

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 11.10.2017****PRONOUNCED ON : 13.10.2017****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.475 of 2001**

Karuppan

...
Vs.

Appellant

1. Thirumalai (died)

2. Palaniammal

3. Palanisamy

4. Sumathi @ Chinna Thiruma

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 07.11.2000 made in A.S.No.2 of 1997 on the file of the Sub Court, Dharapuram, reversing the judgment and decree dated 20.11.1996 made in O.S.No.215/1996 on the file of the District Munsif Court, Kangayam.

For Appellant : Mr.N.Manokaran

For Respondents : No appearance

JUDGMENT

In this second appeal, the challenge is made to the Judgment and decree dated 07.11.2000 made in A.S.No.2 of 1997 on the file of the Sub Court, Dharapuram, reversing the judgment and decree dated 20.11.1996 made in O.S.No.215 of 1996 on the file of the District Munsif Court, Kangayam, by the plaintiff.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that the suit property belonged to the plaintiff's father Palani and that, patta was granted in his favour by the Government on 15.04.1968 and pursuant to the same, the tiled house was put up in the suit property and the same was enjoyed by the plaintiff by paying necessary taxes and the plaintiff's father died on 02.05.1975 leaving behind the plaintiff and his three daughters and the plaintiff's sisters had received their due share from the plaintiff and relinquished their right and interest in the suit property in favour of the plaintiff and hence, they had not been impleaded as parties to the suit and inasmuch as the defendant requested the plaintiff to permit him in the suit property, the permission had been granted by the plaintiff and accordingly, the defendant had been residing in the property. While so, the defendant, without any authority, attempted to effect mutation of the house in the suit property in his name and on coming to know of the same, the plaintiff has approached the authority concerned and got his name

mutated in respect of the house located in the suit property and thereby, paying necessary house tax in respect of the suit property and further, inasmuch as the defendant persisted in claiming title to the suit property by making attempts to alienate the same in favour of the third parties, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that it is true that the suit property belonged to the plaintiff's father and that, patta had been granted in his favour and the case of the plaintiff that his sisters had received their due share and relinquished their right and interest in respect of the suit property in favour of the plaintiff is not admitted and is false and hence, the suit is bad for non-joinder of the sisters of the plaintiff as they are also proper and necessary parties to the adjudication. Further, according to the defendant, the plea of the plaintiff that he had permitted the defendant to reside in the suit property is false and the plaintiff has not whispered as to when the permission was granted and further, according to the defendant, the plea of the plaintiff that he has put up the house structure in the suit property is also false. It is the case of the defendant that the plaintiff's mother Pengaliyal on the demise of her husband had agreed to convey

an extent of 2 ½ cents within the specific boundaries in the suit property in his favour and accordingly, executed a sale agreement on 28.12.1976, after receiving a sum of Rs.200/- and agreed to convey the suit property, after a period of 10 years from the date of sale agreement and accordingly, pursuant to the said sale agreement, it is the case of the defendant that he had put up tiled structure in the suit property and residing with his family for several years and also paying necessary house tax in his name and accordingly, the defendant had established his title to the suit property by way of adverse possession and the plaintiff, without any authority and also without giving due notice by exercising influence effected change of mutation of the house located in the suit property and the same is not binding upon the defendant and hence, the plaintiff is not entitled to obtain the reliefs sought for in the suit.

6.In support of the plaintiff's case, PWs 1 to 5 were examined and Exs.A1 to 7 were marked. On the side of the defendant's, DWs 1 to 3 were examined and Exs.B1 to 9 were marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made by them,

the trial Court was pleased to decree the suit as prayed for. Aggrieved over the same, the defendant preferred the first appeal and the First Appellate Court, on an appreciation of the materials placed, set aside the judgment and decree of the trial Court and thereby allowing the appeal preferred by the defendant resulting in the dismissal of the suit laid by the plaintiff. Impugning the same, the second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration;

i) Whether in the absence of any specific issue as regards the adverse possession pleaded by the Defendant, is the Lower Appellate Court right in coming to the conclusion that the Defendant has prescribed title by adverse possession?

ii) Whether the Lower Appellate Court is right in reversing the judgment of the Trial Court without appreciating the cumulative effect of the documentary and oral evidence of the plaintiff?

