

In the High Court of Judicature at Madras

Dated: 01.07.2015

Coram:

The Honourable Mrs. Justice PUSHPA SATHYANARAYANA

Second Appeal No.478 of 2015

and

M.P.No.1 of 2015

1. D.Raju
2. D.Sakthivel ... Appellants

Versus

C.Mariappan ... Respondent

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 20.03.2015 made in A.S.No.27 of 2014 on the file of the III Additional Subordinate Judge, Cuddalore, confirming the judgment and decree dated 19.02.2014 made in O.S.No.496 of 2008 on the file of the Additional District Munsif, Cuddalore.

For Appellant ... Mr.R.Gururaj

JUDGMENT

The defendants, who had lost before the courts below, have filed this Second Appeal, challenging the decree granted in favour of the plaintiff for declaration of title and for removal of encroachment and recovery of vacant possession.

2. The case of the plaintiff is that the suit property was purchased by the plaintiff's father Chakrapani Padayachi from the defendant's father on 16.07.1984. After the purchase, the plaintiff's father was in possession and enjoyment of the same by obtaining patta and effecting mutation in the revenue records. The plaintiff is the sole heir to the said Chakrapani Padayachi. After the death of the plaintiff's father, the property devolved on the plaintiff and the plaintiff got the patta transferred in his name and has been paying the kist to the revenue department. While so, in the month of February 2008, the defendants tried to encroach the suit property. The plaintiff is living three kilometres away from the suit property, which has been taken advantage of by the defendants and they encroached the suit property and put up a fence and also raised construction in the same. Therefore, the plaintiff has asked for declaration of title and for recovery of possession after removing the encroachment.

3. The suit was resisted by the defendants contending that the father of the defendants, viz., Dhanakodi had borrowed money from the father of the plaintiff Chakrapani. As the security for the said borrowal, the sale deed was executed in favour of Chakrapani. Therefore, it was contended by the defendants that the sale deed was only a sham and nominal for the purpose of security and it was not intended to be acted upon as no consideration has been passed under the sale deed. The defendant also claimed right and title by adverse possession.

4. Before the trial court, on the side of plaintiff, three witnesses have been examined as PW.1 to PW.3 and Exs.A1 to A17 were marked; and on the side of defendants, five witnesses have been examined as DW.1 to DW.5 and Exs.B1 to B28 were marked. Advocate Commissioner's report and plan were marked as Exs.C1 and C2 respectively.

5. The courts below after elaborate consideration of the facts and evidence decreed the suit as prayed for and directed the defendants to hand over possession of the suit property to the plaintiff within a period of two months. Aggrieved by the same, the above Second Appeal has been filed.

6. The counsel for the appellants made his submissions in two fold.

(i) Firstly, it was contended that Ex.A1 was executed only for the purpose of loan and that it was never intended to be acted upon. However, there is no proof for the said allegations and the defendants have also not produced any evidence to prove the discharge of the said loan by rebutting the same. Even in Ex.A1 sale deed recitals, there is nothing mentioned about the borrowal and that the deed was executed only for the purpose of security. Therefore, the first contention fails.

(ii) The second contention was about adverse possession. The trial Court as well as the appellate Court considered the material on record and found that the defendants are not in possession of the suit property for more than the required statutory period. The documents produced by the defendants were the house tax receipts from the years 2002-2011. But the suit was filed on 29.09.2008. The house tax receipts produced from Exs.B8 to B13 are all after suit. Similarly, the defendants had filed Exs.B14 to B26, which are the electricity receipts. The said receipts were also from the years 2009-2011, which are after the suit. The counsel placed his reliance on Exs.B27 and B28 which are the residence certificate and house tax payment certificate. Even the said two documents also do not go to prove the possession of the defendants for the required statutory period. A Commissioner was also appointed in the trial court who had visited the property and filed the report, in which it is stated that the building standing thereon is only about three years old. Therefore, as contended by the plaintiff, the defendants had only

encroached upon the suit property just before the filing of the suit and hence, they cannot claim prescriptive title by adverse possession.

7. Besides the question of adverse possession, being blended one of fact and law can be decided only when the necessary particulars regarding the date of possession, the nature of possession and whether the factum of possession is made known to the original owner of the property, how long the defendant is in possession and whether such possession is open and undisturbed are available in the pleadings. In the absence of any of such details in the written statement, the defendants cannot claim title to the suit property. Adverse possession is a relief claimed by a person by defeating the rights of true owner. Therefore, there cannot be any equity in his favour. In such circumstances, having failed to make out a question of law much less the substantial question of law, the Second Appeal is dismissed.

8. In fine, the Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To

1. The III Additional Subordinate Judge, Cuddalore.
2. The Additional District Munsif, Cuddalore.

+1cc to Mr.AR. Gururaj, Advocate, S.R.No.32773

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EU(27/07/2015)

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