



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.612 of 2014

AND

M.P. (MD) .No.1 of 2014

Mookkayee ... Appellant /Appellant/Defendant

Vs.

Theraviyam ... Respondent /Respondent / Plaintiff

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 27.02.2014, made in A.S.No.4 of 2013 on the file of the Principal Sub-Court, Paramakudi, confirming the judgment and decree, dated 19.02.2013, made in O.S.No.15 of 2003 on the file of the District Munsif cum Judicial Magistrate, Kamuthi.

For petitioner ... Mr.G.Gomathi Sankar

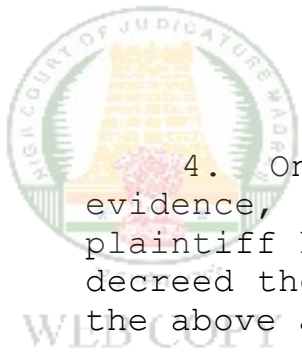
For respondent ... Mr.J.Barathan

JUDGMENT

The defendant, who had lost before both the Courts below, has preferred this appeal. The suit was filed by the plaintiff for declaration and recovery of possession.

2.It is the case of the plaintiff that the suit property was purchased by him on 03.07.1947 as per Ex.A3. Though it was originally purchased as a vacant site, subsequently a small structure was put up by him measuring about 15 feet x 10 feet. Admittedly, the ancestral property of the plaintiff is in western side of the suit property, wherein the plaintiff has been living with his family. The plaintiff's sister's daughter is the defendant and as the mother of the defendant was without any support, the plaintiff was maintaining her also. When the mother of the defendant fell sick, it was stated that the plaintiff had allowed the defendant to occupy the suit property. After the death of the mother of the defendant, the defendant made claim over the suit property. Hence, the plaintiff was constrained to file the suit.

3.The defendant in support of her case had denied the title of the plaintiff and claimed that the superstructure was put up only by her. The document produced by the plaintiff was also denied by the defendant. Besides, the defendant had pleaded title by adverse possession contending that she had been in continuous uninterrupted possession of the suit property.



4. On the above said pleadings, after considering the evidence, the Courts below have concurrently held that the plaintiff had established his title in the manner known to law and decreed the suit. Now, aggrieved by the said judgment and decree, the above appeal is preferred.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the records carefully.

6. It is contended by the learned counsel for the appellant that Ex.A3 was only a certified copy and the original document was not produced before the Courts below for drawing presumption under Section 90 of the Indian Evidence Act, which is incorrect. It is seen from the record that Ex.A3 is the original sale deed in favour of the plaintiff and Ex.A8 is the certified copy of the sale deed issued by the Registration Department. In addition to that, the plaintiff has also produced Ex.A7, dated 23.07.1931, which is a sale deed in favour of his vendor's father. As the documents viz., Exs.A3 and A7 are all more than 30 years old, rightly the Courts below have drawn presumption under Section 90 of the Indian Evidence Act. Even otherwise, in the absence of any other rebuttal evidence produced by the defendant and the fact that the plaintiff also owns the adjacent property and living there, the Courts below have granted the decree in favour of the plaintiff. The defendant/appellant has failed to establish that the superstructure was put up by her and her possession of the suit property is in her own right.

7. So far as the question of adverse possession is concerned, it must be adequate in continuity, in publicity and in extent, and a plea is required to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. Without establishing the *animus*, the defendant cannot claim adverse possession. Hence, even on the ground of adverse possession, the claim of the defendant was negatived. In the light of the above facts and circumstances, there is no question of law arising for consideration.

8. In the result, this second appeal fails and the same is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/Truecopy/



To

1. The Sub Judge, Paramakudi.

2. The District Munsif cum Judicial Magistrate, Kamuthi.

3. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.T.R.JEYAPALAM, Advocate SR.No.68244

+1cc to M/S.G.GOMATHI SANKAR, Advocate SR.No.67705

gcg

MAS/MR-KKR/SAR2:11.08.2017:3P-6C

S.A. (MD) No.612 of 2014
26.07.2017