

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.01.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1092 of 2015 and M.P.No.1 of 2015

1. Damodhara Reddy
2. D.Santha
3. D.Kotti

.. Appellants/defendants

-Vs-

1. Bakkiaraj
2. Anandh Babu
3. Balaji

.. Respondents/Plaintiffs

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree passed in A.S.No.14 of 2013 dated 11.02.2015 by the learned Subordinate Judge, Tiruvallur, reversing the judgment and decree dated 27.02.2013 passed in O.S.No.581 of 2004 on the file of the learned District Munsif, Tiruvallur.

For Appellants : Mr.B.Gandhi

For Respondent : Mr.A.Palaniappan

J U D G M E N T

The defendants in O.S.No.581 of 2004 on the file of the learned District Munsif, Tiruvallur are the appellants. The plaintiffs in the suit are the respondents herein. The said suit was filed for permanent injunction to restrain the defendants from in any manner interfering with the peaceful possession and enjoyment of the plaintiffs in the suit property. The trial court, by decree and judgment dated 27.02.2013 dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.14 of 2013 before the learned Subordinate Judge, Tiruvallur. By decree and judgment dated 11.02.2015, the lower appellate court allowed the appeal, set aside the decree and judgment of the trial court and decreed the suit as prayed for. As against the same, the defendants are before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellants and the learned Counsel for the respondents. I have also perused the records carefully.

3. The case of the plaintiffs in brief is as follows:

The suit property was originally owned by one Babu Naidu. Babu Naidu had mortgaged the suit property by means of an unregistered Mortgage Deed dated 18.10.1968. From the date of the said mortgage, the plaintiffs mother Kamalammal was in possession and enjoyment of the suit property. Kamalammal executed a Settlement Deed dated 15.12.2003 in favour of the plaintiffs thereby settling the suit property in their favour. Thus, the plaintiffs had been in possession and enjoyment of the suit property. According to the plaintiffs, the defendants have got no right whatsoever over the suit property. But, they tried to disturb the possession of the plaintiffs. Therefore, the present suit was filed for permanent injunction.

4. In the written statement, the defendants contended that it is not true that the suit property was originally owned by Kamalammal. It is further stated that the Settlement Deed dated 15.12.2003 is a fabricated document and it would not convey any title to the plaintiffs, since the settler, namely, Kamalammal herself had no title to convey. It is further contended that the suit property was not in the possession and enjoyment of the plaintiffs. But after filing of the suit and after having obtained an interim injunction against the defendants, the plaintiffs trespassed into the suit property and put up a small hut and dispossessed the defendants. It is also the case of the defendants that the suit property was originally owned by Babu Naidu @ Sugunandra Babu Naidu, S/o.Narayanasamy Naidu. The 1st defendant and Babu Naidu were close friends. On account of the said friendship, Babu Naidu had authorised the 1st defendant to manage the suit property. Babu Naidu went on a pilgrimage in the year 1974 after entrusting the suit property to the 1st defendant. Thus, from the year 1974 onwards, the 1st defendant has been in possession and enjoyment of the suit property. Babu Naidu, who went on pilgrimage, had not turned at all. Thus, the 1st defendant was all along in the possession and enjoyment of the suit property and after filing of the suit as stated above, the plaintiffs trespassed into the suit property. Thus, according to the defendants, the plaintiffs are not entitled for any decree as prayed for.

5. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiffs, 3 witnesses were examined and as many as 21 documents have been marked. The Settlement Deed dated 15.12.2003

executed by Kamalammal has been marked as Ex.A.1. Ex.A.2 to Ex.A.4 are the House Tax Receipts for the hut situated on the suit property for the years 2002-2003. Ex.A.14 to Ex.A.18 are also the House Tax Receipts for the hut situated on the suit property for the years 2005 to 2009. On the side of the defendants, 3 witnesses were examined and one document, namely, Encumbrance Certificate dated 26.07.2004 was marked as Ex.B.1. Having considered all the above, the trial court dismissed the suit. As against the same, the plaintiffs filed an appeal before the lower appellate court. Before the lower appellate court, additional evidence was let in by the plaintiffs and Ex.A.22 to Ex.A.25 were received. Ex.A.22 is an Unregistered Settlement Deed. Ex.A.23 to Ex.A.25 are the House Tax Receipts for the subsequent periods. Having considered all the above, the lower appellate court decreed the suit as prayed for after having set aside the decree and judgment of the trial court. That is how, the defendants are before this Court with this Second Appeal.

6. In this Second Appeal, the learned Counsel for the appellants/defendants would submit that Ex.A.22 is an unregistered document which had been rightly rejected by the lower appellate court. The learned Counsel would further submit that the House Tax Receipts do not relate to the suit property at all and the relationship between the House Tax Receipts and the suit property has not been established by the plaintiffs at all. The learned Counsel for the appellants would also submit that the possession of the plaintiffs, though admitted by the defendants, it is only after filing of the suit. As on the date of filing of the suit, the possession of the suit property was only with the defendants. The learned Counsel would further submit that the lower appellate court has failed to appreciate that it is the legal burden on the plaintiffs to prove their possession in the suit property which they have failed miserably. For these reasons, according to the learned Counsel for the appellants, the decree and judgment of the lower appellate court deserve to be interfered with.

