

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.751 of 2013

and

M.P.No.1 of 2013

and

M.P.No.1 of 2015

Pallikudathan @ Chenrayan

...Appellant/Defendant

Vs.

1. Nachiammal
2. Naduran Kali
3. Mari
4. Chenrayan

...Respondents/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned Judge of Subordinate Court, Tirupattur, Vellore District, dated 29.08.2012 passed in A.S.No.1 of 2010 dismissing the appeal thereby confirming the decree and judgement of learned District Munsif Court, Tirupattur, Vellore District, in O.S.No.443 of 1994 dated 29.09.2009.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr. Pa. Sudesh Kumar

JUDGEMENT

The defendant in O.S.443 of 1994 on the file of the learned District Munsif Court, Tirupattur, Vellore District is the appellant herein. The Respondent, Mr.Periyandi was the plaintiff in the suit. The said suit was filed for declaration of title and for recovery of possession. By Decree and judgement, dated 29.09.2009, the Trial Court decreed the suit. As against the same, the appellant herein filed an appeal in A.S.No.1 of 2010 on the file of the learned Subordinate Court, Tirupattur, Vellore District. The sole plaintiff, Mr. Periyandi died during the pendency of the First Appeal. Therefore, his legal representatives were added as respondents 2 to 5 in the said appeal. By decree and judgement dated 29.08.2012, the First Appellate Court dismissed the appeal thereby confirming the

decree and judgement of the trial Court. As against the same, the defendant/appellant is before this Court with this second appeal.

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

The suit property absolutely belongs to the plaintiff. Earlier, the defendant filed a suit in O.S.1213 of 1986 on the file of the learned District Munsif, Tirupattur, North Arcod District, for declaration of title and for permanent injunction. That said suit in O.S.No.1213 of 1986 was dismissed by the trial court by the decree and judgment, dated 13.11.1991, on merits. As against the same, the defendant herein filed an appeal in A.S.No.4 of 1992 on the file of the learned Subordinate Judge, Tirupattur. That was also dismissed on 28.08.1992. As against the same, the defendant herein filed a Second Appeal before this Court in S.A.No.1602 of 1992 and this Court by judgment dated 05.02.1993, dismissed the second appeal. Thus, according to the plaintiff, the defendant has got no title over the suit property. Further, there is a finding in the judgement of this Court that the defendant herein is in possession of the suit property. Therefore, the plaintiff in the suit was forced to file the present suit for declaration of title and for recovery of possession.

3. In the written statement filed by the defendant, it is stated that the suit property in O.S.1213 of 1986 and the present suit property are different. It is further stated that, so far as the present suit property is concerned, the plaintiff has got no title. It is also stated that the defendant has perfected his title by way of adverse possession.

4.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and as many as 9 documents were exhibited. On the side of the defendant, three witnesses were examined and as many as 23 documents were exhibited.

5.Having considered all the above evidences, the trial Court decreed the suit and which was confirmed by the First Appellate Court. That is how the defendant/appellant is before this Court with this second appeal.

6.In this second appeal, the following substantial questions of law have arisen for consideration:-

"1. Whether the courts below were right in holding that the plaintiff is in possession and enjoyment of the suit property, simply on the ground that the earlier suit filed in O.S.1213 of 1986 filed by the defendant herein was dismissed?

2. Whether the courts below were right in holding that the plaintiff has got title in the absence of production of any documents showing the title? "

7.I have heard the learned counsel for the appellant and the learned counsel for the respondents and I have also perused the records carefully.

8. Today, the respondents have filed M.P.No.1 of 2015 in S.A.No.751 of 2013, to allow them to lead additional evidence in this case, in respect of the title. The respondents have produced the following documents:-

"(i) Registered copy of the mortgage deed dated 15.05.1924 executed by Mr.Andi Gounder in favour of Mr.Karather Goundan;

(ii) Registered copy of the sale deed dated 12.06.1936, executed by Mr.Andi Gounder in favour of Mr.Goundappan;

(iii) Registered copy of the settlement deed dated 12.06.1936, executed by Mr.Andi Gounder in favour of Ms.Pungi Ammal and Mr.Periyandi Gounder and

(iv) Registered copy of the sale deed dated 25.06.1952, executed by Mr.Goundappan in favour of Ms.Pungiammal, Mr.Periandi and Mr.Rama Gounder."

9. The learned counsel for the appellant would submit that in the event, this Court has comes to the conclusion to allow M.P.No.1 of 2015 in S.A.No.751 of 2013, to enable the plaintiff to prove the above documents, the matter may be remanded back to the First Appellate Court. The said statement is recorded.

10. The learned counsel for the respondents would submit that the above documents could not be produced before the Courts below, since, they were not readily available at that time. Now, the respondents have obtained registration copies of those documents and produced the same before this Court. He would further submit that to prove the title of the respondents, these documents are very essential.

11. In my considered opinion, since, question of title is involved in this second appeal as one of the substantial questions of law, I am of the view that, sufficient opportunities should be given to the parties concerned to prove their respective case and for which, M.P.No.1 of 2015 in S.A.No.751 of 2013, needs to be allowed. Though, M.P.No.1 of 2015 has been filed belatedly, for reception of these documents as additional evidence, on that score, I do not want to deny the fair opportunity to the plaintiffs/respondents to prove

their title vest on these documents. At the same time, I do not want to deny the opportunity to the defendant also to prove his case. Therefore, I am inclined to remand the matter back to the First Appellate Court.

12. In the result, this second appeal is allowed and M.P.No. 1 of 2015 is disposed of, thereby setting aside the decree and judgement in A.S.No.1 of 2010 dated 29.08.2012 and further, the same is remanded back to the file of First Appellate Court, who shall receive the documents mentioned in M.P.No. 1 of 2015 in S.A.No.751 of 2013, as additional evidence, subject to proof and also permit the parties to lead further evidence, if any. The First Appellante Court shall dispose of the appeal within a period of four months from the date of receipt of the copy of this judgement. Consequently, connected miscellaneous petition in M.P.No.1 of 2013 is closed. There shall be no order as to cost.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jbm/mrp

To

1. The District Munsif,
District Munsif Court, Tirupattur.
2. The Subordinate Judge ,
Subordinate Court, Tirupattur.

1 CC to Mr. Pa. Sudesh Kumar, Advocate SR.No. 14724

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TEJ (CO)
PSI (02.06.2015)