the 1st defendant is not liable to execute any sale deed in favour of the 1st plaintiff. It was also contended that the suit property was never in the possession of the 1st plaintiff and thus, there is no question of adverse possession.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, 4 witnesses were examined and as many as 32 documents have been exhibited. On the side of the defendants, two witnesses were examined and as many as 26 documents have been exhibited. During the course of trial, an Advocate Commissioner was appointed whose report and plan have been marked as Ex.C.1 and Ex.C.2. Having considered all the above, the trial court dismissed the suit which was confirmed by the lower appellate court. That is how, the plaintiffs are before this Court with this Second Appeal.

7. In this Second Appeal, the learned Counsel for the appellants would submit that a reading of Ex.A.7 would go to show that there is a condition that the suit property should be sold only to the 1st plaintiff. He would further submit that there is enormous evidence to show that the 1st plaintiff was all along in the possession of the suit property to the knowledge of the defendants and thus, he has perfected his title by adverse possession. These facts, which have been proved by them by oral and documentary evidence, have not been properly appreciated by the courts below, it is contended.

8. The learned Counsel for the respondents would vehemently oppose this Second Appeal. According to him, a plain reading of the Will under Ex.A.7 would go to show that there is no such condition at all. He would further submit that the courts below have appreciated the oral and documentary evidences to come to the conclusion that the suit property was never in the possession of the 1st plaintiff. The learned Counsel for the respondents would also submit that there is no question of law involved in this Second Appeal warranting admission.

9. I have considered the above submissions.

10. At the outset, I should say that there is no question of law much less a substantial question of law involved in the Second Appeal warranting admission. The contentions made by the learned Counsel for the appellants before this Court are all

only on facts. The question as to whether the Will contains a clause that the property should be sold by the 2nd defendant only to the 1st plaintiff is a simple question of fact. The courts below have perused Ex.A.7 and also considered the oral and documentary evidence to come to the definite conclusion that there is no such condition at all in Ex.A.7 that the property should be sold by the 2nd defendant to the 1st plaintiff only. In this factual finding, I do not find any infirmity or error warranting interference. Similarly, regarding the question of possession also, on appreciating both oral and documentary evidence, the courts below have concurrently held that though the plaintiffs claim to be in possession, injunction cannot be granted as against the co-owner and that such possession would not amount to adverse possession. In this factual finding also, I do not find any infirmity or error warranting interference. Thus, I do not find any substantial question of law involved in this Second Appeal. There is no perversity in the judgments of the courts below. In view of all the above, I hold that there is no merit in the Second Appeal.

11. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Tirupur.

2. The District Munsif, Tirupur.

+1 cc to M/s.Sarvabhavuman Associates, Advocates, sr.69421

+1 cc to Mr.S.K.Rakhunathan, Advocate, sr.69385

S.A.No.516 OF 2009
& M.P. No. 1 of 2009

tej co
kra 01.02.2016