

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.3.2016

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

Second Appeal Nos. 901/2015 & 41/2016

S.A.No.901 of 2015

1. The District Collector,
Villupuram District.
2. The Superintendent of Police,
Villupuram District
3. The Inspector of Police,
Shankarapuram Police Station.
Shankarapuram Taluk,
Villupuram District.Appellants/Appellants/Defendants

Vs.

GirijaRespondent/Respondent/Plaintiff

S.A.No.41 of 2016

1. The District Collector,
Villupuram District.
Villupuram
2. The Superintendent of Police,
Villupuram District
3. The Inspector of Police,
Shankarapuram Police Station.
Shankarapuram Taluk,
Villupuram District.Appellants/Appellants/Defendants

Vs.

K.Krishnamoorthy
Prayer:

....Respondent/Respondent/Plaintiff

The judgments and decrees dated 21.12.2011 and made in A.S. Nos. 39 & 40 /2011 on the file of the learned Sub-ordinate Judge, Kallakurichi, confirming the judgement and decree dated 29.04.2010 passed by the District Munsif Court, Sankarapuram in O.S.No.665 and 677 of 2009 are under challenge in these Second Appeals.

For the Appellants :- Mr. P. H. Arvind Pandian
Additional Advocate General,
Assisted by Mr. T. Jayarama Raj,
Government Advocate (CS)

For the Respondents :- Mr.A. G. Rajan,

COMMON JUDGEMENT

Invoking the provisions of Section 100 of the Code of Civil Procedure these Memorandums of Second Appeals have been preferred by the Appellants challenging the judgments and decrees dated 21.12.2011 and made in the appeals in A.S. Nos. 39 & 40/2011 confirming the judgment and decree dated 29.4.2010 and made in the suits in O.S. Nos. 665 & 677/2009, on the file of the Learned District Munisif, Sankarapuram.

2. With the issues involved in both the appeals are one and the same and the parties to the appeals are also one and the same, both the second appeals have been consolidated together, heard jointly and disposed of in this common judgment.

3. Heard Mr. P. H. Arvind Pandian, learned Additional Advocate General, Assisted by Mr. T. Jayarama Raj, Government Advocate (CS) for the appellants in both the second appeals and Mr. A. G. Rajan, Learned Counsel appearing for the Respondents / Plaintiffs.

4. For easy reference and for the sake of convenience the Respondents herein may hereafter be referred to as Plaintiffs and the Appellants be referred to as the Defendants wherever the context so require.

5. The Plaintiffs Viz. Girija and K. Krishnamurthy are wife and husband. They both had filed the suits in O.S. Nos. 665/2009 and 677/2009 seeking the following releifs:-

- a) declaring their (plaintiffs) absolute right, title and interest over the suit property.

- b) granting the consequential relief of permanent injunction restraining the men belonged to the Defendants 2 & 3, their agents, servants and sub-ordinates from in any manner interfering with their (plaintiffs) peaceful possession and enjoyment of the suit property.
- c) (OR) in the alternative, if for any reasons, the court at the time of trial comes to the conclusion that they (Plaintiffs) are not in possession of the suit property, directing the defendants 2 & 3, their men, agents and sub-ordinates to deliver peaceful and vacant possession of the suit property to them (plaintiffs) within the time fixed by the court, failing which permitting them (plaintiffs) to take possession through the process of court.
- d) for costs

5. The description of the suit properties in both the suits are described here under:-

O.S. No. 665/2009:-

Sankarapuram Taluk, Sankarapuram Town

Natham Survey No. 216 / 4 measuring 0.00.52 sq.mt.

O.S. No. 667/2009:-

Sankarapuram Taluk, Sankarapuram Town

Natham Survey No. 216 / 3 measuring 0.00.52 sq.mt.

Present Market Value is Rs. 52,000/-.

6. Common facts in brief:

The suit property is a house site measuring 540 sq.ft. East, West 10 feet and North, South 54 feet out of 27.27 acres in Survey No. 17/1 of Sankarapuram Village.

7. The suit property originally belonged to 'Koravas' who had been in possession and enjoyment of the said extent as well as the adjacent extent for more than a century. One Venkatapathy Naidu had purchased the said land including the suit site from Venkatan, Subban, Guruvan and Gengana and Rangan under four registered sale deeds bearing document nos. 3401 to 3404 / 1910 dt. 13.10.1910.

8. Then the said Venkatapathy Naidu had sold out the said properties to one Palingulinga Gramani under a Registered Sale Deed bearing No. 4036 / 1912 dt. 18.10.1912. Then the legal heirs of Palingulinga Gramani had sold to one Vasudeva Chettiar by a Registered Sale Deed bearing Document No. 147/ 84 dt. 30.1.1984.

