

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Second Appeal No. 883 of 2015

Mariyammal

..Appellant/Plaintiff

Vs.

1. U. Mariammal
2. U. Arunselvam
3. U. Ganesan

..Respondents/Defendants

Prayer: Second Appeal as against the judgment and decree dated 16.04.2015 made in A.S. No. 1 of 2014 on the file of Sub Court, Mannargudi, confirming the judgment and decree dated 11.10.2013 made in O.S. No. 207 of 2010 on the file of District Munsif Court, Mannargudi.

For Appellant :: Mr.G.B. Sabari Das

J U D G M E N T

The plaintiff in O.S.No. 207 of 2010 on the file of District Munsif Court, Mannargudi is the appellant herein and the respondents herein are the defendants in the suit. Defendants 1 and 2 are respectively the mother and brother of the 3rd defendant.

2. The suit in O.S. No. 207 of 2010 was filed by the plaintiff/appellant herein for declaration of title and for permanent injunction to restrain the defendants/respondents herein, from in any manner, interfering with her peaceful possession and enjoyment of the suit property. The Trial Court, by judgment and decree dated 11.10.2013, dismissed the suit. As against the same, the plaintiff filed A.S.No. 1 of 2014 before the learned Sub Judge, Mannargudi. By judgment and decree dated 16.04.2015, the Lower Appellate Court dismissed the appeal thereby confirming the judgment and decree of the Trial Court. Challenging the same, the plaintiff/appellant is before this Court in this second appeal.

3. This second appeal has come up today for admission and I have heard the learned counsel for the appellant and also perused the records carefully.

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

The suit property, according to the plaintiff, originally belonged to one Uthrapathi. The said Uthrapathi is the husband of the 1st defendant and father of defendants 2 and 3. The said Uthirapathi and his family members were in Singapore. While so, in the year 1985, the plaintiff entered into an oral sale agreement with Uthrapathi's son-in-law, by name, Arulnambi, by which he agreed to sell the suit property to the plaintiff. From then onwards, the plaintiff is in possession and enjoyment of the suit property. Uthrapathi, after his return from Singapore, died in the year 1997. Even thereafter, the plaintiff continued to be in possession and enjoyment of the suit property. The plaintiff had also purchased the lands adjoining the suit property during the year 1985, by means of oral sale. The owners of adjoining lands had executed sale deeds in favour of the plaintiff subsequently. But, the plaintiff could not get the sale deed executed in respect of the suit property from Arulnambi, the son-in-law of Uthrapathi. However, by means of adverse possession, which the plaintiff got from the year 1985, she has perfected her title and that she has been in possession and enjoyment of the same. But, in the year 2010, defendants 1 and 3 attempted to trespass into the suit property, which necessitated the filing of the suit by the plaintiff for declaration of title and for permanent injunction.

5. The 3rd defendant filed written statement in which he denied the oral agreement between the plaintiff and the 1st defendant's son-in-law. According to him, he, being the legal heir of Uthrapathi, has got title over the suit property and he is in possession and enjoyment of the same.

6. Based on the above pleadings, the Trial Court framed appropriate issues.

7. On the side of the plaintiff, the plaintiff was examined as P.W.1 and four more witnesses were examined as P.W.s 2 to 5. As many as 6 documents were marked on her side. On the side of the defendants, the 3rd defendant was examined as D.W.1 and two documents were marked as exhibits.

8. Having considered all the above, the Trial Court dismissed the suit, which was also confirmed by the Lower Appellate Court. That is how the appellant is before this Court in this second appeal.

9. Learned counsel for the appellant would submit that Exs-A1 to A6 pertain to the properties, which are situated adjacent to the suit property. As far as the suit property is concerned, the learned counsel would tacitly submit that no document, whatsoever, has been filed. He would further submit that from the oral evidence of P.W.s 1 to 5, it has been clearly established that the plaintiff has perfected her title by adverse possession and has been in possession of the suit property as on the date of filing of the suit. The learned counsel would also submit that the evidence of D.W.1 is not acceptable and that the Trial Court erred in dismissing the suit without properly appreciating the oral evidence of P.W.s 1 to 5 and that of the oral evidence of D.W.1.

