

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.209 of 2017

and CMP.No.4955 of 2017

1.Jayaraj
2.Kanickai Mary
3.Karthuna Mary
4.Arockia Mary ... Appellants/Appellant/
Plaintiffs

vs.

1.Selvanayagi
2.Gunasekaran
3.Sulochana
4.Vijaya
5.Kalavathy ... Respondents/Respondents/
Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 24.09.2013 made in A.S.No.30 of 2009 on the file of the Subordinate Judge, Ariyalur by confirming the judgment and decree dated 30.03.2009 made in O.S.No.524 of 2004 on the file of the District Munsif Court, Jayankondam.

For Appellants : Mr.P.Arun Jayatram

J U D G M E N T

The plaintiffs in O.S.No.524 of 2004 on the file of the District Munsif Court, Jayankondam, filed the said Suit for a declaration declaring that the plaintiffs are the absolute owners of the suit property and for permanent injunction restraining the defendants 1 to 7 from interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs and also for permanent injunction restraining the defendants 1 to 7 from effecting change in entry in the revenue records by deleting the name of the plaintiffs or adding the name of the defendants 1 to 7 to the suit property. The said Suit after contest came to be dismissed, vide judgment and decree dated 30.03.2009 and aggrieved by the same, the plaintiffs filed A.S.No.30 of 2009 on the file of the Sub-Court,

Ariyalur and vide, impugned judgment and decree dated 24.09.2013, the said Appeal was also dismissed and hence, this Second Appeal.

2. A perusal of the materials placed before this Court in the form of typed set of documents would disclose that the grandfather of the plaintiffs, namely Devasagayam had purchased 12 acres of land in the name of his elder son Sebastian as benami and in respect of the said property, oral partition took place among family members in the year 1954 and as per the said partition, the Suit property went to the share of Amirthanantham and he was in peaceful possession and enjoyment of the same and he died intestate in the year 1979 and his legal heirs, namely the plaintiffs succeeded to the said estate. It is further averred that during the life time of Amirthanantham, his brother Sebastian borrowed some amounts from cooperative society and the properties were brought to auction sale for recovery of the said amount and it was claimed to have been purchased by one Somasundara Mudaliyar, husband of the first defendant and father of the defendants 2 to 7 and taking advantage of the same, the husband of the first defendant attempted to dispossess the plaintiffs from the Suit property and therefore, they filed a Suit in O.S.No.323 of 1983 on the file of the District Munsif Court, Jayankondam and it was dismissed and challenging the same, appeal was filed before the Sub-Court, Ariyalur, which was also dismissed, vide judgment and decree dated 10.07.1991. It is the specific case of the plaintiffs that though the Appeal Suit was dismissed in the year 1991, the plaintiffs continues to be in possession and enjoyment and therefore, they have right and title by way of adverse possession and therefore, came forward to file the Suit.

3. The Trial Court, on consideration of the pleadings, framed the following issues:

1. Whether the plaintiffs are entitle for declaration of right and title over the suit property as he prayed for or not?
2. Whether the plaintiffs are entitle for permanent injunction as he prayed for or not?
3. Whether the plaintiff is entitle for mandatory injunction as he prayed for as against 8th and 9th defendant or not?
4. Whether the Suit is bad for non issue of statutory notice u/s. 80 C.P.C. or not?
Whether the Suit is bad for non-joinder of necessary parties or not?

5. What other relief parties are entitled for ?

During the course of trial, the plaintiff examined himself as PW1 and also examined four others as PWs.2 to 4 and marked Exs.A1 to A11. On behalf of the defendants, the second defendant examined himself as DW1 and one Mr.Rajesh as DW2 and also marked Exs.B1 to B17. The Trial Court, on consideration of oral and documentary evidence, had dismissed the Suit, vide judgment and decree dated 30.03.2009.

4. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.30 of 2009 on the file of the Sub-Court, Ariyalur and the Lower Appellate Court has formulated the following point for consideration:

Whether the impugned Decree and Judgment of the Trial Court is liable to be set aside?

The Lower Appellate Court, on consideration of pleadings, oral and documentary evidence, found that the defendants allowed the plaintiff to enjoy the Suit property even after succeeding in the Court proceedings and now they are claiming title by way of adverse possession. The lower Appellate Court, by placing reliance upon the judgment in 1995 (1) L.W. 680 [Ponnaiyan v. Munian (died) and Others], found that the suit filed by them as well as the appeal filed by them came to be dismissed and the defendants 1 to 7 are found to be in possession based on documents and the plaintiffs are not entitled for any declaratory right or title over the suit property by way of adverse possession and dismissed the appeal, vide judgment and decree dated 24.09.2013. Challenging the same, the plaintiffs have filed this Second Appeal.

5. In the Memorandum of Grounds of Appeal, the appellants/plaintiffs had formulated the following substantial questions of law:

- A) Whether the judgment and decree of the Lower Appellate Court is in conformity with Order 41 Rule 31 of C.P.C. wherein the Lower Appellate Court has not framed necessary issues for determination and failed to render finding on each issue separately?
- B) Whether the Suit is barred by resjudicata?

6. The main grievance expressed by the learned counsel appearing for the appellants/plaintiffs is that the Lower Appellate Court has not properly formulated the points for determination. A perusal of the impugned judgment and decree passed by the Lower Appellate Court would clearly reveal that both the parties have not understood the scope of the appeal and advanced arguments and therefore, improper formulation of point for determination has not resulted in any prejudice to the case

of the appellants/plaintiffs and that apart, the plaintiffs claim their right and title over the suit property solely based on adverse possession and in the light of the ratio laid down in the above cited judgment, the plaintiffs are not entitled for any declaratory right or title over the suit property by way of adverse possession.

7. This Court, on an independent application of mind to the entire materials placed before it, is of the view that this Second Appeal lacks merit and it deserves dismissal.

8. In the result, this Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree dated 24.09.2013 made in A.S.No.30 of 2009 on the file of the Subordinate Judge, Ariyalur, confirming the judgment and decree dated 30.03.2009 made in O.S.No.524 of 2004 on the file of the District Munsif Court, Jayankondam. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Sub Judge, Ariyalur.

2.The District Munsif, Jayankondam.

+1cc to Mr.P.Arun Jayatram, Advocate SR.No.17647

S.A.No.209 of 2017

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