

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2016

PRONOUNCED ON : 28.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.356 of 2011

1. M.Jambunathan

2. J.Vasanthi

... Appellants / Defendants

Vs.

Nandavanam Trust,
Poovanur,

Rep. By its Trustee Meiyappan ... Respondent/ Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.04.2010 made in A.S.No.58 of 2009 on the file of the Subordinate Judge, Mannargudi, confirming the Judgment and Decree dated 04.03.2009 made in O.S.No.30 of 2007 on the file of the Principal District Munsif Court, Mannargudi.

For Appellants : Mr.A.Meenakshisundaram

For Respondent : Mr.K.K.Ramakrishnan
for P.T.Ramadevi

JUDGMENT

Challenge in this second appeal is made by the defendants against the judgment and decree dated 13.04.2010 made in A.S.No.58 of 2009 in the file of the Subordinate Court, Mannargudi, confirming the judgment and decree dated 04.03.2009 made in O.S.No.30 of 2007 on the file of the Principal District Munsif Court, Mannargudi.

2. The suit has been laid by the plaintiff Trust for recovery of possession and mesne profits.

3. Asserting that the suit property belongs to the plaintiff Trust and alleging that inasmuch as the defendants have unauthorisedly encroached into the suit property, the plaintiff Trust has laid the suit against the defendants for recovery of possession of the suit property.

4. It is not disputed in the written statement specifically that the suit property does not belong to the plaintiff Trust. The only defence put forth is that the plaintiff trustee's father had alienated the suit property to one Uthrapathy and the said Uthrapathy in turn had alienated the suit property in favour of the second defendant on 19.05.1997 and therefore, the defendants have not encroached into the suit property as put forth by the plaintiff Trust and the suit is liable to be dismissed.

5. The above case of the defendants has been stoutly challenged by the plaintiff.

6. The Courts below, based upon the evidence adduced by the respective parties, have found that the suit property has been endowed to the plaintiff Trust, particularly taking into account of the suit filed between the trustees in O.S.No.37 of 1959 on the file of the Subordinate Court, Kumbakonam and the first appeal preferred in A.S.No.128 of 1996 on the file of the District Court, Thanjavour. Further, the Courts below have also taken into consideration, the agreement entered into between the Trustees Venkatachalam Chettiyar and Narayanan Chettiar on 19.10.1964 and the copy of the same has been marked as Ex.A1 and based upon the said documents and the contents found therein have found that the suit property had been endowed to the plaintiff Trust and that the suit property is not the private property of the Trustees. As regards the above findings of the Courts below, nothing has been pointed out by the counsel for the appellants to warrant any interference.

7. As adverted to earlier, the defendants have taken a plea that Uthrapathy has purchased the suit property from the plaintiff trustee's father. In other words, according to the defendants, inasmuch as the suit property is the private property of the plaintiff trustee's father Meyyappa Chettiyar, he had conveyed the suit property to Uthrapathy. However, it has not been mentioned on what date and under what mode Meyyappa Chettiyar had conveyed the suit property to Uthrapathy. The sale deed said to have been executed by Meyyappa Chettiyar in favour of Uthrapathy conveying the suit property has not been marked. No other acceptable document whatsoever has been filed to hold that Uthrapathy has any connection in respect of the suit property. In this connection, Uthrapathy, who has been examined as DW2, has also in his evidence admitted about the existence of the plaintiff Trust and that the Trust properties cannot be alienated. Further, he has not also substantiated by adducing acceptable and reliable evidence that Meyyappa Chettiyar had alienated the suit property in his favour.

8. The first defendant examined as PW1 has also admitted the existence of the plaintiff Trust and that the plaintiff Trust owns various lands. It is also admitted that Uthrapathy has no connection whatsoever with the plaintiff Trust. Having pleaded that Uthrapathy had purchased the suit property from the plaintiff trustee's father the defendants have not evinced interest to establish the same. Further, having pleaded that the second defendant had purchased the suit property from Uthrapathy, the defendants have also not produced the sale deed pertaining to the same.

9. On the other hand, they have chosen to mark Ex.B1 sale agreement dated 19.05.1997 said to have been executed by Uthrapathy in faovur of the second defendant. It has also been found that no material is produced to hold as to how Uthrapathy had derived title to the suit property. Therefore, it could be seen that quite inconsistent to the case put forth by them, the defendants have now placed only the sale agreement said to have been executed by Uthrapathy in favour of the second defendant in respect of the suit property. It has not been explained as to how the document Ex.B1 would convey title in respect of the suit property in favour of the second defendant.

10. That apart, it has not been explained as to why the defendants have not taken further steps to get pucca conveyance from Uthrapathy or as to why Uthrapathy has not take proper conveyance from Meyyappa Chettiyar in respect of the suit property so far. It is therefore evident that as the suit property had been endowed to the plaintiff Trust, as found by the Courts below, it could be seen that the same could not be alienated by any one including the trustees. Therefore, it could be seen that the documents placed by the defendants would not in any manner advance their case that they have title to the suit property. The Courts below have correctly held that the revenue records projected would not be sufficient to hold that the suit property is the personal property of the Trustees. In any event, when no legal conveyance has been projected by the defendants to uphold their claim of title in respect of the suit property, it could be seen that the defendants have no right or title over the suit property in any manner.

11. As found earlier, the findings of the Courts below upholding the plaintiff trust title to the suit property are not shown to be erroneous and misdirected against the provisions of law. However, the counsel for the appellants/defendants would contend that in any event, the defendants have perfected their title to the suit property by adverse possession on account of long and continuous enjoyment beyond the statutory period asserting title over the same to the knowledge of the plaintiff Trust. However, the plea of adverse possession has not been raised in the written statement. That apart, there is

also no material placed by the defendants to uphold their claim of adverse possession. Thus their case of adverse possession cannot be countenanced. In such circumstances, the plea of limitation now taken by the defendants for non suing the plaintiff also cannot be accepted.

12. The counsel for the appellants placed reliance on the decision reported in (2013) 8 MLJ 142 (Balasubramania Nainar (Deceased) and Ors V. Ashok Kumar and Ors). The counsel for the respondent placed reliance on the decision reported in (2000) 3 Supreme Court Cases 708 (Roop Singh (Dead) Through LRS V. Ram Singh (Dead) Through Lrs) and 2010-4-L.W.35 (Syed Dowlath Hussain (Died) & 6 others (Brought on record as L.Rs of the sold appellant vide order dated 27.10.1999 in CMP No.2979/98) V. Khatoon Bi(since deceased) & 13 others). The principles of law outlined in the above decisions are taken into consideration and followed, as applicable to the facts and circumstances of the case on hand.

In conclusion, it is evident that no substantial question of law is found to be involved in this second appeal. Therefore, the second appeal deserves rejection and accordingly, the same is dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sms

To

1. The Subordinate Judge, Mannargudi.
2. The Principal District Munsif Court, Mannargudi.

1 cc to Mr.P.T. Ramadevi, Advocate, Sr. 69574
1 cc to Mr.A. Meenakshi sundaram, advocate, Sr. 69723

S. A.No.356 of 2011

MSM (CO)
kk 27/12