7. But the learned Counsel appearing for the respondents/plaintiffs would submit that though it is true that Ex.A.22 is an unregistered document and therefore, the plaintiffs cannot claim title under the said document, there is no legal bar for the court to act upon Ex.A.22 for the collateral purpose to know the nature of the possession of the plaintiffs. The learned Counsel for the respondents would further submit that the House Tax Receipts relate only to the suit property and the same has not been disputed. He would also submit that even according to the written statement, from the year 2004 onwards, the plaintiffs have been in possession and

enjoyment of the suit property. The lower appellate court has given a finding that the possession of the plaintiffs is even before the filing of the suit and therefore, according to the learned Counsel for the respondents, the lower appellate court was right in granting the decree as prayed for. At any rate, according to the learned Counsel, there is no substantial question of law involved at all in this Second Appeal. For all these reasons, according to the learned Counsel for the respondents, the Second Appeal is liable to be dismissed.

8. From the above submissions, the following substantial questions of law have come up for consideration in this Second Appeal:

1. Whether the lower appellate court was right in rejecting Ex.A.22 even for the collateral purpose to know the alleged nature of possession of the plaintiffs?

2. Whether the lower appellate court was right in holding that the House Tax Receipts Ex.A.2 to Ex.A.4 and Ex.A.14 to Ex.A.18 relate to the suit property? and

3. Whether the lower appellate court was right in holding that the plaintiffs were in possession of the suit property as on the date of filing of the suit?

9. Admittedly, from the year 2004 onwards, the plaintiffs are in possession and enjoyment of the suit property. This has been tacitly admitted in the written statement wherein the defendants have stated that after filing of the suit and after having obtained an interim injunction, the plaintiffs have trespassed into the suit property. But, unfortunately, no steps have been taken by the defendants to recover the possession from the plaintiffs on the strength of their plea that the plaintiffs have trespassed into the suit property, that too, during the pendency of the suit. Now the question is as to whether the plaintiffs were in possession and enjoyment of the suit property as on the date of filing of the suit or they trespassed into the suit property subsequent to the filing of the suit. It is essentially a question of fact. This has been answered by the lower appellate court holding that the plaintiffs were in possession and enjoyment of the suit property even on the date of filing of the suit. I do not find any perversity in the said findings so as to interfere with the same. Thus, the third substantial question of law is answered in favour of the plaintiffs.

10. So far as Ex.A.22 is concerned, admittedly, it is an unregistered document of the year 1968. The title of the person who executed the said document is not disputed. Now the question is as to whether the said document could be used for any collateral purpose. In this regard, there can be no quarrel

that the said document could be used for the purpose of knowing the nature of the possession claimed by the plaintiffs. Though this document is of the year 1968, till the year 2002, the plaintiffs have got no document to prove that Kamalammal, the Settler was in possession and enjoyment of the suit property. Ex.A.2 is the House Tax Receipt dated 28.03.2002. A perusal of the said document would go to show that the Door Number of the house is 102. This document relates back to the file of the suit. But Ex.A.3 and Ex.A.4 are House Tax Receipts dated 28.03.2002 and 02.03.2003 respectively. In these two documents, the door number of the house has been shown as 29. The other House Tax Receipts, namely, Ex.A.14 to Ex.A.18 would go to show that the Door Number of the House is 48. But no evidence has been let in to correlate these documents with the suit property. Therefore, it is difficult to give much weightage to these documents so as to hold that the plaintiffs have proved their possession in the suit property. But at the same time, the defendants have also not come forward with a clean and definite stand.

11. In the written statement, the defendants do not claim title for the suit property. The 1st defendant claims that the suit property was owned by Babu Naidu and Babu Naidu had entrusted the suit property to him in the year 1974. But, there is no document produced to prove the said entrustment. From the year 1974, until the suit was filed, to make out even a prima facie case that the 1st defendant had been in possession, no document whatsoever was filed. It is common knowledge that if the suit property remains to be a vacant site, possession can be presumed in favour of the person who has got title to it. In this case, the 1st defendant does not even claim title for the suit property. Therefore, it is not possible for this Court to presume possession in his favour. Apart from that, in the Reply Notice under Ex.A.11, the defendants have taken a contrary stand. In the said reply notice, they have stated that the original owner of the suit property had sold the same by means of an oral sale to another person from whom by means of another oral sale, the 1st defendant in turn purchased the suit property. Thus, in the reply notice under Ex.A.11, the defendants claim title whereas the same has been given up by them in the written statement.

