

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Second Appeal No.830 of 2014

R.Segar ... Appellant/Defendant

Vs.

K.R.Subramanian .. Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 21.04.2014 passed in A.S.No.28 of 2012 by the Principal District Judge, Puducherry, confirming the judgment and decree dated 06.02.2012 passed by the Additional Subordinate Judge, Puducherry in O.S.No.218 of 2007.

For Appellant : Mr.W.M.Abdul Majeed

For Respondent : Mr.A.Tamilvanan

J U D G M E N T

The unsuccessful defendant before the Trial Court as also before the First Appellate Court, is the appellant herein.

2. The specific case of the plaintiff, who is the respondent herein, is that 'A' schedule property is 1/4th portion of the larger extent of the house property bearing Door No.59 in R.S.No.232/1B, corresponding to Cadasral No.642/27/31, 642/27/31/2, 642/27/31/3, 642/27/31/4 at East Coast Road, Periakalpet, Puducherry. The larger extent of 'A' schedule property is an ancestral house of the plaintiff's forefathers and it was commonly owned by four brothers, viz. Manickam Graminy, Pavadai Graminy, Thangavelu Graminy and Ramasamy Graminy. 'A' schedule property fell to the share of Pavadai Graminy, who executed a Notarial Will on 20.04.1963 in RV 302 No.64, bequeathing the said property to one of his sons Pandarinathan. The said Pandarinathan sold 'A' schedule property to one Kothandam, S/o.Manjini by virtue of a French Notarial Sale Deed, dated 17.02.1965. Kothandam died intestate on 08.12.1988 and by virtue of the judgment and decree in O.S.No.1215/1988 of the Principal District Munsif, Puducherry,

his son, Premaraja was declared as the legal heir of the deceased Kothandam.

3. According to the plaintiff, the defendant is related to the said Premaraja and he was not having any permanent place of abode of himself. Therefore, in order to help him, in June 1999, the said Premaraja and his wife Priya, permitted the defendant to reside in a small room in the front portion of the 'A' schedule property of an extent of approximately 150 sq. ft., which is the 'B' schedule property, as a permissive occupier, without any rent. As such, the defendant was in occupation of the 'B' schedule property as a licensee and permissive occupier of the said Premaraja.

4. The said Premaraja sold the 'A' schedule property to his father-in-law, viz. Dr.Berty Ratnasamy, vide registered sale deed dated 04.10.2001 and after the demise of the latter, the 'A' schedule property was inherited by his wife, Mrs.Valentine Maria Joseph Nadine. The plaintiff purchased the 'A' schedule property from the said Mrs.Valentine under a registered sale deed dated 20.02.2003, vide Ex.A2 and ever since the date of purchase of the said property, the plaintiff is in physical possession and enjoyment of 'A' schedule property and constructive possession of 'B' schedule property along with the larger extent of his ancestral house, of which 'A' and 'B' schedule properties are part. Immediately after purchase of the 'A' schedule property, the plaintiff requested the defendant to vacate and hand over the vacant possession of the 'B' schedule property and issued a legal notice dated 18.01.2007, vide Ex.A3 to him, but the defendant refused to receive the same. The returned postal cover addressed to the defendant is marked as Ex.A4. According to the plaintiff, the defendant has no right to refuse delivery of vacant possession of the 'B' schedule property, when he is occupying the same only as a permissive occupier. Hence, the plaintiff filed a suit in O.S.No.218 of 2007 before the Additional Sub Court, Puducherry, for recovery of possession and to direct the defendant to vacate and hand over the vacant possession of the 'B' schedule property to him.

5. While so, it is the case of the defendant before the Trial Court that he is in possession and enjoyment of the plaintiff 'A' schedule property since 1983 and paying taxes for the said property. The occupation of the 'A' schedule property was known to his uncle Kothandam and by his continuous and uninterrupted possession of the 'A' schedule property since 1983, he has perfected his title by prescription over 'A' and 'B' schedule properties. According to him, the alleged sale deed dated 04.10.2001, said to have been executed by the said Premaraja in favour of his father-in-law, is not a valid sale deed binding upon the defendant and it is a sham and nominal one, created by

Premaraja in collusion with his father-in-law and the plaintiff, for the sole purpose of evicting the defendant. According to the defendant, the alleged sale deed dated 20.02.2003 is also a sham and nominal one, created with the sole intention of evicting him from the suit property.

