

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2016

PRONOUNCED ON : 25.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.455 and 446 of 2011

and

M.P.Nos.1 & 1 of 2011

Raju Pandaram	...	Appellant in S.A.No.455 of 2011
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Malarvizhi	...	Appellant in S.A.No.446 of 2011
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Vs.

1.T.K.Kandasamy 2.Dhanabagam	...	Respondents in both second appeals
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S.A.No.455 of 2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.12.2010 made in A.S.No.32 of 2008 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 21.01.2008 made in O.S.No. 621 of 2005 on the file of the Principal District Munsif Court, Namakkal.

S.A.No.446 of 2011

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 20.12.2010 made in A.S.No.31 of 2008 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 21.01.2008 made in O.S.No. 619 of 2005 on the file of the Principal District Munsif Court, Namakkal.

For Appellant
in both appeals : Mr.T.Dhanyakumar

For Respondents
in both appeals : Mrs.P.T.Asha
for M/s.Sarvabhuman Associates

JUDGMENT

S.A.No.455 of 2011

Challenge in this second appeal is made by the plaintiff against the judgement and decree dated 20.12.2010 made in A.S.No.32 of 2008 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 21.01.2008 made in O.S.No.621 of 2005 on the file of the Principal District Munsif Court, Namakkal.

S.A.No.446 of 2011

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 20.12.2010 made in A.S.No. 31 of 2008 on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 21.01.2008 made in O.S.No.619 of 2005 on the file of the Principal District Munsif Court, Namakkal.

2. The appellants laid their respective suits claiming the title to the suit properties based upon adverse possession and consequential permanent injunction.

3. The case of the appellants is that the mother of the defendants Ammaiakkal had alienated the suit properties in their favour under the sale deeds dated 27.01.1986 and pursuant to the same, delivered the possession of the suit properties to them and the first defendant has also consented to the above said transactions. However, the sale deeds could not be registered on account of the delay tactics adopted by Ammaiakkal and the said Ammaiakkal had died on 09.11.1987 and inasmuch as the plaintiffs had been enjoying the suit properties, pursuant to the above said sale deeds, continuously uninterruptedly to the knowledge of Ammaiakkal, the defendants, exhibiting hostile attitude beyond the statutory period, according to the plaintiffs, they have perfected title to the suit properties and hence, they have come forward with the suit seeking the necessary reliefs.

4. Per contra, though it is admitted by the first defendant, that Ammaiakkal had executed the sale deeds and she had given her consent, it is stated that the sale deeds had not been registered as the plaintiffs have not tendered the sale consideration and the further defence taken is that the possession of the suit properties were not handed over to the plaintiffs as alleged by them and therefore, according to the defendants, the plaintiffs are not in possession and enjoyment of the suit properties at any point of time and therefore,

they are not entitled to claim the reliefs sought for.

5. The courts below have negated the reliefs sought for by the plaintiffs. The plaintiffs, though, would claim title to the suit properties under the sale deeds alleged to have been executed by Ammaiakkal on 27.01.1986, inasmuch as the sale deeds have not come to be registered as mandated under law, it could be seen that no valid title would convey to the plaintiffs as per law in respect of the suit properties under the said sale deeds. However, the plaintiffs have claimed title to the suit properties by adverse possession. It has not been established as to how the plaintiffs would be legally entitled to lay the suit for claiming title to the suit properties on the basis of the plea of adverse possession. The plea of adverse possession can be used only as a shield and as a sword.

6. That apart, when the defendants have taken a specific plea that the plaintiffs were not given possession of the suit properties by Ammaiakkal or by the defendants at any point of time, it is for the plaintiffs to establish that they had perfected title to the suit properties by way of adverse possession as pleaded by them. However, no document whatsoever has been produced by the plaintiffs to hold that they have perfected their title to the suit properties alleged to have been purchased by them from Ammaiakkal by way of adverse

possession. If really, the plaintiffs have been in possession and enjoyment of the suit properties as pleaded by them, as rightly noted by the courts below, the plaintiffs would have produced necessary proof and material to substantiate the same. Sans any material to hold that the plaintiffs are put in possession and enjoyment of the suit properties and also, to hold that the plaintiffs have perfected title to the suit properties by way of adverse possession as claimed by them, it could be seen that the courts below have, in the right perspective of the evidence adduced and also, on a correct appreciation of law, negated the reliefs sought for by the plaintiffs. No interference is called for to the findings of the courts below for rejecting the case of the plaintiffs.

In conclusion, no substantial question of law is found to be involved in the second appeals. Resultantly, the second appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. The Sub Court, Namakkal
2. The Principal District Munsif Court, Namakkal.

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
S. A.No.455 and 446 of 2011
and
M.P.Nos.1 & 1 of 2011

25.11.2016

Pre-delivery Judgment made
in
S. A.No.455 and 446 of 2011
and
M.P.Nos.1 & 1 of 2011
To

The Hon'ble Mr.Justice T.Ravindran

Most respectfully submitted
sms
P.A. to TRNJ