9. Thereafter the plaintiffs had purchased the suit property under the Registered Sale Deeds bearing Document Nos. 146/84 dt. 31.1.1984 and document no. 2528 /1995 dt. 19.10.1995 respectively from the legal heirs of Palingulinga Gramani and Vasudeva Chettiar for the consideration of Rs. 20,785/- and Rs. 49,700/- respectively and after their purchase they have been in continuous and uninterrupted possession and enjoyment of suit property till date. Even prior to their purchase their predecessors in title had been in continuous possession and enjoyment of the said property.

10. The suit properties in both the suits are situated in the south east part of Survey No. 17/1 abutting to Pootai Road which is also form south part of Survey No. 17/1 and southern boundary of Survey No. 17. The old survey no.17/3 measuring 0.22 cents alone represents the police quarters, situated in eastern part of survey no. 17/1 and north east side of suit property.

11. The larger extent 27.27 acres comprised in old survey no. 17/1 was splitted into number of Natham Survey Fields and renumbered under Natham Survey Scheme. In the said Natham Survey the plaintiffs' house site (suit property) and adjoining individual house sites were remeasured separately and formed as sub-divisions 3 to 6 in new Nathan Survey Field No. 216. The suit property is comprised in new Natham Survey 216/4 and 216/3 and correlates to old Survey No. 17/1 part in all respects.

12. The police quarters comprised in 216/2 in New Natham survey field correlates to old Survey No. 17/3 in all respects. The special Thalsildar, Natham Settlement Kallakurichi had also issued the holdings registering certificates to the Plaintiffs for New Survey No. 216/4 measuring 00.52 sq.mt in his proceedings Ref. L. Dis. (A1) 356/94 dt.31.5.94.

13. The plaintiffs were put to understand that somebody had played fraud and rounded off the patta sub division Nos.216/3 and made it to appear that only sub divisions available are No.216/1 and 216/2, both of which represent only police quarters in the whole extent. Various representations, made by the plaintiffs to the defendants as well as to the revenue officials to set right the things, were ended in vain. On their applications the Assistant Settlement Officer, Thiruvannamalai, after ascertaining the facts had passed an order on 26.03.1988 restoring the Survey Nos.216/3 and 216/4, and issued patta and ordered to carry out necessary changes in the revenue records of village and taluk office.

14. The men belonging to the defendants 2 and 3 have threatened the plaintiffs with dire consequences not to put up any construction over the suit properties.

15. That on 01.06.2002, when the plaintiffs made arrangements to put up a basement for the construction, the defendant's men had prevented them disputing their rights and title and hence they were constrained to file the suits to declare their title to the suit properties and also for the consequential relief of permanent injunction.

16. The third defendant alone had filed his written statement which was adopted by the defendants 1 and 2. While denying the allegations made in the plaints they have contended that the Assistant Settlement Officer, Thiruvannamalai had wrongfully with the influence of the plaintiffs, without giving any notice or without hearing them, who are in actual possession and enjoyment of the suit properties had passed an order on 26.03.1988 restoring the sub division Nos.216/3 and 216/4 and ordered to make necessary changes in the revenue records. The order of the Assistant Settlement Officer according to them is not valid.

17. In so far as the Natham Survey Nos.216/1 & 216/2 in old Survey Nos.17/1 & 17/3 are concerned, the defendants and their men alone have been in possession and enjoyment for more than 70 years and thereby they have prescribed title by adverse possession. Around the suit property in eastern and northern side, the Police Quarters building are in existence and that the suit property has been in possession and enjoyment of the defendants and not in the possession of the plaintiffs.

18. Based on the pleadings of the parties to the suit the learned District Munsif, Sankarapuram had formulated the following issues:

1. Whether the plaintiff is the absolute owner of the suit property?
2. Is it true to say that the suit property was allotted for Police Quarters for about 70 years ago?
3. Whether the plaintiffs are in possession and enjoyment of the Suit property?
4. Whether the plaintiffs are entitled to ask for the relief of declaration? and
5. Whether the plaintiffs are entitled for permanent injunction as prayed for?

19. The plaintiffs in order to substantiate their case had exhibited eight documents on their side, besides the examination of the plaintiff Krishnamurthy as P.W.1, one Mr. Haridoss was examined as P.W.2. No documentary evidence was adduced, on behalf of the defendants, however, one Mr. Raja Inspector of

Police attached to Sankarapuram Police Station was examined as D.W.1

20. Based on the oral and documentary evidence, the learned District Munsif, Sankarapuram had proceeded to allow both the suits granting the relief of declaration as well as perpetual injunction, as prayed for by the plaintiffs.

21. It is manifested from paragraph 16 of the Judgment of the trial Court that D.W.1's evidence was not in favour of the defendants. On the other hand it was in favour of the plaintiffs' case. Based on his candid admission, the trial Court had concluded that excepting the plaintiffs 'no one of others is having any right, title or interest over the suit property.

22. The first Appellate Court had given its concurrence to the Judgment of the trial Court which resulted in the dismissal the First Appeals preferred by the defendants.

