

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.989 of 2015
and
M.P.No.1 of 2015

N.Ramasamy Gounder

... Appellant/Plaintiff

Vs.

1.C.Thimmappan
2.C.Krishnaraj (Deceased)
3.C.Ramasampath
4.Shanthi
5.Minor Amirthavarshini
(Rep.by her guardian and
Next friend Mother Shanthi)

6.Krishnammal
(RR 4 to 6 brought on record as
Lrs of deceased R.2 vide order of Court
dated 13.08.2015 made in M.P.Nos.1 to
6 of 2015)

... Respondents/Defendants

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.11.2011 passed in A.S.No.30/2011 on the file of the learned Subordinate Judge, Sathyamangalam, Erode District confirming the decree and judgment dated 20.06.2008 passed in O.S.No.356/2004 by the learned District Munsif, Sathyamangalam, Erode District.

For Appellant : Mr.I.C.Vasudevan
For Respondents : Mr.K.Govi Ganesan

JUDGMENT

The plaintiff in O.S.No.356 of 2004 on the file of the learned District Munsif, Sathyamangalam is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration of title and for perpetual injunction, restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. By decree and judgment dated 20.06.2008, the

trial Court dismissed the suit. As against the same, the defendants filed an appeal in A.S.No.30/2011 on the file of the learned Subordinate Judge, Sathyamangalam. By decree and judgment dated 28.11.2011, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. Challenging the same, the appellants/defendants 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 appellant and the learned counsel for the respondents and also perused the records carefully.

3.The case of the plaintiff is that the suit property belongs to the defendants but, he entered into possession of the suit property in the year 1974 and he has been continuously in possession and enjoyment of the same. The plaintiff has constructed a farm house on the suit property in the year 1974 and thereafter, constructed a residential house in the year 1975. His possession was very well known to the defendants. Thus, his possession is adverse to the interest of the defendants and thus, he has perfected title for the suit property.

4.The defendants in the written statement contended that in respect of the property which is situated on the southern side of the suit property, earlier, there was a suit filed in O.S.No.129 of 1981 on the file of the learned District Munsif, Gobichettipalayam by the defendants herein. In that suit, the plaintiff herein was the sole defendant. In the written statement filed therein, the plaintiff herein claimed that he is in possession of the northern side of the suit property, as a cultivating tenant. Thus, according to the defendants, the plaintiff has not perfected his title at all by means of adverse possession.

5.Based on the above materials, the trial Court framed appropriate issues. On the side of the plaintiff, five witnesses were examined and 38 documents were marked. On the side of the first defendant, he was examined as D.W.1 and five documents were marked. During trial, an Advocate Commissioner was appointed by the Court and his report was marked as Ex.C.1 and the sketch drawn by him was marked as Ex.C.2.

6.Having considered all the above, the trial Court dismissed the suit which was confirmed by the First Appellate Court. Challenging the same, the plaintiff is before this Court with this second appeal.

7. In this second appeal, the learned counsel for the appellant would submit that the possession of the plaintiff is adverse to the interest of the defendants and thus, he has perfected his title. In my considered view, the same cannot be accepted, for the simple reason that, in the earlier suit in O.S.No.129 of 1981, the plaintiff herein had stated that so far as the suit property in the present suit is concerned, he had been in possession and enjoyment of the same as cultivating tenant. Having said so, it is not now open for the plaintiff to claim that he has perfected his title by way of adverse possession. This has been rightly considered by the Courts below to come to the conclusion that the plaintiff has not established his title.

8. So far as the relief of injunction is concerned, the plaintiff has not claimed possession as cultivating tenant in the present suit and instead, he has claimed possession based on his so called title. This is the reason why the Courts below have not granted the decree for injunction in favour of the plaintiff in which, I do not find any perversity. In view of the above, I do not find any substantial question of law involved at all in this second appeal warranting admission.

9. 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.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm
To

1. The Subordinate Judge, Sathyamangalam.

2. The District Munsif, Sathyamangalam.

Copy To

The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.K.Govi Ganesan, Advocate, S.R.No.60849

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.60819

Second Appeal No.989 of 2015

AK(CO)
CA(25/11/2015)