

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.03.2015

DELIVERED ON: 18.06.2015

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.Nos.798 and 799 of 2006

&
M.P.No.1 of 2006

Amsa

... Appellant in both the appeals/
Defendant in O.S.95/97 and
Plaintiff in O.S.58/97

vs.

Subramanian

...Respondent in both the appeals/
Plaintiff in O.S.95/97 and
Defendant in O.S.58/97

Prayer in S.A.No.798 of 2006: Second Appeal against the judgment and decree dated 30.12.2005 passed in A.S.No.54 of 2005 on the file of the Principal Sub Court, Tindivanam in reversing the judgment and decree dated 08.04.2005 passed in O.S.No.95 of 1997 on the file of District Munsif-cum-Judicial Magistrate Court, Vanur.

Prayer in S.A.No.799 of 2006: Second Appeal against the judgment and decree dated 30.12.2005 passed in A.S.No.46 of 2005 on the file of the Principal Sub Court, Tindivanam in reversing the judgment and decree dated 08.04.2005 passed in O.S.No.58 of 1997 on the file of District Munsif-cum-Judicial Magistrate Court, Vanur.

For appellant : Mr.P.Mani

For respondent : Mr.A.K.Kumarasamy

COMMON JUDGMENT

S.A.No.798 of 2006 has been preferred against the decree of the lower appellate Court made in A.S.No.54 of 2005. S.A.No.799 of 2006 has been preferred against the decree of the lower appellate Court made in A.S.No.46 of 2005.

2. Subramanian, the respondent in both the second appeals filed O.S.No.95 of 1997 on the file of the District Munsif Court, Vanur against Amsa, the appellant in both the appeals, claiming a damages of Rs.15,000/- and costs. The appellant in both the second appeals filed O.S.No.58 of 1997 against the respondent herein for declaration and permanent injunction in respect of the suit property. Both the suits were tried together along with yet another suit O.S.No.50 of 1998 filed by the appellant herein against the respondent herein claiming a sum of Rs.2000/- as damages.

3. The learned trial Judge, namely the District Munsif-cum-Judicial Magistrate, Vanur decreed the suit O.S.No.58 of 1997 and dismissed the suits O.S.No.95 of 1997 and O.S.No.50 of 1998 without costs. As against the dismissal of O.S.No.50 of 1998 filed by the appellant herein, no appeal was filed by the appellant herein. As against the decree passed in O.S.No.58 of 1997, the respondent herein preferred an appeal in A.S.No.46 of 2005 and as against the decree dismissing O.S.No.95 of 1997, the respondent herein preferred an appeal in A.S.No.54 of 2005, both on the file of the Court of Principal Subordinate Judge, Tindivanam.

4. The learned lower appellate Judge (the Principal Subordinate Judge, Tindivanam), by a common judgment, allowed both the appeals, set aside the decrees passed by the trial Court in O.S.No.58 of 1997 and O.S.No.95 of 1997, dismissed the suit O.S.No.58 of 1997 and decreed the suit O.S.No.95 of 1997. As against the said decrees passed in A.S.No.46 of 2005 and 54 of 2005, the present second appeals, namely S.A.No.799 of 2006 and S.A.No.798 of 2006 respectively have been filed.

5. Both the second appeals were admitted on 26.09.1996 and, in both the second appeals, the following common substantial questions of Law were formulated:

1. Whether the lower appellate Court has erred in law in holding that the plaintiff is entitled to the suit property by adverse possession, when he claimed his title over the suit property on the basis of Ex.B3 and B4 sale deeds?
2. Whether in law the judgment and decrees passed by the lower appellate Court are sustainable, when it has failed to consider and appreciate the evidence on record in proper perspective and based its conclusion on mere surmises and conjectures and upon no evidence and in short a perverse finding?

6. The arguments advanced by Mr.P.Mani, learned counsel for the appellant and by Mr.A.K.Kumarasamy, learned counsel for the respondent were heard. The judgments of the courts below and the other materials available on record were also perused.

