

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.08.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL NO.1985 OF 2000

AND

C.M.P.NO.19474 OF 2000

Thanthayal (deceased)

2.Ramasamy

3.Kulandaivel

4.Radhamani

5.Amsaveni

6.Manickam

7.Thulasimani

... Appellants

(appellants 2 to 7 brought on record as legal heirs of the deceased sole appellant vide order of the court dated 09.03.2007 made in C.M.P.No.805 of 2007)

/versus/

N.R.Subramaniam

...Respondent/
Appellant/Plaintiff

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed by the first Additional District Judge cum Chief Judicial Magistrate, Erode made in A.S.No.290 of 1999, dated 23.10.2000 reversing the judgment and decree of the Sub Court, Gobichettipalayam made in O.S.No.107 of 1997 dated 31.08.1999.

For Appellants :Mr.M.Narayanaswamy

For Respondent :Ms.M.Chithra Gomathy

J U D G M E N T

Suit for declaration and delivery of possession has been filed by the plaintiff based on the title deed in favour of his mother Kunjayal @ Nanjayal and the oral partition effected between the legal heirs of Kunjayal @ Nanjayal in the year 1991

and later, it was reduced into writing by partition deed Ex.P9 dated 19.03.1996.

2. The case of the defendant is that she has purchased the property from the plaintiff in the year 1973 and improved the property by spending money and putting up construction and further, the revenue records have been mutated in her name. Hence, the plaintiff is not entitled for any relief.

3. The trial Court held in favour of the defendant whereas on appeal, the first appellate Court has reversed the finding of the trial Court and allowed the suit. Therefore, the present appeal has been laid.

4. At the time of admission, this Court has formulated the following Substantial Question of Law for consideration:

Whether the finding of the appellate Court that the appellant has not prescribed title by adverse possession is vitiated by perversity?

5. Heard the learned counsel appearing for the appellants and learned counsel appearing for the respondent.

6. The contention of the learned counsel appearing for the appellant is that it is an admitted fact by the plaintiff that the possession is with the defendant and the plaintiff has permitted the defendant and he has not objected the defendant from putting up construction and improving the land. Having considered the fact of open and continuous enjoyment of the property for more than the period prescribed and even if the sale of the year 1973 relied by the defendant, the lower appellate Court has not accepted the open and continuous possession of the defendant and the same ought to have waived in the mind of the lower appellate Court and lower appellate Court ought to have confirmed the judgment and decree of the trial Court. Further, the learned counsel appearing for the appellants also pointed out that the testimony of DW3, who is the son of the plaintiff's sister Valliammal, has stated that his mother Valliammal was not mentally stable and she was taking treatment in the hospital at Coimbatore for more than 15 years. While so, when there is categorical evidence regarding the mental status of one of the party to the partition deed alleged to have been executed between the legal heirs of the Kunjayal @ Nanjayal on 19.03.1996, the Courts below ought not to have given much credence to the partition deed. Further, it is emphasized by the learned counsel appearing for the appellants that continuously in possession of the property and paying necessary tax, the plaintiff has lost his right what so ever to reclaim the property from the appellants.

7. Per contra, the learned counsel appearing for the respondent would submit that the defendant and her husband were working as a Pannaial in the plaintiff's field. Since the suit property was long time unoccupied and the defendant requested the plaintiff to accommodate, the defendant was allowed to occupy the suit property and in the year 1996 when she attempted to transfer the patta in her name discreetly, notice was issued to the defendant to vacate and hand over the possession to which, the defendant/appellants frivolously claimed, which is forced the plaintiff to come out the plea of declaration and delivery of possession.

8. The title to the suit property is vested with the plaintiff, which has been clearly established through sale deed and partition deed among the legal heirs of Kunjaya! @ Nanjaya!. While so, the tax receipts relied by the defendant/appellants are not a proof for title or continuous possession. Since the receipts themselves are not a proof for continuous period for more than 12 years and further receipts are not issued in the name of the defendant alone. Having conscious and anxious consideration given to the rival plea, this Court venture upon to verify the tax receipts relied by both the parties. It is found that though some of the tax receipts are issued in the name of the defendant, the receipts also indicate that the property is in the name of Subramanian (plaintiff) and some of the receipts in the name of Kunjaya! @ Nanjaya!, who is the mother of the plaintiff and few receipt relied by the plaintiff is in the name of the (plaintiff) itself. Therefore, it cannot be construed that the defendant had been in suit property continuously and hostile to claim the title owner. Further more, the evidence of DW3, without any supportive medical records, one cannot brand a person, who is not before this Court, as mentally ill-person even if, so claimed by her own son. Any oral evidence contra to the document ought to have let in subject to the provision of 91 and 92 of the Indian evidence Act. Here, this Court finds that the oral evidence does not clear the test of Sections 91 and 92 of Indian Evidence Act.

9. For all the reasons, this Court finds that the case of the appellant herein is not sustainable. Hence, this appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Ist Additional District Judge
-cum- Chief Judicial Magistrate,
Erode.

2.The Subordinate Judge,
Gopichettipalayam.

3.The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to M/S.M.Narayanaswamy, Advocate Sr. 56366

+1cc to M/S.R.N.Amarnath, Advocate Sr. 57055

S.A.No.1985 of 2004

RSK(CO)
VR(12/09/2017)



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