23. This is the second innings made by the defendants by placing these Second Appeals before this Court.

24. Before entering into the merits of the case, this Court would like to make it clear that no substantial question of law is involved to entertain the Appeals, as contemplated under Section 100 of the Code of Civil Procedure. Further, the substantial questions of law formulated by the defendants in their memorandum of Second Appeals are absurd and none of them is qualified to be termed as substantial question of law.

25. Sub Section (1) of Section 100 CPC enacts that an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. It is implied from the language coined in sub section (1) of Section 100 CPC that if the substantial question of law is not involved and if the High Court is not satisfied the Second Appeal cannot be entertained and shall have to be either rejected or dismissed at the threshold. As contemplated in sub section (4) of Section 100 CPC, if the High Court is satisfied that a substantial question of law is involved, it shall formulate that question.

26. In so far as these Second Appeals are concerned, this Court is of firm view that no substantial question of law is involved.

27. Mr. P.H.Aravind Pandian, learned Additional Advocate General while advancing his arguments has made reference to the provisions of Sections 79 and 80 of the Code of Civil Procedure and has contended that no notice as required under Section 80 CPC was given to the defendants by the plaintiff at the time of

filing of the suits. Secondly he would contend that the suit itself was barred by limitation under Article 58 of the Limitation Act, 1963.

28. With reference to the issuance of notice under Section 80 CPC, this Court would like to point out that it is the rudimentary principle of law that whenever a person happens to file a suit against the Government, or against a public officer, a statutory notice under Section 80(1) CPC shall have to be given to the Government against whom the suit is filed. Sub Section (1) of Section 80 CPC envisages that save otherwise provided in sub section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of:-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(c) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;

(d) in the case of a suit against any other State Government a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at this office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left. In case, the plaintiff needs an urgent or immediate relief against the Government or any public officer in his official capacity, the suit must be instituted with the leave of the Court, without serving any notice as required by sub section (1), as contemplated under sub section (2) of Section 80 CPC.

29. In so far as the present suits are concerned they would not have been entertained or admitted by the trial Court unless a petition under Section 80(2) CPC is filed seeking leave of the Court to file the suit without serving notice on the defendants as required by sub section (1) of Section 80 CPC.

30. Learned Additional Advocate General had adverted to that both the suits were barred by limitation under Article 58 of the Limitation Act, 1963. No doubt the provisions Article 58 of the Limitation Act, 1963 apply for suits relating declaration of title and the consequential relief of permanent injunction.

31. In so far as this suit is concerned, the cause of action arose on 25.03.2002, when the plaintiffs had made a representation to the Forest Minister, and on 01.06.2002, when the plaintiffs were prevented by the defendants and their own men from putting up the basement. According to Article 58 of the Limitation Act, 1963, the starting point of limitation is, when the right to sue accrues. The period of limitation is three years, within which this was filed.

32. As it is seen from the cause of action paragraph of the plaints, the defendants, their men were said to have been prevented and threatened the plaintiffs, when they were making arrangements to put up basements for their proposed construction i.e. on 01.06.2002. It is significant to note here that the suits were filed in the year 2002 i.e. on 26.06.2002. Therefore, it could be easily inferred that the suits were not barred by limitation.

33. Learned Additional Advocate General while advancing his arguments on behalf of the defendants/appellants has taken this Court through the testimonials of D.W.1, as it is seen from the running page No.26 of the typed set of papers.

34. The learned District Munsif, Sankarapuram has precisely made reference to the evidence of D.W.1, Inspector of Police attached to the Sankarapuram Police Station. Probably he may not be knowing the full history of the case and therefore on perusal and on considering his evidence, the learned District Munsif, Sankarapuram had indicated that the evidence of D.W.1 need not be relied upon in this case, since he had not at all given any evidence to strengthen their side. Further, he goes on to add that D.W.1 himself had clearly admitted in his cross-examination that the suit properties were belonged to the plaintiffs viz., Tmt. Girija and her husband Krishnamirthy. In this connection the learned trial Judge had observed that the general principle is "possession follows title". He has further observed that from Ex.A1 to Ex. A10 the plaintiffs had established their title over the suit properties and had also explained as to how the plaintiffs had acquired title over the suit properties.

35. Finally, this Court would like to place it on record that concurrent findings of fact cannot be interfered with in Second Appeal, unless they are perverse. It may also be relevant to note here that the High Court in Second Appeal cannot re-

appreciate the evidence and substitute its own view of evidence, particularly when the findings of the first Appellate Court is based on material on record. Both the trial Court and the first Appellate Court have given their concurrent findings saying that the plaintiffs are entitled for a declaratory decree in respect of their title, interest and possession over the suit properties and therefore, this Court is of the firm view that the Judgments and decrees of both the Courts below do not require the interference of this Court.

36. In the result, Second Appeal Nos.901 of 2015 and 41 of 2016 fail and they are dismissed, accordingly. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Sub Court,
Kallakurichi.

2.The District Munsif,
Sankarapuram.

+2cc to Mr.A.G.Rajan, Advocate Sr. 17074

Second Appeals Nos. 901/2015 & 41/2016

GP(CO)
VR(02/11/2017)

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