12. Similarly, though it is stated now in the written statement that the 1st defendant has been in possession and enjoyment of the property as a trustee of its original owner Babu Naidu from the year 1974, in the reply notice, they have stated that the original owner of the suit property was one Babu Naidu and Babu Naidu had indebted to one Lakshmi Narashimhan and the suit property was thereafter purchased by Lakshmi

Narashimhan from Babu Naidu by means of oral sale and in the year 1957, he, in turn, sold the suit property to Kistappa Naicker and from whom, the 1st defendant purchased the suit property subsequently. Thus, according to the defendants case, even prior to 1957, the suit property was parted away with Babu Naidu. If that is true, the present plea of the defendants that in the year 1974, Babu Naidu had title and entrusted the suit property to the 1st defendant is a false plea. Further, the 1st defendant has not come forward to lead any evidence in respect of the said statement, instead, during his cross-examination, he has let in evidence in respect of the same, taking a third stand. According to him, his grandfather purchased the entire Vellerithangal village including the suit property from one Narayana Reddy and Narayana Reddy had handed over the possession of the suit property to the plaintiffs to run a shop in the suit property and thus, for 60 years, the defendants have been in possession. This is quite contrary to the stand taken in the written statement wherein the 1st defendant has stated that he has entered into the possession of the suit property only in the year 1974.

13. Considering all these aspects and also considering the oral evidence, the lower appellate court has come to the conclusion that the plaintiffs were in possession and enjoyment of the suit property as on the date of filing of the suit ignoring Ex.A.22, Ex.A.2 to Ex.A.4, Ex.A.14 to Ex.A.21 and Ex.A.23 to Ex.A.25. The finding of the lower appellate court on the basis of the oral evidence that the plaintiffs have been in possession of the suit property, cannot be interfered with. If really the defendants have got any title to the suit property or at least possessory title and if it is true that the defendants were dispossessed after filing of the present suit, it is always open to them to work out their remedies to establish the right they have claimed to recover possession from the plaintiffs. In this Second Appeal, the decree of the lower appellate court deserves to be confirmed only on the factual finding that the plaintiffs have been in possession and enjoyment of the suit property. Whether the plaintiffs have been kept in lawful possession and whether the defendants have got any right to recover the same from them are all legal issues involved in this matter. It is for the parties to work out the same in the manner known to law. In these circumstances, I answer the 1st substantial question of law in favour of the plaintiffs to hold that Ex.A.22 could be accepted in evidence and considered for collateral purpose to know the nature of the possession claimed by the plaintiffs.

14. So far as the second substantial question of law is concerned, I answer the same only in favour of the plaintiffs.

Thus, I find that the Second Appeal deserves only to be dismissed.

15. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Munsif, Tiruvallur.
- 2.The Subordinate Judge, Tiruvallur.

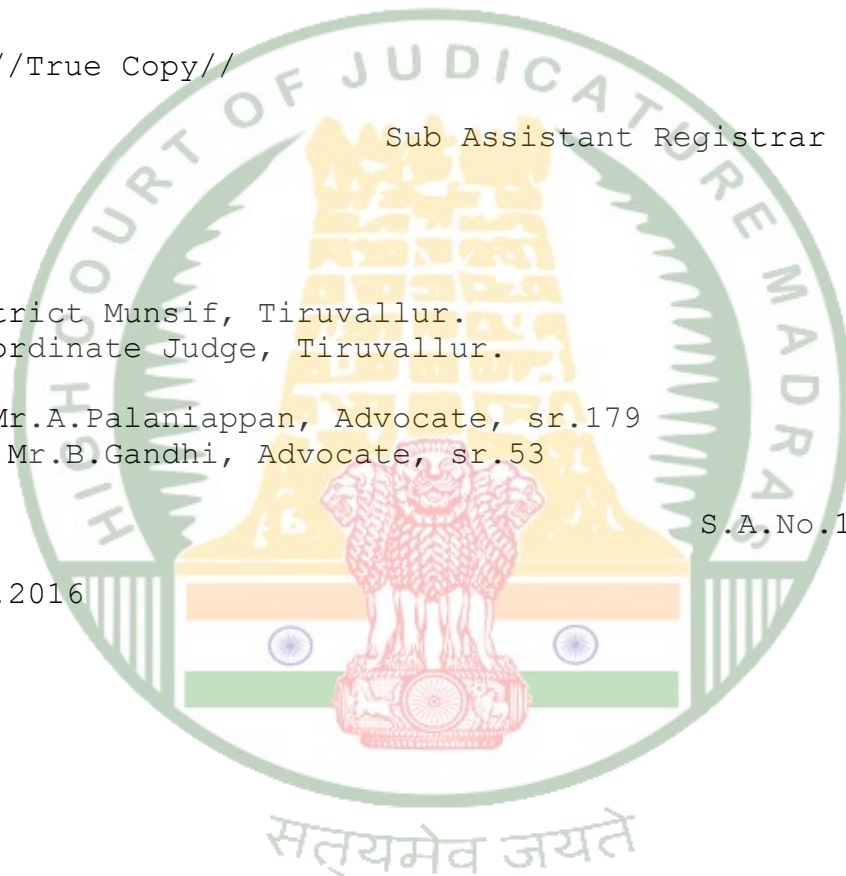
+1 cc to Mr.A.Palaniappan, Advocate, sr.179

+2 ccs to Mr.B.Gandhi, Advocate, sr.53

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