6. It is the further case of the defendant that 'A' and 'B' schedule properties were not considered as part of the ancestral house, as 3/4th of the same is in possession of the plaintiff and that 'B' schedule property was never in occupation of the plaintiff's alleged vendor Valentine Maria Joseph Nadine, wife of Berty Rathinasamy or even Premaraja, son of Kothandam. According to the defendant, 'A' schedule property was actually purchased by one Manjini Counder, father of Kothandam and grandfather of the defendant, in the year 1965. Ever since the date of purchase in 1965, the said property was in actual possession and enjoyment of his father Raghavan only and till date, his father is in actual possession and enjoyment of the suit properties. He contended that the suit is bad for non-joinder of necessary party, namely Raghavan, his father, who actually took possession of the suit property in the year 1965 itself, with the knowledge of Kothandam.

7. The Trial Court, on a consideration of the oral and documentary evidence, by judgment and decree dated 06.02.2012, decreed the suit in favour of the plaintiff and directed the defendant to vacate and hand over the vacant possession of the 'B' schedule property to the plaintiff. Aggrieved by the same, the defendant went on appeal before the Principal District Court, Puducherry and the First Appellate Court, by judgment and decree dated 21.04.2014, dismissed the appeal, thereby confirming the judgment and decree of the Trial Court. Challenging the same, the defendant is before this Court by way of the present Second Appeal.

8. This Court, on 22.08.2014, admitted the Second Appeal on the following substantial questions of law:

(i) Whether the Lower Court was right in coming to the conclusion that the issue of permissive occupancy has been established in the absence of valid documentary and oral evidence with respect to the occupation?

(ii) Whether the Lower Court was right in granting the decree, when the present suit is barred by law under the Limitation Act, 1963 and the plaintiff having extinguished his right as per law?

(iii) Whether the denial of title and plea of adverse possession put forth by the

appellant was considered in the right perspective and whether the title of the plaintiff has been established?

9. Learned counsel for the appellant/defendant contended that the Courts below failed to see that the respondent/plaintiff and his predecessors have to be non-suited solely as the suit is barred by limitation. It is his further contention that the Courts below failed to see that the respondent/plaintiff has failed to prove that the appellant/defendant was put into possession as alleged by him and he has to prove his own case as averred by him.

10. In reply, learned counsel appearing for the respondent/plaintiff contended that the appellant/defendant having claimed adverse possession, ought to have stated as to, on what date he came into possession and what was his nature of possession.

11. On a perusal of the entire oral and documentary evidence, it is seen that the respondent/plaintiff has established his case that the appellant/defendant was in permissive occupation. The legal notice dated 18.01.2007 vide Ex.A3 served on the appellant/defendant would amply prove that the respondent/plaintiff had asked the appellant/defendant to vacate the premises and that the suit cannot be said to be barred by limitation. If it is a case of adverse possession, probably, the contention of the appellant/defendant may be correct, but, it is a case of permissive occupancy. Thus, when the theory of adverse possession is not acceptable, the suit cannot be said to be barred by limitation and hence, Article 65 of the Limitation Act will not be applicable to this case, more particularly, when the permissive occupant, i.e. the appellant/defendant has been asked to vacate the premises.

12. Coming to the next issue, it is seen that though the appellant/defendant claims to be in continuous possession and enjoyment of the suit property for more than 12 years, that may give him the right to claim adverse possession. But, it is crystal clear that he is not the owner of the property. It is further seen from the evidence of one Mani @ Manigandan, who was examined as D.W.2, that the said Premaraja requested the appellant/defendant to vacate and hand over the possession of the suit property to him. Thus, it is clear that the defendant has not prescribed title over the suit property by adverse possession.

13. It is to be noted that in the Written Statement filed before the Trial Court, the appellant/defendant has admitted that plaint 'A' and 'B' schedule mentioned properties were not

considered as part of the ancestral house, as 3/4th of which is in possession of the plaintiff and that the plaintiff mentioned properties were treated as separate and distinct properties for a very long time, which is evident from the fact that it was sold as a separate unit even in the year 1965.

14. The contention of the learned counsel for the appellant/defendant that there is perversity in the impugned judgments, cannot be countenanced and the totality of the evidence let in by the parties have to be taken into account and merely because the respondent/plaintiff has mentioned in the plaint regarding the possession of respective properties by the parties and reiterated the same in his evidence, it cannot be considered as perversity of evidence. Since the respondent/plaintiff has established his right over the property in question, the Trial Court has rightly decreed the suit and directed the appellant/defendant to hand over the vacant premises to the respondent/plaintiff, which was confirmed by the First Appellate Court, and the same does not require interference by this Court. Thus, the substantial questions of law are answered against the appellant/defendant.

15. In fine, the Second Appeal stands dismissed, thereby confirming the judgment and decree of the First Appellate Court and the Trial Court. No costs. Consequently, connected M.P.No.1 of 2014 and M.P.No.1 of 2015 are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal District Judge,
Puducherry.
2. The Additional Subordinate Judge,
Puducherry.

+1cc to Mr.I.Abrar Md.Abdullah, Advocate SR.No.45182

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VD(CO)
GN(22/09/2017)