

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.943 of 2015 and
M.P.No.1 of 2015

1.M.Ragupathi
2.Mrs.Rajammal
3.Mrs.Komala
4.Mrs.Navaneedham

... Appellants/defendants
2 to 5

Vs.

1.Chowdhamani @ Shanthi
2.Suresh Kumar
3.Ashok Kumar
4.Hemanth Kumar

... Respondents/Plaintiffs

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 31.03.2015 in A.S.No.54 of 2013 on the file of the learned Subordinate Judge, Poonamallee confirming the decree and judgment dated 18.02.2013 passed in O.S.No.656/2004 on the file of the learned Additional District Munsif, Poonamallee.

For Appellants : Mr.G.Dilip Kumar
For Respondents : Mr.M.V.Seshachari

JUDGEMENT

The defendants in O.S.No.656 of 2004 on the file of the learned Additional District Munsif, Poonamallee are the appellants herein. The respondents are the plaintiffs in the suit. The said suit was filed for recovery of possession and for damages to the tune of Rs.250/- per month from the date of plaint till the date of delivery of vacant possession. The learned District Munsif by decree and judgment dated 18.02.2013 decreed the suit as prayed for. As against the same, the appellants herein filed an appeal in A.S.No.54 of 2013 on the file of the learned Subordinate Judge, Poonamallee. By decree and judgment dated 31.03.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants are

before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the Appellants and the learned counsel for the respondents who has entered appearance by way of caveat and also perused the records carefully.

3.The case of the plaintiffs is as follows:-

The first plaintiff is the wife of one Mr.Ramakrishnan. One Mr.Munusamy Naidu, the husband of the first defendant (the father of the second defendant) was working as a Watchman under Mr.Ramakrishnan. Mr.Ramakrishnan purchased the suit property comprised in S.No.363/1 in the year 1962. Even at the time of purchase, there was a hut on the suit property which had been used as Watchman's residence. Mr.Ramakrishnan appointed Mr.Munusamy Naidu as Watchman and also allowed him to live in the said hut in the year 1979. Thus, Mr.Munusamy Naidu was in occupation of the said hut as a permissive occupier. But, after the demise of Mr.Munusamy Naidu, when the plaintiffs demanded to vacate hand over vacant possession of the property to them, the defendants refused to do so and instead, the defendants filed a suit in O.S.No.1197 of 1988 on the file of the learned District Munsif, Poonamallee wherein, they claimed title for the property and they also prayed for injunction to restrain the plaintiffs herein from disturbing their possession. The said suit was dismissed by the trial Court. As against the same, the defendants herein filed an appeal in A.S.No.42 of 2000 and the same was also dismissed on 18.07.2002. Thereafter, the plaintiffs herein filed the present suit in O.S.No.656 of 2004 on the file of the learned District Munsif, Poonamallee for recovery of possession and for damages for the use and occupation of the suit property by the defendants.

4.The plaintiffs have averred that, they are the absolute owners of the suit property and the defendants are therefore, liable to vacate the suit property as they continue to occupy the house, despite withdrawal of the permission.

5.The defendants contested the suit alleging that the hut on the suit property was constructed only by Mr.Munusamy Naidu and he was in possession of the property even for a long period prior to the year 1962 and hence, according to the defendants, Mr.Ramakrishnan, was not at all permitted Mr.Munusamy Naidu to occupy the suit property. Thus, according to the defendants, they have got every right to continue to be in possession of the suit property.

6.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, the third

plaintiff was examined as P.W.1 and as many as 13 documents were exhibited. On the side of the defendants, the second defendant was examined as D.W.1 and no document was marked. Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellants/defendants are before this Court with this second appeal.

7.The learned counsel for the appellants would submit that the suit is barred by limitation. According to him, even in the earlier suit in O.S.No.1197 of 1988, the title of the plaintiffs herein was denied by the defendants herein and thus, from the said date of denial, the plea of limitation started to run and thus, the present suit filed in the year 2004 is barred by limitation. This is the only substantial question of law raised by the learned counsel for the appellants across the bar.

