

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1276 of 2012

and

M.P.Nos.1 of 2012, 1 of 2015 & 2 of 2015

1.S.Malini
2.Srinivasan
3.Ramkumar

4.Saravanan @ Bondhu @ Raja ... Appellants/Appellants/
Defendants

-Vs-

B.Sasidharan ... Respondent/Respondents/
Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Decree and Judgment in A.S.No.3 of 2012 dated 12.12.2012 on the file of the Principal District Judge, Puducherry confirming the Decree and Judgment in O.S.No.60 of 2007 dated 30.09.2010 on the file of the Additional Sub-ordinate Judge, Puducherry.

For Appellants : Ms.Poornima
for M/s.S.Sithirai Anandam
For Respondent : Mr.V.Venkatasamy

J U D G M E N T

The unsuccessful defendants are the appellants before this Court. According to the appellants, the appellants were the tenants under one A.Kaliappan and that A.Kaliappan agreed to sell the land to the appellants verbally and that he has taken a sum of Rs.75,000/-, after giving a promissory note. It is further contended that there was a suit in O.S.No.222 of 2005 before the Principal District Munsif Court, Puducherry, stating that the appellants shall not be evicted except under due process of law and that during the pendency of the said suit, Sale deed (Ex.A1) was entered between the said A.Kaliappan and the respondent herein. According to the appellants, the said suit in O.S.No.222 of 2005 was dismissed for default and that any agreement or sale deed entered is lis pendens and that the sale deed is invalid in the eye of law and even assuming it to be valid, the appellants cannot be evicted except in accordance

with law and that the appellant being in occupation for over 30 years and that no one questioned their occupancy, in view of the adverse possession, the appellants shall not be disturbed.

2. The respondent, who is the plaintiff would contend that at no point of time, the appellants were tenant of one A.Kaliappan and even assuming so, when the sale deed was executed, the vacant possession of the property was handed over to the respondent and that the appellants could only be treated as a trespassers to the suit property and in the written statement, there is no pleading with regard to the tenancy and that it has been contended that there was a mortgage.

3. This Court has admitted the second appeal on 28.12.2012 on the following substantial questions of law:-

"Have not the appellants prescribed title by adverse possession, which was not considered by the Courts below?".

4. It is the case of the appellants that they having prescribed title by adverse possession, the same was not considered by the Courts below. Admittedly, no documents have been filed before the trial Court and the Appellate Court invoking Order 41 Rule 27 of C.P.C., by way of an application with regard to the acceptance of additional documents that have been filed and that has been rejected by the trial Court. In the present Second Appeal also, similar application has been made and the appellants contended that there is a promissory note and that the money is due from A.Kaliappan to the appellants.

5. From the pleadings narrated supra, even assuming that long possession of the suit property will not create any interest over the suit property in favour of the appellants, the Courts below have rightly come to the conclusion that the defendants, who are the appellants herein, failed to plead and prove as to under what capacity they are residing in the suit property. When the defendants are in possession of the property in question without any legal right, they can be treated only as trespassers and the question of claiming adverse possession does not arise. The trial Court as well as the Appellate Court rightly rejected the plea of the appellants herein.

6. With regard to the pleading that was rejected by the lower Appellate Court in A.S.No.3 of 2012, with regard to acceptance of documents under Order 41 Rule 27 of C.P.C., and similar application having been filed before this Court, the lower Appellate Court rightly held that as the appellants failed to prove as to under what capacity they are occupying the suit property, the Appellate Court has ought to have rendered a

finding as to how the finding of the trial Court is perverse and thereafter, look into the additional evidence pleaded by them after due notice to the other party. Since the appellants have failed to satisfy any of the conditions stipulated under Order 41 Rule 27 of C.P.C., and that mere statement would not prove the possession in the suit property, the documents require, cannot by itself, are sufficient warranting invocation of Order 41 Rule 27 of C.P.C. Relying upon the decision of the Hon'ble Apex Court reported in AIR 2008 SUPREME COURT 579 (K.R.Mohan Reddy V. M/s. Net Work Inc. Rep. Tr. MD.), the Appellate Court has rejected the request of the appellants herein and I.A.No.66 of 2012 was dismissed.

7. Since the Courts below have rightly rendered a finding in favour of the plaintiff and that there is no question of adverse possession, the question of law is answered against the appellants/defendants. The second appeal stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ah/kmi

To

1.The Principal District Judge,
Puducherry.

2.The Additional Sub Judge,
Pondicherry.

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

+1cc to Mr.V.Venkatasamy, Advocate Sr. 41040

+1cc to Mr.S.Sithirai Anandam, Advocate Sr. 41489

S.A.No.1276 of 2012

VGI (CO)
VR(17/07/2017)