

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.341 of 2015 and

M.P.No.1 of 2015

G.Arumugam .. Appellant/Plaintiff

-Vs-

1. Cadirvel @ Raja
2. Venkatasubramaniam .. Respondents/Defendants

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 06.01.2015 made in A.S.No.10 of 2014 on the file of the learned I Additional District Judge, Tindivanam, confirming the judgment and decree dated 04.03.2013 made in O.S.No.29 of 2008 on the file of the District Munsif-cum-Judicial Magistrate, Vanur.

For Appellant : Mr.T.Dhanasekaran

For Respondents : Mr.T.Sai Krishna
for M/s.Sai Bharath and Ilan

J U D G M E N T

The plaintiff in O.S.No.29 of 2008 on the file of the learned District Munsif-cum-Judicial Magistrate, Vanur is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration of title and for recovery of possession. The trial court by decree and judgment dated 04.03.2013 dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.10 of 2014 on the file of the learned I Additional District Judge, Tindivanam. By decree and judgment dated 06.01.2015, the lower appellate court dismissed the appeal thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

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

The suit property comprised in Survey No.134/4 was purchased by the father of the plaintiff, namely, Govindasamy, by means of a registered Sale Deed dated 02.03.1937. Thus, he was in possession and enjoyment of the same as absolute owner. On

30.08.1962, he died intestate leaving behind the plaintiff as his only legal heir. The plaintiff being the only son of his father inherited the same and he is in possession and enjoyment of the same as absolute owner. While so, the defendants trespassed into the suit property in the year 2002 and therefore, he filed the present suit for declaration of title and for recovery of possession.

3. In the written statement, the defendants contended that the suit property was purchased by one Kothandapany by means of a registered sale deed dated 03.04.1968 from Kuppammal @ Kaliammal who is the grandmother of the plaintiff and the plaintiff himself when he was a minor represented by his paternal aunt Ellammal. The same was made for the benefit of the plaintiff who was the minor then. From the said date of purchase, Kothandapany was in possession and enjoyment of the suit property. Kothandapany sold away the suit property to one Suseela by means of a registered sale deed dated 22.04.1968. Thus, Suseela was in possession and enjoyment of the same. She had executed a general power of attorney and from the power agent of Suseela, the defendant Cadirvelou @ Raja purchased the same by means of a registered sale deed for valuable consideration. Thus, the defendant is the absolute owner of the suit property. It was also contended that earlier a suit was filed by the defendant in O.S.No.80 of 2001 before the District Munsif Court, Vanur against the plaintiff herein for permanent injunction to restrain the defendant from in any manner interfering with his peaceful possession and enjoyment of the suit property. That suit was dismissed by decree and judgment dated 07.06.2004. As against the same, the plaintiff herein filed an appeal in A.S.No.6 of 2005 and the same was also dismissed by the learned Subordinate Judge, Tindivanam by decree and judgment dated 21.09.2005. However, according to the plaintiff, the dismissal of the said suit is not a bar for him to maintain the present suit as in the present suit he prayed for declaration of title and for recovery of possession.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, 6 witnesses were examined and as many as 4 documents have been marked. On the side of the defendant, two witnesses were examined and 35 documents have been marked. Having considered all the above, the trial court dismissed the suit and the same was also confirmed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

5. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant, learned Counsel for the respondents and I have also perused the records carefully.

6. The learned Counsel for the appellant would submit that the lower appellate court was not right in holding that the plaintiff has got no title for the suit property on account of the sale made under Ex.B.1 dated 03.04.1968. The learned Counsel for the appellant would further submit that there is enormous evidence to show that the plaintiff had been in possession and enjoyment of the property all these years.

7. I have considered the above submissions.

8. So far as the earlier suit in O.S.No.80 of 2001 is concerned, the lower appellate court has held that the dismissal of the said suit is not a bar for the plaintiff to maintain the present suit as the principles of res judicata is not applicable. Regarding this conclusion arrived at by the lower appellate court, the appellant has got no grievance.

9. Now the question is as to whether the lower appellate court was right in holding that the plaintiff has proved that he has got title to the suit property. Admittedly, the suit property was originally purchased by the father of the plaintiff. But he died as early as on 30.08.1962. At that time, admittedly, the plaintiff was a minor. His grand mother was Kuppammal @ Kaliyammal. It is in evidence that under Ex.B.1, the suit property was sold by the grand mother of the plaintiff Kuppammal and the plaintiff himself who was the minor then. In the said document, the plaintiff was represented by his paternal aunt Ellammal. Further in the year 1968, under Ex.B.2 dated 25.03.1968, the purchaser has sold the property to one Suseela. Then, from Suseela, the defendants have purchased the same and they have been in possession and enjoyment of the suit property. The patta has been transferred in the name of the 1st defendant. The lower appellate court has found that it is not as though the plaintiff was not aware of the sale made on his behalf in the year 1968. Having knowledge of the sale made in the year 1968, the plaintiff did not file any suit within a period of limitation questioning the said sale. This has been duly considered by the lower appellate court. The courts below, on appreciating the facts, have found that the defendants have got title and the plaintiff is not entitled for recovery of possession. This is essentially a conclusion arrived at on facts and there is no question of law much less a substantial question of law involved warranting admission of the Second

Appeal. In such view of the matter, I do not find any perversity in the decree and judgments of the courts below. Thus, I do not find any merit at all in the Second Appeal.

10. 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 IV)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif-cum-Judicial Magistrate,
Vanur.

2.The I Additional District Judge,
Tindivanam.

+1cc to M/S. Sai Bharath and Ilan, Advocate, S.R.No.64402

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.64432

S.A.No.341 OF 2015

tej(CO)
srg(11/01/2016)

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