

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.157 of 2015 and M.P.No.1 of 2015

Poorani

.. Appellant/Plaintiff

-Vs-

Sankar

.. Respondent/Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 09.07.2014 passed in A.S.No.30 of 2013 by the learned Principal Subordinate Judge, Tindivanam, reversing the judgment and decree dated 18.01.2013 passed in O.S.No.339 of 2010 by the learned Principal District Munsif, Tindivanam.

For Appellant : Mr.J.Kamaraj

For Respondent : Mr.R.Karunaharan

J U D G M E N T

The plaintiff in O.S.No.339 of 2010 on the file of the learned Principal District Munsif, Tindivanam is the appellant herein. The respondent is the sole defendant in the suit. The said suit was filed for permanent injunction to restrain the defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. By decree and judgment dated 18.01.2013, the trial court decreed the suit as prayed for. As against the same, the defendant filed A.S.No.30 of 2013 before the learned Principal Subordinate Judge, Tindivanam. By decree and judgment dated 09.07.2014, the lower appellate Court set aside the decree and judgment of the trial court and dismissed the suit. As against the same, the appellant/plaintiff is before this Court with this Second Appeal.

2. I have heard the learned Counsel for the appellant and I have also perused the records carefully. The respondent has appeared on caveat.

3. By consent of the learned Counsel on either side, the Second Appeal itself is taken up for final disposal.

4. The case of the plaintiff is as follows:

The suit property, which is a vacant site, was originally owned by one Mr.Krishnappa Gounder. Krishnappa Gounder died many years before leaving behind his only son Ganapathy. Ganapathy became the owner of the property by virtue of succession and he was in possession and enjoyment of the same. He died 40 years before in the year 2010. Ganapathy's wife Lakshmi Ammal and their children Kuppusamy and Subramaniyan had migrated to Chennai 40 years before and thus, they never returned to the village at all. The plaintiff's husband Mr.Periyandavar was in possession and enjoyment of the suit property as a trespasser. This was known to Lakshmi Ammal and her children Kuppusamy and Subramaniyan. His possession was open and adverse to the interest of the true owners, namely, Lakshmi Ammal, Kuppusamy and Subramaniyan. On the expiry of the statutory period, Mr.Periyandavar had perfected his title for the suit property. Thus, he was in possession and enjoyment of the suit property as absolute owner after completion of 12 years. Thereafter, Periyandavar executed a registered sale deed in favour of the plaintiff on 30.04.2007, thereby transferring the title of the suit property in favour of the plaintiff. Thus, from 30.04.2007 onwards, the plaintiff has been in possession and enjoyment of the suit property.

5. It is further stated by the plaintiff that Periyandavar had earlier filed a suit in O.S.No.339 of 2007 before the learned Additional District Munsif, Tindivanam against the defendant herein and against one Munusamy. That was the suit for declaration of title and for injunction to restrain the defendants therein from in any manner interfering with his peaceful possession and enjoyment of the suit property. In that suit, a specific issue was framed as to whether Mr.Periyandavar had perfected his title by adverse possession. The trial court, on contest, gave a finding that Periyandavar had perfected his title by adverse possession. But since Periyandavar had sold away the property to the plaintiff on 30.04.2007, according to the learned Additional District Munsif, the decree for declaration and injunction could not be granted in favour of Periyandavar. In effect, according to the said decree and judgment, since the Periyandavar was no more the owner and he was no more in the possession of the property, the suit was liable to be dismissed. Accordingly, the suit was dismissed on 27.08.2010. However, the plaintiff continues to be in possession of the property, moreover, the defendant has got no right whatsoever over the same.

6. The case of the defendant is that it is true that one Ganapathy was the absolute owner of the suit property on the demise of his father Mr.Krishnappa Gounder. It is also true that Ganapathy had his wife by name Lakshmi Ammal and two children, namely, Kuppusamy and Subramaniyan. Subramaniyan died as a bachelor. Kuppusamy's wife Muthulakshmi Ammal also died. Lakshmi Ammal also died. Thus, after the demise of Kuppusamy, his son Prakash has

become the absolute owner of the suit property. The defendant purchased the suit property from Prakash by means of a registered sale deed dated 20.06.2007 for a valuable sale consideration of Rs.18,000/-. From the date of purchase, according to the defendant, he has been in possession and enjoyment of the same, over which the plaintiff has got no right whatsoever.

7. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 3 witnesses were examined and as many as 4 documents were exhibited. On the side of the defendant, 3 witnesses were examined and as many as 7 documents were exhibited. Having considered all the above, the trial court decreed the suit which was reversed by the lower appellate court. That is how the plaintiff is before this Court with this Second Appeal.