10. I have considered the above submissions.

11. Admittedly, the plaintiff has not filed any document pertaining to the suit property to show either her possession or her title. The plaintiff has relied only upon the oral evidence of P.W.s 1 to 5 wherein they have stated that the plaintiff has been in possession and enjoyment of the suit property right from the year 1985. This oral evidence of P.W.s 1 to 5 has been appreciated by the Courts below and they have come to the conclusion that the plaintiff has failed to prove her possession and that she has also failed to prove that she has perfected her title by adverse possession. This is a finding of fact and there is no question of law, much less, any substantial question of law, involved. In the said finding of the Courts below, I do not find any perversity also. When the plaintiff claims that she has been in possession and enjoyment of the suit property from the year 1985 onwards, it is rather surprising that she has not filed any document to show or prove her possession for so many decades. Thus, in my considered view, the Courts below were right in holding that the plaintiff has failed to prove her possession.

12. So far as title is concerned, since possession itself has not been proved, there is no question of adverse possession and thus, the Court below was right in dismissing the suit declining to grant a decree for title also. It has not been pleaded by the plaintiff as to when and under what circumstances, the alleged oral sale agreement was entered into between her and the 1st defendant's son-in-law and whether any amount was in fact paid by her to Arulnambi pursuant to the said agreement. The pleading is so vague and on that score also, the plaintiff is bound to lose the case. At any rate, since there is no question of law, much less, any substantial question of law involved, the second appeal cannot be even admitted.

13. In the result, the second appeal is dismissed as devoid of merits. The judgment and decree of the Trial Court, as confirmed by the Lower Appellate Court, is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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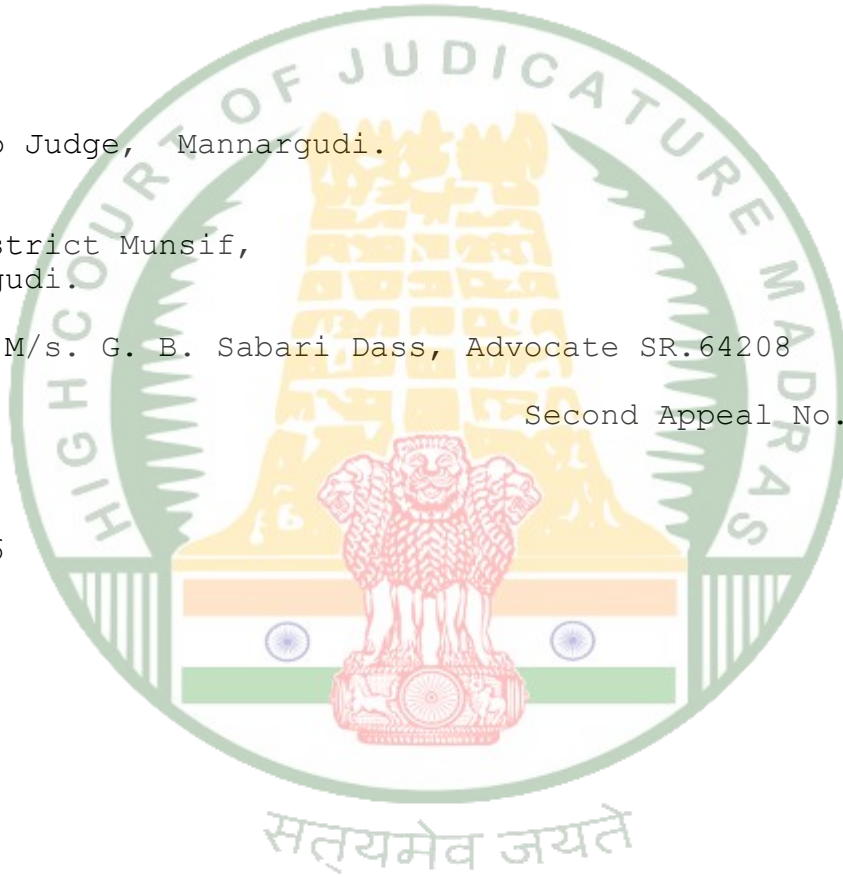
1. The Sub Judge, Mannargudi.

2. The District Munsif,
Mannargudi.

+ 1 cc to M/s. G. B. Sabari Dass, Advocate SR.64208

Second Appeal No.883 of 2015

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