

THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 08.12.2016
PRONOUNCED ON : 20.12.2016
CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.Nos.274 & 536 of 2011
and CMP.No.18361 of 2016
and M.P.Nos.1 & 1 of 2011

1.Easwari
2.M.Kumar

... Appellants in
S.A.No.274 of 2011 and
Respondents in
S.A.No.536 of 2011/
Defendants in OS.No.271/06

Rajamaniammal

Vs.

... Respondent in
S.A.No.274 of 2011 and
Appellant in
S.A.No.536 of 2011/
Plaintiff in OS.No.271/06

Second Appeals are filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 07.12.2010 made in A.S.No.66 of 2009 and 44 of 2010 respectively on the file of the Court of the Principal Subordinate Judge, Tindivanam, confirming the judgment and decree dated 17.11.2009 made in O.S.No.271 of 2006 on the file of the Principal District Munsif, Tindivanam.

For Appellants in
S.A.No.274 of 2011 and
Respondents in
S.A.No.536 of 2011 : Mr.S.V.Jayaraman
Senior Counsel
for Mr.T.Dhanasekaran

For Respondent in
S.A.No.274 of 2011 and
Appellant in
S.A.No.536 of 2011 .. Mr.Antony Jesus

COMMON JUDGMENT

The defendants in O.S.No.271 of 2006 and the plaintiff in O.S.No.271 of 2006 have impugned in these second appeals the judgment and decree dated 07.12.2010 made in A.S.No.66 of 2009 and 44 of 2010 respectively on the file of the Principal Subordinate Court, Tindivanam, confirming the judgment and

decree dated 17.11.2009 made in O.S.No.271 of 2006 on the file of the Principal District Munsif, Gingee.

2. Both second appeals have been admitted and the following substantial question of law is formulated for consideration in these second appeals.

" Whether the courts below have erred in law in not accepting the case of either of the parties and hence, their findings are misdirected against the evidence on record and perverse."

3. The parties are referred to as per their ranking in the trial Court, for the sake of convenience.

4. The plaintiff has laid the suit seeking for a declaration that she has possessory right over the suit property and also, for the relief of permanent injunction.

5. In the written statement, the defendants have made a counter claim asking for declaratory relief as regards their title/ right in respect of the suit property and also, for recovery of possession of the suit property from the plaintiff/trespassers.

6. The suit property is stated to be situated in Nadukuppam Village in Survey No.193/2 admeasuring 0.85 cents within the specific boundaries. Now, according to the plaintiff, the property situated to the South of the suit property was in the possession and enjoyment of Rangaiyan and he and his predecessor in interest have been in possession and enjoyment of the suit property for the past thirty years and according to the plaintiff, she had purchased the property situated to the south of the suit property from Rangaiyan under the sale deed dated 29.06.1989 and inasmuch there was no title document in respect of the suit property for Rangaiyan, according to the plaintiff, she had also purchased the suit property from Rangaiyan on the same date and accordingly, she has been in possession and enjoyment of the suit property and further, according to the plaintiff, her two sons viz., Manikandan and Murugan had occupied a portion of the suit property and put up construction and residing therein and further, according to the plaintiff, in one portion of the suit property, her daughter Alamelu is residing by putting up thatched construction and in the remaining portion, the plaintiff is in possession and enjoyment and thus, according to the plaintiff, she is entitled to obtain the relief of declaration of her possessory right in respect of the suit property and inasmuch the defendants, without any

authority, interfered with her possession and enjoyment, she has been constrained to lay the suit against the defendants for appropriate reliefs.

7. Per contra, the defendants, after denying the case of the plaintiff in toto, contended that the first defendant's husband Madhavan had purchased an extent of 5 acres and 4 cents in survey No.93/3 within the specific boundaries from one Namachivayam under the sale deed dated 23.01.1989 and prior to their purchase, Namachivayam was in possession and enjoyment of the suit property and further, according to the case of the defendants, the plaintiff's son Murugan and Son-in-law viz., Sundaramoorthy had illegally trespassed into the suit property and put up house construction and they are not entitled to the suit property and hence, according to the defendants, the trespassers are liable to hand over the possession of the occupied portion of the suit property to them and hence, they have sought necessary reliefs by way of counter claim in their written statement.

8. The courts below have found that both the plaintiff and the defendants have failed to establish their right over the suit property and accordingly, dismissed both the plaintiff's suit as well as the counter claim sought for by the defendants.