9.It is not in dispute that the suit property originally belonged to the plaintiff's father Palani and that, he had been assigned patta in respect of the suit property by the Government and the said patta has been marked as Ex.A6. It is also not in dispute that Palani died leaving behind his wife and his son, the plaintiff and three daughters as his legal representatives. Now, according to the plaintiff, his three sisters had received due share from him and accordingly, relinquished their interest in respect of the suit property in his favour. With reference to the above case of the plaintiff, the plaintiff has examined his sisters as PWs 2 to 4 and it is found that PWs 2 to 4 have clearly deposed about having received their due share from the plaintiff and their interest in respect of the suit property in favour of the plaintiff. It is thus found that the plaintiff has got title to the suit property as such. However, it is the specific case of the defendant that after the demise of Palani, his wife Pongiyaal had agreed to convey an extent of 2 ½ cents in the suit property to the defendant's wife and accordingly, executed a sale agreement in his favour on 28.12.1976, after receiving a sum of Rs.200/- and agreed to convey the sale deed 10 years thereafter and thus, according to the defendant, pursuant to the above said sale agreement, he has put up the house structure in the suit property and

residing therein continuously and thus, it is the plea of the defendant that he has perfected his title to the suit property by way of adverse possession. The agreement of sale projected by the defendant has been marked as Ex.B1. From the terms found in Ex.B1, it is found that the possession of the property described therein has not been handed over to the defendant. Pursuant to the same, it is therefore found that the claim of the defendant that he has taken delivery of the possession of the property as described in Ex.B1 as such cannot be accepted. That apart, it is found that the defendant has not established the validity of Ex.B1, that is, to say he has not proved that Pongiyaal, in isolation, on her own is entitled to convey the suit property described therein in favour of the defendant's wife as claimed by him. When it is not in dispute that the suit property originally belonged to Palani and when it is also not disputed that Palani died leaving behind his wife, son viz., the plaintiff and three daughters and when it is found that the three daughters have relinquished their interest in respect of the suit property in favour of the plaintiff, it is found that both Pongiyaal and the plaintiff have right and title over the suit property. In such view of the matter, it has not been explained or established as to how the defendant could claim any right or title over the property mentioned in Ex.B1, merely on the basis of the sale agreement said to have been

executed by Pongiyaal alone. That apart, as to what further steps had been taken by the defendant to get the legal conveyance of the property mentioned in Ex.B1 has not been properly explained. According to the defendant, Pongiyaal had agreed to convey the legal document in respect of the suit property 10 years after Ex.B1. It has not been explained or established by the defendant as to whether any such document has come to be executed by Pongiyaal. Subsequently, it is seen that Pongiyaal had died on 15.01.1977 and thereafter, it is found that only the plaintiff alone is entitled to the suit property as such. If really, Ex.B1 has any legal acceptance, as rightly put forth by the plaintiff's counsel, the defendant would have taken appropriate steps as per law to get the legal conveyance in respect of the suit property from the plaintiff. However, till date, it is seen that the defendant has not moved his little finger to obtain any sale deed in respect of the property mentioned in Ex.B1 from the plaintiff. It is thus found, as rightly held by the trial Court, that Ex.B1 cannot be clothed with any legal colour so as to enable the defendant to claim any title or right over the suit property.