7. Since the parties are same in both the second appeals and the trial Court in the common judgment referred to the appellant herein as plaintiff and the respondent herein as defendant, it shall be convenient to adopt the same method of referring to the parties in this judgment; unless and otherwise specifically mentioned, the term "plaintiff" shall refer to the appellant Amsa / plaintiff in O.S.No.58 of 1997 and the term "defendant" shall refer to Subramanian, the respondent in the second appeals /defendant in O.S.No.58 of 1997.

8. The plaintiff Amsa filed the suit O.S.No.58 of 1997 against the respondent contending that she purchased the suit property from Murugesan S/o.Senkazhni and his son Ravikumar under a registered sale deed dated 04.04.1997 for a consideration of Rs.13,000/- and was in possession of the same thereafter; that Murugesan and Ravikumar had got the property in a partition and when she took possession of the suit land along with Eucalyptus trees, she cut the same and stored in the suit property; that the defendant with the help of ruling party people and using the influence, brought the Kottakuppam police to the suit land and took away the trees worth about Rs.500/-; that the police also, at the instigation of the defendants, terrorized the plaintiff by making her remain in the police station for three days from 15.07.1997 to 17.07.1997; that therefore, after issuing a notice under Section 80 CPC on 22.07.1997 to the Inspector of Police, Superintendent of Police and Collector, she was taking separate proceedings against the Government claiming damages of Rs.25,000/- and that she was constrained to file the suit against the respondent/defendant for declaration of title to the suit property and for permanent injunction not to disturb her possession.

9. The defendant filed the written statement denying the plaintiff allegations and contending that the purchase made by the plaintiff was from persons having no valid title and right to transfer and that the sale deed relied on by the plaintiff was a sham and nominal deed obtained without passing of any consideration. It was also contended by him that an extent of 70 cents including the suit property originally belonged to one Dhanapal ; that the said property was purchased by a person called Mannu under a registered sale deed dated 07.05.1973; that the defendant purchased the same from the said Mannu by a sale deed dated 20.06.1979 from which date the defendant is doing cultivation and is in possession and enjoyment of the same; that even if the plaintiff and her predecessor-in-title might have got any title to the suit property, by open and continuous possession and enjoyment of the suit property for more than 12 years by the vendor of the defendant and by the defendant, he has perfected title by adverse possession; that while so, the appellant, taking advantage of the ex parte injunction, cut and removed the Eucalyptus trees weighing more than 20 tones on 05.09.1997; that the defendant was entitled to recover Rs.15,000/- being the value of the said trees and that hence the suit filed by the plaintiff, namely O.S.No.58 of 1997 should be dismissed with exemplary cost of Rs.2000/- under Section

10. With averments similar to the averments made in the written statement filed in O.S.No.58 of 1997, the defendant filed the suit O.S.No.95 of 1997 for recovery of a sum of Rs.15,000/- as damages and for costs. The said suit was resisted by the plaintiff Amsa based on the averments made in the written statement filed therein, which are similar to the plaint averments made in her suit viz. O.S.No.58 of 1997.

11. In the trial Court, in order to substantiate her contention, besides deposing as PW1, the plaintiff examined Murugesan, Velmurugan, Gopal and Abdul Ameer as Pws 2 to 5 and produced 12 documents marked as Exs.A1 to A12. The defendant examined himself as DW1 and one Mannu as DW2 and produced 21 documents marked as Exs.B1 to B21.

12. The learned trial Judge, on an appreciation of evidence, accepted the case of the plaintiff and rejected the case of the defendant. On appeal, the learned lower appellate Judge reversed the findings of the trial Court, set aside the decrees passed by the trial Court and dismissed the suit filed by the plaintiff and at the same time decreed the suit filed by the defendant.

