

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.No.2111 of 1986

- 1.Srinivasa Naidu (died)
- 2.S.Pattammal
- 3.S.Ganthimathi
- 4.S.Asaithambi
- 5.V.Valarmathi
- 6.S.Anbazhagan
- 7.S.Udaya Suriyan
- 8.S.Suguna
- 9.S.Poonguzhali
- 10.S.Manimegalai
- 11.D.Bhuvaneswari
- 12.J.Kodiswari
- 13.J.Rajarajeswari
- 14.S.Venkatasubramanian

... Appellants/Respondents/Plaintiffs
(Appellants 2 to 14 brought on record as legal representatives of the deceased first appellant as per order of Court vide C.M.P.No.15873 of 1997 dated 13.11.1998)

..Vs..

- 1.Thulasi ammal (died)
- 2.Pakkirisamy udayar
- 3.Gowri
- 4.Chandira
- 5.Kamala

... Respondents/Appellants/defendants
(Respondents 2 to 5 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 07.01.2015 made in C.M.P.No.3469 of 1999)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 22.07.1986 in A.S.No.40 of 1986 on the file of the Additional Subordinate Judge, Cuddalore by setting aside the Judgment and decree of the District Munsif, Panrutti dated 19.9.84 made in O.S.No.867/83.

For Appellants : Mr.M.Muniruddin Sheriff

For Respondents : No Appearance

JUDGMENT

No representation for the respondents.

The first appellant Srinivasa Naidu (since deceased) filed a suit in O.S.No.867 of 1983 before the District Munsif Court, Panruti for declaration of his title, recovery of possession and for past and future mesne profits from the respondents/defendants.

2. The brief case of the first appellant/plaintiff is as follows:

The suit property originally belonged to one Papayee Ammal. The plaintiff purchased the suit property through a sale deed dated 30.08.1963 (Ex.A2) from the said Papayee Ammal. The first respondent/defendant's husband was running a sweet stall in the suit property as a tenant. Subsequently, there was a dispute between Papayee Ammal, the vendor of the first appellant/plaintiff and her brothers which resulted in filing of a suit in O.S.No.74 of 1966 before the Subordinate Court, Cuddalore. Though, the suit went against Papayee Ammal, the vendor of the first appellant/plaintiff, she filed an appeal in A.S.No.162 of 1971 in which her title to the suit property was declared in her favour.

3. According to the plaintiff, he retained the shop bearing door No.50 and rented out the remaining portions and that the sixth defendant wrongfully claimed title to the suit property through a sale deed dated 21.01.1977. It is further contended by him that the respondents/defendants 1 to 9 are in possession of the property as tenants without paying rents to him.

4. A written statement was filed by the second respondent/second defendant and the same was adopted by the first respondent/first defendant. Both the respondents in the written statement have denied all the allegations of the first appellant/plaintiff. Their specific contention is that shop Nos.49, 77 and 78 originally belonged to one Lakshminarayana Reddiar, and he had settled the property in favour of the first defendant's father-in-law. According to them, first respondent/first defendant has been running a sweet stall for the past 60 years in the suit property and therefore they have prescribed title by adverse possession and prescription.

5. The trial Court framed the following issues:

(i) Whether it is true that the plaintiff is entitled to the suit property?

(ii) Whether the first defendant has prescribed title to shop Nos.77 and 78 by adverse possession and prescription?

(iii) Whether the plaintiff is entitled for recovery of possession from the defendants?

(iv) what relief is the plaintiff entitled?

6. After full contest, the trial Court decreed the suit on the following grounds:

(i) The first appellant/plaintiff had established his title to the suit property through the sale deed dated 30.08.1963 (Ex. A2).

(ii) The defendants, though contended that they have been in possession of the suit property for the past 60 years did not adduce any acceptable oral or documentary evidence to substantiate their contention and also failed to prove their claim of adverse possession over the suit property.

7. Aggrieved over the same, the first defendant Thulasi Ammal filed an appeal in A.S.No.40 of 1986 before the Additional Subordinate Judge, Cuddalore. The said Appeal was allowed by the learned Additional Subordinate Judge, vide decree and judgment dated 22.07.1986. Though the first Appellate Court has clearly held that the respondents/defendants did not adduce any evidence to show that they have prescribed title to the suit property by adverse possession and prescription, it has been held that since the first appellant/plaintiff in his evidence had admitted that the first defendant has been in possession of the suit property for the past 20 years, the suit filed by the appellant/plaintiff is liable to be dismissed.

8. During the pendency of the present appeal, the first appellant died and therefore, his legal heirs were impleaded as appellants 2 to 14. Similarly, the first respondent Thulasi Ammal died and her legal heirs have been brought on record as respondents 2 to 5.

9. The Second Appeal was filed on the following substantial question of law:

" Whether the view taken by the lower Appellate Court that the respondent had prescribed title to the suit properties by adverse possession is correct?"

10. Mr.M.Muniruddin Sheriff, the learned counsel appearing for the appellants would contend that though the first Appellate Court had clearly held that Papayee Ammal had executed a sale deed in favour of the plaintiff and the plaintiff is also entitled to the suit property through the sale deed dated 30.08.1963 (Ex. A2) committed an error in by holding that the first respondent/first defendant has been in possession of the suit property for the past 20 years. His specific contention is that this conclusion of the first Appellate Court is mainly based on the oral evidence of PW1. He further relied on the decision in Ram Nath and others reported in AIR 1962 ALLAHABAD 604 (V 49 C 142) and contended that non-payment of rent by itself would not raise any presumption of adverse possession or lead to the inference that it was due to repudiation of landlord's title.