10.Now, according to the plaintiff, on the request made by the defendant, he had permitted the defendant to reside in the house

structure put up in the suit property and inasmuch as the defendant, without any authority, attempted to effect mutation in respect of the house property in his favour and also attempted to alienate the suit property in favour the third parties, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

11. It is found that following the move made by the plaintiff with the authorities concerned, the house tax mutation in respect of structure put up in the suit property had been changed in the name of the plaintiff and this could be evidenced from the documents marked on the side of the plaintiff and also the testimony of PW5, the concerned official. It is found that as of now, the tax in respect of the house structure in the suit property stands only in the name of the plaintiff. Now, according to the defendant, it is he, who had put up the house structure in the suit property and accordingly, paying necessary taxes in respect of the same. In this connection, the defendant has marked only one house tax receipt as Ex.B2 and a perusal of the same would go to show that it stands in the name one Thirumaan. The defendant's name is Thirumalai and it is not stated as to how Ex.B2 is related to the defendant. Be that as it may, when it is found that the plaintiff, through the authorities concerned, had effected mutation in

respect of the suit property in his favour and when the further attempt made by the defendant to change the same had, till date, not yielded any result, it is found that inasmuch the suit property belonged to the plaintiff, it is found that the concerned authority had effected mutation of the house tax in favour of the plaintiff.

12. It is the case of the defendant that the plaintiff has not placed any material to hold that he has put up the house structure in the suit property and accordingly, the plaintiff has also not stated clearly as to when he had granted the permission to the defendant to reside in the suit property and in such view of the matter, according to the defendant, it is he, who had put up the house structure in the suit property and residing therein by effecting tax mutation in his name. As adverted above, when according to the case of the defendant that he has been inducted into the possession of the suit property pursuant to Ex.B1 and when it is found that Ex.B1 cannot be given any legal acceptance as such and further, when it is found that the defendant has not taken further steps to get the conveyance of the suit property from the plaintiff, it is found that Ex.B1 would not in any manner serve the case of the defendant. That apart, there is no material to hold that it is only the defendant, who had put up the house structure in the suit

property, no doubt, a tax receipt has been marked as Ex.B2 on the side of the defendant. Even assuming for the sake of argument that the same relates to the defendant, it is found that as per the materials placed, the plaintiff had made request to the concerned authority for effecting the tax mutation in his name and accordingly, the authority concerned, after giving due notice to the concerned parties, had changed the tax in the name of the plaintiff and in such view of the matter, inasmuch as it is only the plaintiff, who has title to the suit property, it is found that the tax has been mutated in his name by the concerned authority. The plea of the defendant that the above said action of the authority concerned has been made behind his back is not substantiated by any acceptable material.

13. Now coming to the plea of adverse possession put forth by the defendant, it is found that other than Ex.B2, no other acceptable document has been projected by the defendant to substantiate his plea of adverse possession. As found earlier, Ex.B1 does not serve the case of the defendant. Similarly, Exs.B2 to 6 also would not be useful to sustain the plea of adverse possession projected by the defendant. The voter's card marked as Ex.B7 also on its own would not be useful to hold that the defendant has perfected his title to the suit property by

adverse possession. Ex.B9 is the voters list of the year 1996 of Vellakovil Panchayat and the said document, being of the year 1996, it is found that the same also would not be useful to uphold the plea of adverse possession put forth by the defendant. In such view of the matter, it is found that the First Appellate Court, without any basis or material, has proceeded to hold that the plaintiff is not entitled to obtain the reliefs sought for in the suit, on account of the failure of the plaintiff in establishing that he had granted permission to the defendant to reside in the suit property. When it is found that the defendant has no legal title to the suit property as such pursuant to Ex.B1 and when the defendant seeks title to the suit property only on the premise of adverse possession and when the documents projected by the defendant are not helpful in upholding the plea of adverse possession and when it is not in dispute that following the death of Palani, his wife Pongiyaal and the relinquishment of the shares in favour of the plaintiff by the three daughters of Palani, only the plaintiff has title to the suit property, it is found that the plaintiff is the owner of the suit property as such, hence, he is entitled to recover the possession of the same from the defendant, who has no title to the suit property in any manner.