13. The suit property has been described as Hec. 0.25.50 equivalent to Acres 0.35 comprised in R.S.No.96/14 within specified boundaries. The same is said to be part of 70 cents comprised in Old S.No.139/15 of Mathur Village, Vanur Taluk. In the suit filed by the defendant in O.S.No.95 of 1997, the very same property is shown in the plaint schedule without furnishing the re-survey number and simply describing it to be 35 cents out of 70 cents comprised in S.No.139 /15. According to the plaintiff, she purchased the property from Murugesan S/o.Senkazhni and Ravi Kumar, S/o.Murugesan under Ex.A1 sale deed dated 04.04.1997. Of course in the plaint, she had stated that she paid a total sum of Rs.13,000/-, out of which Rs.12,000/- represented the consideration for the land and Rs.1,000/- represented the cost of the standing trees (Eucalyptus trees). However, the sale deed does not refer to any standing trees and a separate consideration being paid for such standing trees. On the other hand, the total sale consideration as per Ex.A1 has been recited as Rs.12000/-.

14. Though the plaintiff would have contended that the Eucalyptus trees she had cut and stored in the suit property were taken away by the defendant with the help of ruling party people and police and she chose to file the suit O.S.No.50 of 1998 claiming a sum of Rs.2000/- as damages, the said suit came to be dismissed and she did not file any appeal against the same. However, she chose to pursue the remedy in the other suit filed by her, namely O.S.No.58 of 1997 for declaration of title and injunction not to disturb her peaceful possession and enjoyment of the suit property. In the reply statement filed by the plaintiff, it has been stated that the suit property originally belonged to Rangan, the great grandfather of Murugesan; that the said Rangan

had two sons by names Veerampatinathan and Mari; and the said Veerampatinathan and Mari divided the properties inherited by them from their father 40 years prior to the filing of the suit; that the suit property fell to the share of Mari in the said partition; that Senkazhani was the only son of Mari and that after the death of Senkazhani the plaintiff purchased the property from Murugesan, S/o. Senkazhani and Ravikumar, son of Murugesan. Thus, the plaintiff Amsa has traced her title in clear terms.

15. So far as the branch of Veerampatinathan is concerned, according to the plaintiff he died 30 years back leaving his sons Dhanapal and Subbaiah; that while the defendant obtained a sale deed, the said Dhanapal was wrongly referred to as Dhanapal, S/o. Mari and that there was no person by name Dhanapal, S/o. Mari in the village Mathur. Such a clear genealogy brought out by the plaintiff has been reiterated by PW1 and also by PW2 Murugesan, one of the vendors under Ex.A1. The independent witnesses Pws 3 and 4 also corroborated the said evidence of Pws 1 and 2. In addition, PW5, the Village Administrative Officer has also deposed to the effect that Dhanapal, the vendor of the defendant was the son of Veerampatinathan and thus, supported the case of the plaintiff.

16. Though the defendant, who figured as DW1, would have stated that Dhanapal and Subbaiah were sons of Mari, he was not in a position to state the vendor's name of Mari. Though DW2, Mannu is said to have purchased the entire extent of 70 cents from Dhanapal, the vendor of the defendant, he would state that Mari had no brother either by name Veeampatinathan or in any other name. The sale deed under which Mannu, the vendor of the defendant is said to have purchased 70 cents has been marked as Ex.B3. In Ex.B3 the vendors names have been noted as Dhanapal and Subbaiah. Though the father's name of Dhanapal has been mentioned as Mari and Subbaiah has been referred to as his younger brother, Dhanapal has not signed and he only put a mark "keeral" and his thumb impression alone was obtained in the registration endorsement. Subbaiah has signed as V.Subbaiah. The witnesses examined on the side of the defendant admitted that if Subbaiah was the son of Mari, his initial would have been "M" and he would have signed as M.Subbaiah. Since Subbaiah has signed as V.Subbaiah in Ex.B3 and no initial has been noted before the name of Dhanapal, the contention of the plaintiff that Dhanapal and Subbaiah were not sons of Mari and they were the sons of Veerampatinathan becomes probable. It gets strengthened by the furnishing of Genealogy by the plaintiff and also the evidence of plaintiff's side witnesses. Considering the entire evidence in proper perspective and on proper appreciation of evidence, the learned trial Judge has rendered a correct finding that the vendors of Mannu under Ex.B3 were not the sons of Mari and they were the sons of Veerampatinathan. As a corollary, the learned trial Judge came to a correct conclusion on preponderance of probabilities that the oral partition alleged by the plaintiff between Veerampatinathan and Mari, sons of Rangan some 40 years prior to the filing of the suit, stands substantiated.