11. In the instant case, the specific contention of the first appellant/plaintiff is that he has rented out the suit property to the first defendant. On the contrary the contention of the first respondent/first defendant is that the suit property was originally owned by one Lakshminarayana Reddiar and that the said Lakshminarayana Reddiar settled the suit property in favour of the father-in-law of the first respondent, when the first respondent claims to the suit property through a settlement deed, she cannot claim title by adverse possession and prescription. It is trite law that to claim adverse possession and prescription; (i) The possession of the person claiming adverse possession should be hostile to the real owner, and (ii) It should be open and continuous to the knowledge of the real owner.

12. The learned counsel appearing for the appellants relied on the decision in D.Balaraman Vs. Sadagopan and others reported in 2013(3) CLT 37 in which it has been held thus,

"for seeking a relief of adverse possession, one should admit the title of other person and from which, he could have stated the date on which, he claims adverse possession to prescribe title and the claim should be certain. Similarly, the burden of proving adverse possession is upon the person, who claims title by way of adverse possession - It is well settled proposition of law that "animus possidendi" is one of the ingredients of adverse possession. Unless the person, who is in possession of the land has the required animus for prescription of title, the period of seeking adverse possession cannot commence."

13. At the out set, it may be observed that the first Appellate Court has dismissed the suit filed by the first

appellant/plaintiff only based on the oral evidence of PW1. Merely because PW1 has deposed that the first respondent/first defendant has been in possession of the suit property for the past 20 years, it cannot be held that the first defendant has prescribed title by adverse possession and prescription especially when the case of the appellant/plaintiff is that he had rented out the suit property to the respondents/defendants. It is also settled law that the person who claims adverse possession and prescription should prove his case and when there is no evidence in this regard, the first Appellate Court should not have allowed the appeal.

14. A perusal of the sale deed and other documents adduced on the side of the first appellant/plaintiff clearly shows that she has purchased the suit property and therefore, she is entitled to the suit property. The trial Court, in fact, has dealt with, in extenso, the evidence adduced on both sides and has rightly held that the plaintiff is entitled to suit property and also entitled for recovery of possession from the respondents/defendants. In view of all these reasons stated by me, I hold that the decree and judgment dated 22.07.1986 passed by the learned Additional Subordinate Judge, Cuddalore, warrant interference by this Court.

15. In the result, the appeal is allowed. No costs.

(i) the decree and judgment in A.S.No.40 of 1986 dated 22.07.1986 passed by the learned Additional Subordinate Judge, Cuddalore is set aside.

(ii) the suit in O.S.No.867 of 1983, on the file of the learned District Munsif, Panruti, is decreed with costs.

(iii) the decree and judgment dated 19.09.1984 passed by the learned District Munsif, Panruti is restored.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

mbi/dna

To

1.The Additional Subordinate Judge,
Cuddalore.

2. The District Munsif,
Panruti.

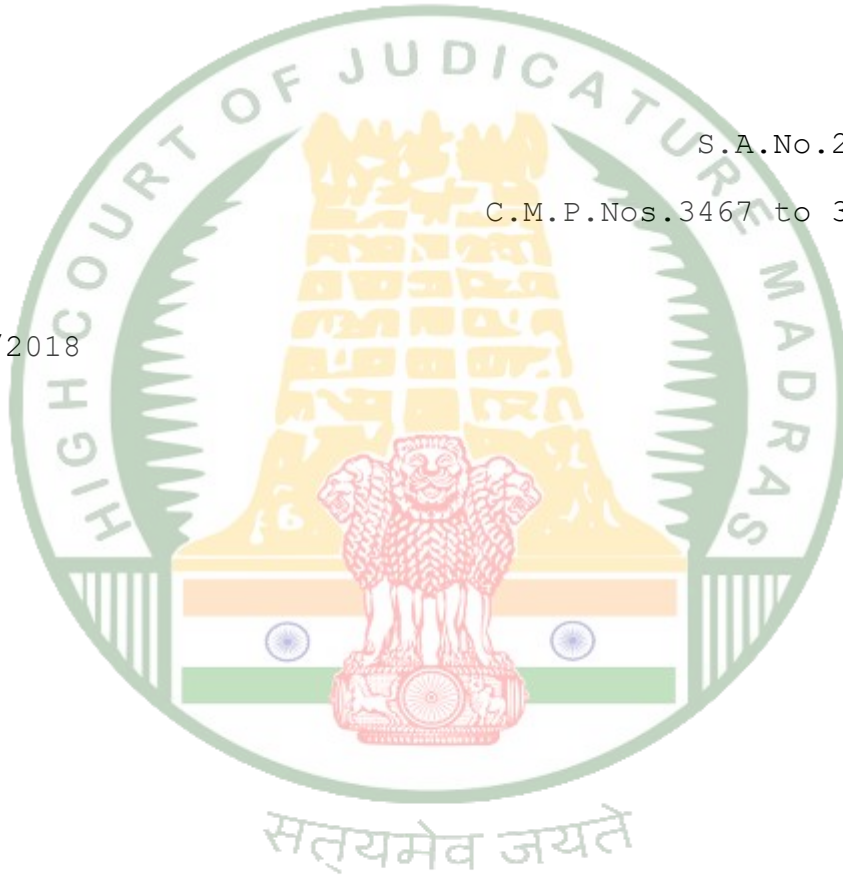
Copy to

The Section Officer,
VR Section,
High Court, Madras.

+1cc to M/s.M.Muniruddin Sheriff, Advocate Sr.73090

S.A.No.2111 of 1986
and
C.M.P.Nos.3467 to 3469 of 1999

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srg 13/12/2018



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