14. However, the First Appellate Court is found to have discountenanced the plea of the plaintiff on the footing that the plaintiff has failed to establish the permission said to have been given by him to the defendant to reside in the suit property. It is the reasoning of the First Appellate Court that the plaintiff has also failed to establish that he has put up the house structure in the suit property. However, when it is found that only the plaintiff has title to the suit property and the defendant cannot claim any valid title to the suit property pursuant to Ex.B1 and when the defendant has also failed to establish the plea of adverse possession by placing acceptable materials, it is seen that the defendant is only an intruder of the suit property without any authority and accordingly, it is seen that the plaintiff having valid title to the suit property is entitled to obtain the reliefs sought for in the suit. That apart, as rightly put forth by the counsel for the plaintiff, the First Appellate Court, without framing any specific point for its determination as regards the plea of adverse possession, has proceeded to hold that the defendant, has prescribed title to the suit property by adverse possession, sans any material projected by the defendant pointing to the same. It is further found that as rightly put forth by the plaintiff's counsel, the First Appellate

Court, without considering the materials placed by the respective parties in the right perspective, has reversed the judgment and decree of the trial court and this approach of the First Appellate Court can only be termed as perverse and without any legal basis and in such view of the matter, the judgment and decree of the First Appellate Court cannot be allowed to sustain further.

15. In the light of the above discussions, the substantial questions of law formulated in the second appeal are answered against the defendant and in favour of the plaintiff.

16. In conclusion, the Judgment and decree dated 07.11.2000 made in A.S.No.2 of 1997 on the file of the Sub Court, Dharapuram, are set aside and the judgment and decree dated 20.11.1996 made in O.S.No.215/1996 on the file of the District Munsif Court, Kangayam are confirmed and accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

13.10.2017

Index : Yes/No

Internet : Yes/No

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To

1. The Sub Court, Dharapuram.

2. The District Munsif Court, Kangayam.

T.RAVINDRAN,J.

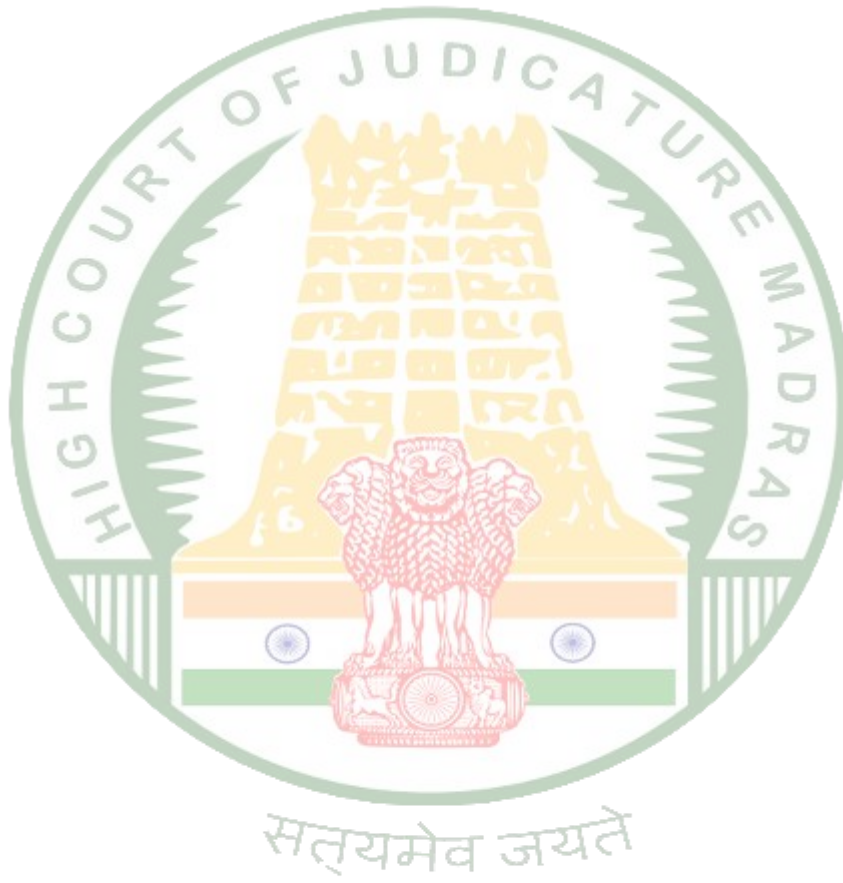
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