17. In this regard, the suit property measuring 35 cents has been shown to be lying on the south of the land belonging to the defendant. It is obvious from the description of property under Ex.A1 that the remaining extent of 35 cents belonging to the defendant is shown to be the northern boundary of the suit property. The defendant, who chose to file the suit O.S.No.95 of 1997, has not chosen to give the boundaries of the property even though he mentioned an extent of 35 cents out of 70 cents in S.No.139/15 to be the suit property in his suit. The defendant is also not cocksure of his title to the suit property derived from his vendor Mannu under Ex.B4. He was also not sure of the proper derivation of title of his vendor Mannu under Ex.B3. The same is the reason why the defendant chose to take a plea that he had perfected title to the suit property measuring 35 cents by adverse possession. It is his contention that ever since the purchase made by his vendor Mannu (07.05.1973) under Ex.B3, he (Mannu) was in possession and enjoyment of the entire extent of 70 cents; that from 20.06.1979, the date of Ex.B4 sale deed, the defendant has been in possession and enjoyment of the entire extent of 70 cents of the suit property and that therefore, he has perfected title by adverse possession to the suit property. Though he would claim that he was in possession and enjoyment of the suit property and thereby perfected title by adverse possession, he has not chosen to produce the revenue records like Adangal extract, Kist receipts etc., for the entire extent from 07.05.1973. Exs.B11 to B21 are the kists receipts produced by the defendant. They are from 1988 onwards. Kist receipts from 07.05.1973 to 03.04.1988 have not been produced. Therefore, on facts, the defendant has not substantiated his contention that he was in possession and enjoyment of the suit property for more than the statutory period and thereby perfected title by adverse possession.

18. The defendant, who claims derivation of title under Ex.B4 sale deed, could not have had the necessary animus to hold the property adverse to the real owner. As he does not admit the title of the plaintiff and the plaintiff's vendor, possession on the assumption that he is the owner will not amount to an adverse possession with necessary animus. The learned trial Judge rightly came to the conclusion that the defendant did not have title to the suit property and he had not substantiated his case of perfection of title by adverse possession. On the other hand, such a well considered finding of the trial Court was interfered with and reversed by the lower appellate Court. Disregarding the reliable evidence in the form of testimonies of PWs 1 to 5 and Ex.A1 sale deed and solely relying on the recitals found in Exs.B3 and B4, the learned lower appellate Judge came to the conclusion that the defendant had title to the suit properties and even otherwise he had perfected title to the suit property by adverse possession. Such a finding is not only infirm and discrepant, but also perverse, as rightly contended by the appellant/plaintiff.

19. The plaintiff led clear evidence to the effect that the suit property has been in her possession and enjoyment and that the defendant, with the help of party men and police tried to interfere

with her possession and enjoyment of the suit properties. Even at the time of the visit made by the Commissioner appointed by the trial Court, the property was found enclosed with fence and the gate was opened only by the son of the plaintiff. This has not been denied when specifically suggested to DW1. Even the defendant was not able to deny the fact that underground pipeline has been laid in the property of the plaintiff. All these aspects would go to show that it is the plaintiff who is in possession and enjoyment of the suit property and the defendant has disputed her title. The very fact that the defendant has taken a stand that the suit property is in his possession and the plaintiff has cut and removed the Eucalyptus trees that stood in the suit property and claimed damages in a sum of Rs.15,000/-, will make it clear that the defendant has made attempts to cause disturbance to the peaceful possession and enjoyment of the suit property by the plaintiff and in fact he had caused such disturbances. Hence, the plaintiff has substantiated her case for the grant of declaration and injunction as prayed for, whereas the defendant has failed to substantiate his case that he is entitled to the relief of recovery of a sum of Rs.15,000/- as damages.