8.The learned counsel for the respondents would submit that the suit is not barred by limitation because, in the earlier suit in O.S.No.1197 of 1988, the defendants herein never pleaded adverse possession instead, they claimed title. Therefore, according to him, the plea of limitation started to run only from the date of dismissal of A.S.No.42 of 2000 i.e., on 18.07.2002.

9.I have considered the above submissions.

10.A perusal of the documents produced would go to show that the defendants herein in the earlier suit in O.S.No.1197 of 1988 never admitted the title of the plaintiffs herein and instead, they claimed absolute title.

11.In my considered view, the person who pleads adverse possession should first of all admit the title of the other party. But, in this case, the appellants herein never admitted the title of the respondents herein and therefore, the question of adverse possession does not arise. Even in the written statement, the appellants herein have not made any plea of adverse possession. They have also not made the plea of limitation. In such view of the matter, the only question raised by the appellants before this Court is liable to be answered in favour of the plaintiffs/respondents. Thus, I do not find any question of law much less a substantial question of law warranting admission of this second appeal and therefore, this second appeal is liable to be dismissed at its threshold.

12.In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm
To

1.The Subordinate Judge,
Poonamallee.

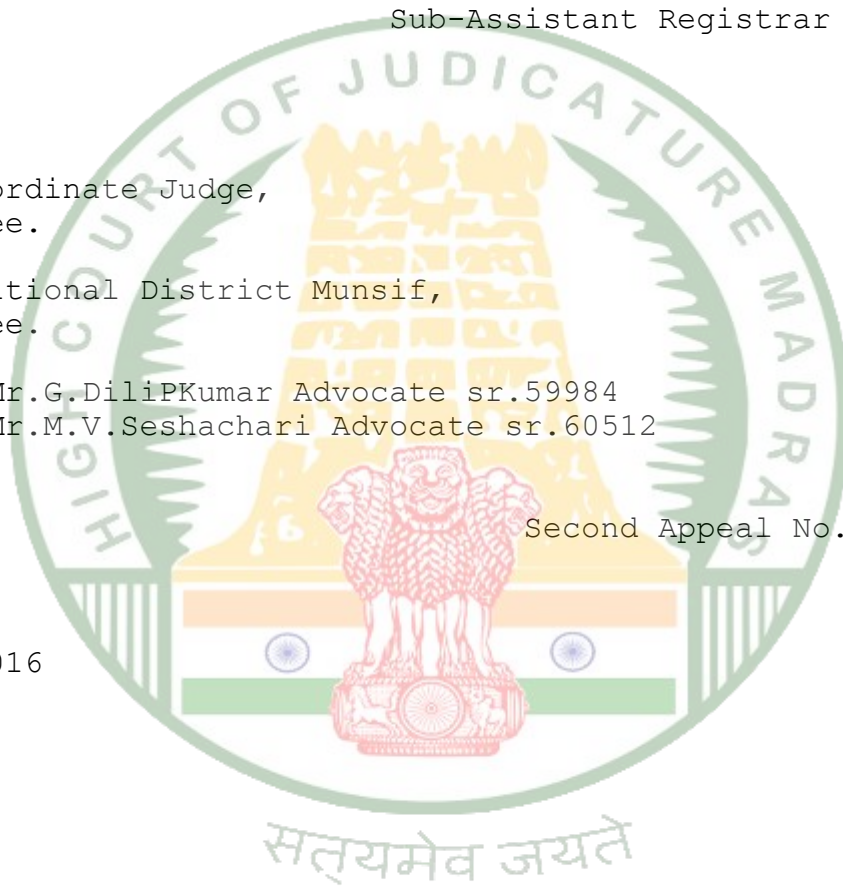
2.The Additional District Munsif,
Poonamallee.

+1 cc to Mr.G.DilipKumar Advocate sr.59984

+1 cc to Mr.M.V.Seshachari Advocate sr.60512

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