9. The plaintiff has not pleaded as to how her vendor Rangaiyan had acquired title to the suit property. The plaintiff has not clearly put up a case as to under what mode or deed, she has acquired the suit property from Rangaiyan i.e. Whether under a oral sale or a written sale deed or otherwise or under the sale deed dated 29.06.1989. The plaintiff has pleaded that her seller Rangaiyan and his predecessor in interest had been in possession and enjoyment of the suit property as described in the plant for several years. However, as regards the possession and enjoyment of Rangaiyan or his predecessor in interest in respect of the suit property, as rightly found by the courts below, no document whatsoever has been produced. Now, according to the plaintiff, the suit property is situated within the specific boundaries admeasuring 0.85 cents. The courts below have found that as per the commissioner report in ground only an extent of 0.75 cents is available. Further, the courts below have also found that the documents marked on the side of the plaintiff do not disclose that the suit property, as described in the plaint, is in the plaintiff's possession and enjoyment. When, even according to the plaintiff's case, the various portions of the suit property had been occupied by her sons and daughter and they are residing in their respective portions by putting up construction, it has not been explained by the plaintiff as to how, she is entitled to seek possessory right independently for the entire extent of the suit property. The sons and daughter of the plaintiff have not been arrayed as

parties in the present suit.

10. Further, it could also be seen that the documents produced by the plaintiff are not shown to be related to the suit property as described in the plaint. In this connection, on a perusal of the documents filed by the plaintiff, we can see that the plaintiff has filed various electricity charge receipts, house tax receipts and kist receipts. The courts below have found based upon evidence of the staff of the Panchayat union examined as DW3, the house receipts could not be correlated to the suit property. No exception could be taken to the above findings of the courts below. It is found that at the relevant point of time as deposed by DW3, the house tax receipts could not have been issued by the Panchayat concerned. Further, from the documentary evidence adduced on the side of the plaintiff, it cannot be gathered that the entire extent of the suit property i.e. 85 cents is in the possession and enjoyment of the plaintiff. Even admittedly, the plaintiff's vendor had no document of title in respect of the suit property. As adverted to earlier, the plaintiff has not placed any document to show that her vendor or his predecessor in interest had been in possession and enjoyment of the suit property as described in the plaint.

11. In such view of the matter, on the basis of the electricity charge receipts, house tax receipts, etc., we cannot not safely conclude that the suit property, as described in the plaint, is in the possession and enjoyment of the plaintiff. The plaintiff has not placed any revenue documents to hold that her possession and enjoyment of the suit property had been recognised by the revenue authorities. Even the revenue documents, as such, would not by itself be sufficient to hold that the plaintiff has legal title and possession in respect of the suit property.

12. The courts below have found that the physical features of the suit property as noted by the advocate commissioner do not correlate with the description of the suit property given in the plaint. Now, according to the plaintiff, the suit property is situated to the South of Punja belonging to the defendants, to the North of punja belonging to the plaintiff, to the East of Kanthadu-Nadukuppam Road and to the West of punja belonging to Ayanar. Therefore, it could be seen that the plaintiff, at the best, would be entitled to the property situated to the South of the suit property, as according to her, she has purchased the same under the sale deed dated 29.06.1989. Though it is contended that along with the said property, the plaintiff had also purchased the suit property from Rangaiyan, when it is found that Rangaiyan had no title to convey the same to the plaintiff and further, when the plaintiff has not also placed any material to hold that Rangaiyan was in possession and

enjoyment of the suit property as described in the plaint and when it is found that the plaintiff had purchased only the property situated to the South of the suit property from Rangaiyan under the above mentioned sale deed, as rightly found by the courts below, when there is nothing to show that the documents produced by the plaintiff marked as Exs.A1 to 29 relate to the suit property and when admittedly, the property to the South of the suit property had been purchased by the plaintiff from Rangaiyan and in such circumstances, when Exs.A1 to 29 are not shown to be having any nexus to the property situated to the south of the suit property purchased by the plaintiff from Rangaiyan, as rightly found by the courts below, no safe credence could be attached Exs.A1 to 29 to hold that the suit property as described in the plaint is in the possession and enjoyment of the plaintiff. Equally, as regards the plea of adverse possession set up by the plaintiff, it has to be held that the plaintiff has failed to establish the above said plea by adducing acceptable and reliable evidence for enabling the court to hold that the plaintiff has perfected her title to the suit property as described in the plaint by way of adverse possession. In view of the above position, no exception could be taken to the findings of the courts below for rejecting the plaintiffs case. The plaintiff has miserably failed to establish her legal title, possession and enjoyment of the suit property and hence the plaintiff cannot be granted the reliefs sought for.