20. The well considered finding of the trial Court in this regard has been unjustifiably and unnecessarily interfered with by the lower appellate Court and the lower appellate court erroneously held that the defendant perfected title by adverse possession, solely relying on Ex.B3 and B4 sale deed and without properly appreciating the evidence on record in proper perspective. The findings of the lower appellate Court have been made on mere surmises and conjectures. The lower appellate Court's finding is one which can be termed perverse as no reasonable person can arrive at such a conclusion on the basis of the evidence available on record. Accordingly both substantial questions of law are answered in favour of the appellant and against the respondent.

In the result, both the second appeals are allowed with costs and the decrees of the lower appellate Court dated 30.12.2005 passed in A.S.No.54 of 2005 and A.S.No.46 of 2005 are set aside. The decrees of the trial Court dated 08.04.2005 made in O.S.No.95 of 1997 and O.S.No.58 of 1997 shall stand restored and confirmed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

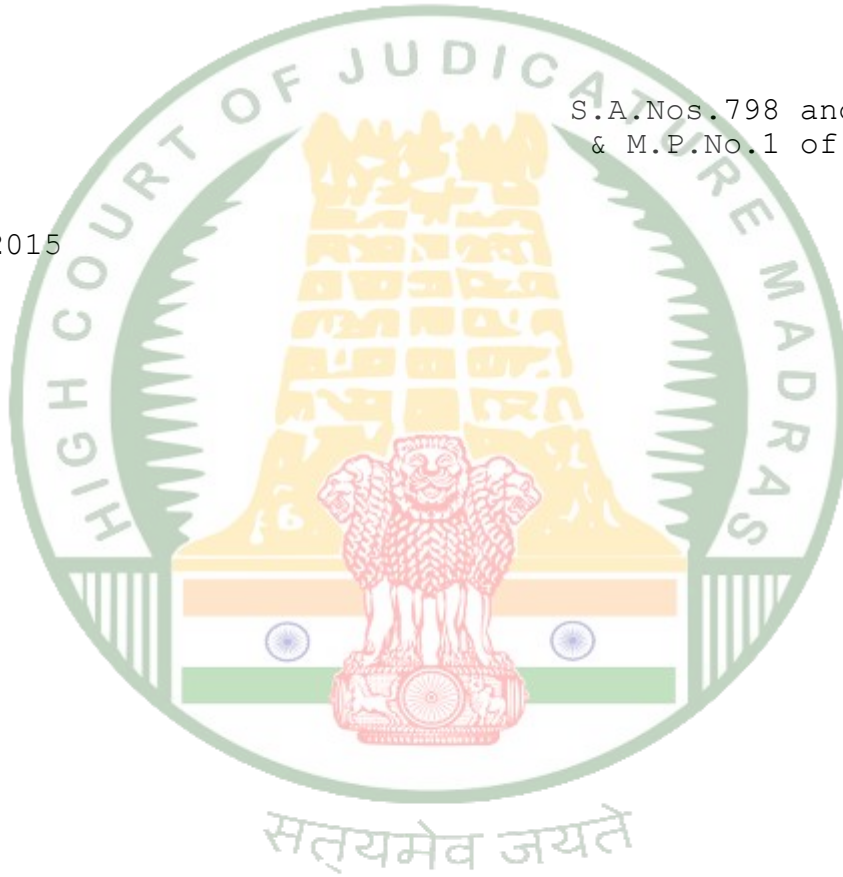
To

1. The Principal Sub Judge, Tindivanam
2. District Munsif-cum-Judicial Magistrate, Vanur
3. The section officer, VR section, High court, Madras

+2cc to Mr. P.Mani, Advocate SR 30187, 30186

S.A.Nos.798 and 799 of 2006
& M.P.No.1 of 2006

NM (CO)
RS 13.08.2015



WEB COPY