



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.85 of 2015 and

M.P.Nos.1 & 2 of 2015

Thandapani

.. Appellant/Plaintiff

-Vs-

1.Krishnaveni

2.Kamala

3.Neela

4.Usha

5.Selvi

6.Laila

.. Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 17.06.2011 in A.S.No.62 of 2007 on the file of the learned Additional Subordinate Judge, Puducherry thereby confirming in O.S.No.972 of 2005 on the file of the learned III Additional District Munsif, Puducherry, on the file of the judgement and decree dated 22.08.2007.

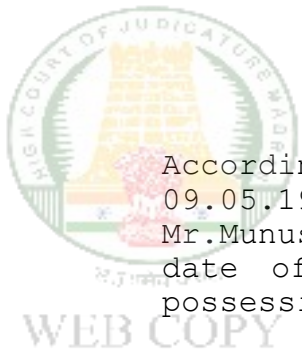
For Appellant : Mr.D.Bharatha Chakravarthy
for M/s.Sai Bharath and Ilan

J U D G M E N T

The plaintiff in O.S.No.972 of 2005 on the file of the learned Additional Subordinate Judge, Puducherry 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 and also for permanent injunction to restrain the defendants from enlarging the area of their occupancy in the suit property and putting up any permanent structure thereon. The trial Court by decree and judgement dated 22.08.2007, dismissed the suit. As against the same, the appellant herein filed an appeal in A.S.No.62 of 2007 on the file of the learned Subordinate Judge, Puducherry. By judgement and decree dated 17.06.2011, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant is before this Court with this second appeal.

2.The case of the plaintiff is as follows:-

The suit property was admittedly owned by one Mrs.Ranganayaki.



According to the plaintiff, under Ex.A.13, sale deed dated 09.05.1961, Mrs.Ranganayaki sold away the suit property to one Mr.Munusamy. Mr.Munusamy is the father of the plaintiff. From the date of purchase, according to the plaintiff, his father was in possession and enjoyment of the suit property.

3.The first defendant is the sister of Mr.Munusamy. The other defendants are the children of the first defendant. According to the plaintiff, out of sympathy towards her, Mr.Munusamy allowed the first defendant and her children namely the other defendants to live in the suit property as licensee. Thus, the first defendant along with the other defendants have been in possession and enjoyment of the suit property.

4.While so, Mr.Munusamy sold away the suit property by means of registered sale deed dated 25.03.1999 (Ex.A.1) to the plaintiff. Thus, according to the plaintiff, he has become the absolute owner of the suit property. But, the defendants continued to be in possession and enjoyment of the suit property even after execution of Ex.A.1, sale deed dated 25.03.1999, as licensee. While so, during the month of January 2004, the first defendant started disputing the title of the plaintiff. Further, the defendants have also refused to vacate and hand over vacant possession to the plaintiff. Therefore, the plaintiff issued a legal notice under Ex.A.2 dated 17.11.2004 to the defendants for cancelling the licence granted to the first defendant and calling upon the defendants to vacate and hand over vacant possession of the suit property to the plaintiff.

5.Having received the said legal notice, the first defendant sent a reply notice dated 03.01.2005 (Ex.A.10) to the plaintiff disputing his title over the suit property and refusing to hand over vacant possession of the suit property to the plaintiff. It was in those circumstances, according to the plaintiff, the present suit was filed.

6.The case of the defendants is that, it is true that Mrs.Ranganayaki was the original owner of the suit property. It is their case that Mrs.Ranganayaki is the paternal grand mother of Mr.Munusamy and Mrs.Krishnaveni. Mr.Ranganathan, the husband of Mrs.Ranganayaki who was working in the Public Works Department purchased the suit property in the name of Mrs.Ranganayaki. It is further contended that, to their knowledge, Mrs.Ranganayaki did not execute any sale deed in favour of Mr.Munusamy. After the demise of Mrs.Ranganayaki, the first defendant's husband died leaving behind the defendants without any male support. So, Mr.Ranganathan, supported the defendants. He also died in the year 1974. After the demise of her husband, the first defendant and her children were living in the suit property and from that time onwards they have been in possession and enjoyment of the suit property. As a matter of fact, the plaintiff's father Mr.Munusamy had received a sum of



Rs.2,000/- from the first defendant and orally released all his rights in respect of the suit property to the defendants in the presence of Panchayatdars. It was also contended that the defendants have been in possession and enjoyment of the suit property for the past 32 years. On 10.02.1999, the first defendant executed a gift deed in favour of the other defendants and the same was registered. This was also known to the plaintiff. Thus, according to the defendants, assuming that the oral release deed is not valid, the defendants have perfected their title by way of adverse possession. Therefore, according to them, the suit is liable to be dismissed.

7. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and 16 documents were exhibited. On the side of the defendants, neither oral evidence was let in nor documentary evidence was exhibited.

8. Having considered the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. That is how the appellant is before this Court with this second appeal.

9. In this second appeal, at the outset, I should say that there is no substantial question of law involved at all warranting admission of the second appeal. All the grounds raised in the memorandum of second appeal are all only on questions of fact. Let me now consider the grounds raised and argued by the learned counsel for the appellant.

10. Admittedly, Mrs. Ranganayaki was the absolute owner of the suit property under Ex.A.13 dated 09.05.1961. She has sold away the property to one Mr. Munusamy. In my considered opinion, the title duly passed on to Mr. Munusamy and Mr. Munusamy was the absolute owner of the suit property. But, the fact remains that even during life time of Mr. Munusamy, he has not occupied the suit property. The defendants were inducted to possession and admittedly, they were in possession for more than 32 years as on the date of filing of the suit. The controversy is that, in respect of the nature of possession.

11. According to the plaintiff, the defendants were inducted to possession as licensee. Whereas, according to the defendants, they were originally inducted to in possession by one Mr. Ranganathan, the husband of Mrs. Ranganayaki. After their demise, Mr. Munusamy orally released all his rights over the suit property to the first defendant in the presence of Panchayatdars on receiving a sum of Rs.2,000/- from the first defendant. The Courts below have held that the defendants have perfected their title by way of adverse possession.

12. Though, now, it is contended by the learned counsel for the appellant/plaintiff that licence was granted by Mr. Munusamy in favour



of first defendant thereby permitting the defendants to be in possession of the suit property, absolutely, there is no pleading as to when such licence was given and in whose presence the same was given and as to when the defendants were inducted in to possession.

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13. In the written statement, it is stated that out of sympathy, the first defendant was inducted to in possession by Mr. Munusamy as licensee. Thus, there is no evidence at all to prove that there was such oral licence given by Mr. Munusamy in favour of the first defendant.

14. If once the theory of licence stands not proved, then, as a corollary, this Court has to believe that the defendants were inducted to possession after the demise of the husband of the first defendant by Mr. Ranganathan. Assuming that Mr. Ranganathan did not induct these defendants in to possession, the fact remains that the defendants have been in possession and enjoyment of the suit property for the past 32 years before the filing of the suit. In the month of February 1999, the first defendant had executed a gift deed in favour of the other defendants, which also would go to show that the first defendant asserted her title and disputed the title of the plaintiff. It was only thereafter, Ex.A.1 was executed by Mr. Munusamy in favour of the plaintiff on 25.03.1999. A perusal of Ex.A.1 would go to show that the suit property was sold by Mr. Munusamy to the plaintiff to meet out the medical expenses of his wife who is none else than the mother of the plaintiff. It is highly un-believable that the plaintiff would have purchased the property to pay money to his father by way of consideration to meet out the medical expenses of his own mother. It is not as though the plaintiff and his father Mr. Munusamy were living apart. Thus, it is very obvious that after the first defendant had disputed his title, in order to create a document, for the purpose of claiming title under Ex.A.1, the same has been created by the plaintiff. Therefore, no weightage could be given to Ex.A.1. Since, title had already been perfected on the expiry of 30 years period as on 25.03.1999, Mr. Munusamy himself would not have title to convey the same to the plaintiff.

15. The contention of the learned counsel for the appellant is that, in order to perfect title, it should be proved that the first defendant had animus to perfect title. Legally, and the said contention is correct. But, in this case, two Courts below have held that for the past 40 years, the first defendant along with her children were in possession asserting her title thereby disputing the title of the plaintiff. According to the defendants, the oral release was made in the year 1970. Thus, it is obvious that all through, the defendants have been disputing the title of the plaintiff and thus, they have perfected their title by way of adverse possession.

16. In my considered opinion, this is essentially, a question of



fact which has been answered by the two Courts below by appreciating oral as well as documentary evidences. Since, no substantial question of law is involved in this matter, I do not find any reason to admit this second appeal.

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17. In the result, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

True Copy

Sub Assistant Registrar

To

1. The Additional Subordinate Judge,
Puducherry.

2. The III Additional District Munsif,
Puducherry.

+1 cc to M/s. Sai Bharathy Ilan, Advocate, SR.10372

rj(c0)
krd 31/3

S.A.No.85 of 2015