13. As regards the case of the defendants, though they had claimed to have purchased an extent of 5 acres 4 cents from Namachivayam in survey 93/3 within the specific boundaries, as rightly found by the courts below, the documents produced by them and marked as Exs.A1 to 21 are not sufficient to hold that they pertain to the suit property as described in the plaint. Now, according to the defendants, the suit property, as described in the plaint, had been purchased by them from Namachivayam under the sale deed dated 23.01.1989, which has been marked as Ex.B1. Under Ex.B1, as found by the courts below, the defendants have purchased an extent of 4.80 acres. Therefore, the courts below have found that in the absence of any material to hold that the property purchased by the defendants under Ex.B1 also comprised the suit property, it could be seen that the documents produced on behalf of the defendants would not be adequate to come to the conclusion that they also relate to the suit property. The defendants have not clearly pleaded or established as to how Namachivayam had acquired legal title to the suit property. Though the documents produced on behalf of defendants could only be sufficient to hold that their predecessor in interest viz., Namachivayam had been in possession and enjoyment of 4.80 acres in survey 93/3, the said documents could not be safely taken into account for

holding that the suit property has also been in possession and enjoyment of Namachivayam as put forth by the defendants and thereafter, by the defendants or that the title of the suit property vests with them.

14. The courts below have also found as seen earlier, in between the defendants property of an extent of 4.80 acres and the suit property there is a ridge, in which, Palmyra, eucalyptus and Neem trees are located. It is also found from the commissioner's report that the suit property is lying at a lower level i.e. 3' below the property of the defendants. Further, the boundary description of the property purchased by the defendants under Ex.B1 and the boundary description of the suit property as found in the plaint do not tally. Now, according to the defendants, they had purchased the property under Ex.B1 situated to the West and North of Odai, south of Kulam and East of Road. On the other hand, the boundary recitals of the suit property are found to be different and in such view of the matter, the case of the defendants that under Ex.B1, they had purchased the suit property also, as such, cannot be accepted. Accordingly, it could be seen that the courts below have held that from the documents produced on behalf of the defendants, it cannot be safely concluded that the suit property is in the legal possession and enjoyment of the defendants or that the defendants have legal title in respect of the same. Equally, the defendants have not established their plea of adverse possession in respect of the suit property by adducing acceptable and reliable evidence.

15. The main point put forth by the respective counsel is that the courts below have negated the reliefs sought for by both parties and the said approach of the courts below are against the law and also mis directed against the evidence on record and the courts below should have either found that the plaintiff or the defendants are in the possession and enjoyment of the suit property and therefore, according to them, the courts below have failed to uphold the possessory title /title perfected by the respective parties in respect of the suit property.

16. However, in the light of the above discussions, when both parties claim declaratory relief in respect of the possessory right/title over the suit property as described in the plaint respectively and when the documents projected by them respectively do not correlate to the suit property and when it is also found that the suit property has not been properly described and that the predecessor in interest of both the plaintiff and the defendants are not shown to have been in possession and enjoyment of the suit property or having any legal title in respect of the suit property, it could be seen that the courts below have rightly negated the reliefs sought

for by the both parties and no exception could be taken in respect of the same. Therefore, the contention that the courts below have erred in law in not accepting the case of either of the parties as regards their title and possession and enjoyment of the suit property and their findings are misdirected against the evidence on record and hence, perverse cannot be countenanced.

17. In the light of the above discussion, the decision relied on by the plaintiff 1968(3) SCR 163 (Nair Service Society Ltd. V. K.C.Alexander and others) is not applicable to the facts and circumstances of the present case.

The substantial question of law formulated in these second appeals is accordingly answered against the plaintiff in O.S.No.271 of 2006/appellant in S.A.No.536 of 2011 and the defendants in O.S.No.271 of 2006/appellants in S.A.No.274 of 2011. Resultantly, both second appeals fail and accordingly, the second appeals are dismissed. No costs. Consequently, connected civil miscellaneous petition in CMP No.18361 of 2016 and miscellaneous petitions in M.P.Nos.1 to 1 of 2011 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sms
To

1. The Principal Subordinate Judge,
Tindivanam.

2. The Principal District Munsif, Gingee.

3. The Section Officer VR Section
High Court Madras

+1 cc to Mr.T.Dhanasekaran Advocate sr 74592

S. A.Nos.274 & 536 of 2011
and CMP.No.18361 of 2016
and M.P.Nos.1 & 1 of 2011

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