8. In the Second Appeal, the learned Counsel for the appellant would submit that the lower appellate court was not legally right in reversing the decree and judgment of the trial court because in the earlier suit in O.S.No.339 of 2007, the trial court had given a specific finding in a specific issue that Mr.Periyandavar had perfected his title by adverse possession and thus, he was the absolute owner of the suit property. The learned Counsel would further submit that as against the said findings, there was no appeal preferred by the defendant herein, who is one of the defendants in O.S.No.339 of 2007 as well. Since that finding is between the parties, as per Section 11 of the Code of Civil Procedure, this plea of the defendant that the plaintiff has got no title, is barred. The learned Counsel for the appellant would point out that since the suit property is a vacant site, the inference is that the plaintiff is in possession of the same. Apart from the inference, the plaintiff has proved her possession by means of the oral evidence of P.Ws.1 to 3 also. Thus, according to the learned Counsel for the appellant, the lower appellate court ought not to have reversed the decree and judgment of the trial court.

9. From the facts narrated herein above and the submissions made by the learned Counsel for the appellant and from the Memorandum of grounds of the Second Appeal, I frame the following substantial questions of law for consideration of this Court:

"1. Whether the lower appellate court was right in reversing the decree and judgment of the trial court without applying the principle of res judicata in respect of the finding recorded by the trial court in the earlier suit in O.S.No.339 of 2007? and

2. Whether the lower appellate court was right in reversing the decree and judgment of the trial court by applying the settled legal principle that in respect of vacant possession, the inference is that the possession is at the hands of a person who has got title?"

10. The learned Counsel for the respondent would vehemently oppose this appeal. According to him, in the earlier suit in O.S.No.339 of 2007, though there was a finding that Periyandavar had perfected his title in respect of the suit property, ultimately, the suit was dismissed. The learned Counsel would further submit that there was no appeal filed by Periyandavar against the decree and judgment of the trial court passed in O.S.No.339 of 2007. Therefore, according to him, Section 11 of C.P.C. is not at all applicable to the facts of the present case. The learned Counsel for the respondent would also submit that the plaintiff has not proved her possession and thus, the lower appellate court was right in reversing the decree and judgment of the trial court.

11. I have considered the above submissions.

12. Ex.A.2 is the certified copy of the judgment dated 27.08.210 in O.S.No.339 of 2007 of the learned Additional District Munsif, Tindivanam. A perusal of the same would go to show that there was a specific issue framed in that suit as to whether Periyandavar the plaintiff in the said suit had perfected his title by adverse possession. The trial court, after having considered the evidence available, had given a specific finding in the said issue that Periyandavar had become the absolute owner of the suit property by prescribing his title by adverse possession. The sole defendant herein was one of the defendants in the said suit. But the defendant herein did not choose to file any appeal against the said findings. Therefore, the said findings recorded in O.S.No.339 of 2007 by the trial court will operate as res judicata as against the defendant to raise the same issue in the present suit. The said finding given by the trial court in O.S.No.339 of 2007 cannot be reopened at all. From that judgment, it has been very clearly proved that Periyandavar was the absolute owner of the suit property as he had perfected his title by adverse possession.

13. Periyandavar had now sold away the suit property in Ex.A.1 to the plaintiff. Therefore, the plaintiff has now proved that she is the absolute owner of the suit property. The suit property is, admittedly, a vacant site. Therefore, the inference is that the person who has got title is in possession of the property. In other words, the principle possession follows title is to be applied. If that is done, it can be inferred that the plaintiff is in possession of the property. This inference is further supported by the oral evidence of P.W.1 to P.W.3. The defendant has not filed any appeal to disprove the said legal inference. Therefore, in my considered opinion, the lower appellate court was right in reversing the decree and judgment of the trial court.

14. The learned Counsel for the appellant would submit that since O.S.No.339 of 2007 was dismissed ultimately by the trial court,

the principle of res judicata would not be applicable. This argument persuaded me for the simple reason that the suit was ultimately dismissed because by the time when the suit ripe for disposal, Periyandavar had already sold away the property in favour of the plaintiff. Since he had parted away with the title of possession, the trial court dismissed the suit. Therefore, the ultimate dismissal of O.S.No.339 of 2007 is immaterial since there was a clear finding that Periyandavar had perfected his title by adverse possession. I wish to repeat that there was no appeal filed against the said findings.

15. The learned Counsel for the respondent would submit that the patta stands in the name of the respondent would go to prove his possession. In my considered opinion, patta is neither a monument of title nor a document, always go to prove possession. Therefore, this argument is also rejected.

16. In view of the above discussions and conclusions, I am inclined to answer both the substantial questions of law only in favour of the appellant. I hold that the defendant is barred from disputing the title of the plaintiff and I also hold that by applying the principle that the possession follows title, the plaintiff has proved his possession. Thus, both the substantial questions of law are answered in favour of the appellant.

17. In the result, the Second Appeal is allowed and the decree and judgment of the lower appellate court is set aside and the trial court is restored. No costs. Consequently, connected Miscellaneous Petition is also closed.

tsi

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,
Tindivanam.
2. The Principal District Munsif,
Tindivanam.

+ 1 cc to Mr.J.Kanagaraj, Advocate SR 16429

gj (co)
prk3/6

S.A.No.157 OF 2015
& M.P. No. 1 of 2015