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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.10.2018

DELIVERED ON: 23.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.314 of 1996

1. Gunasekaran
 2. Dhanapakkiam (died)
 3. Dhanalakshmi
 4. Jayalakshmi
 5. Amirthavalli
 6. Gandhimathi
- ... Appellants/2nd defendants

(first appellant and appellants 3 to 6 recorded as legal heirs of the deceased 2nd appellant vide order of this court dated 30.06.2014 made in memo filed before this court dated 30.06.2014 in S.A.No.314 of 1996)

Vs.

1. Ramaswamy (died)
2. Ponnusamy
3. Marimuthu
4. Govindammal
5. Kanagasabai @ Jayaraman (died)
6. Lakshmi
7. Malliga (died)
8. R.Jayam
9. Thirunavukkarasu
10. Mathialagan
11. Thenmozhi
12. Manimozhi
13. A.Kalavani
14. Velvizhi

(Respondents 8 to 14 are brought on record as legal heirs of the deceased first respondent vide order of this court dated 05.06.2014 made in CMP No.1281 to 1289 of 2007 in S.A.No.314 of 1996)

15. Maheswari
16. Murugesan @ Murugan
17. Jagadeesan
18. Bama

(Respondents 14 to 18 are brought on record as legal heirs of the deceased 5th respondent vide order of this court dated 05.06.2014 made in CMP No.1281 to 1289 of 2007 in S.A.No.314 of 1996)



19. Pakkirisamy
20. Senthil
21. Prabhu

WEB COPY (Respondents 19 to 21 are brought on record as legal heirs of the deceased 7th respondent vide order of this court dated 05.06.2014 made in CMP No.1281 to 1289 of 2007 in S.A.No.314 of 1996)

... Respondents/Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 11.08.1995 passed by the II Additional District Judge, Pondicherry in A.S.No.95 of 1991 upholding the decree and judgment dated 29.01.1991 passed by the Principal Sub Judge, Pondicherry in O.S.No.221 of 1988.

For Appellants : Mr.T.V.Krishnamachary

For Respondents 4 to 21 : Mr.T.D.Vasu

First respondent : Died

For respondents 2 and 3 : No appearance

JUDGMENT

The present second appeal is filed against the concurrent decision of both the courts below by the 2nd defendant and the legal heirs of the first defendant in O.S.No.221 of 1988 on the file of the Principal Sub Judge, Pondicherry, who are also the appellants in A.S.No.95 of 1991 on the file of the II Additional District Judge, Pondicherry.

2. The respondents/plaintiffs filed a suit in O.S.No.221 of 1988 before the Principal Sub Judge, Pondicherry to declare that the settlement deed dated 26.05.1986 (Ex.A4) as null and void in respect of 3/4th share of the respondents/ plaintiffs property and also for a partition of the suit property into four equal shares and to allot three such shares to the respondents/plaintiffs.

3. The case of the respondents/plaintiffs is summarised below.

- The suit property as described in the plaint situate in C.No.388/6, 388/7 in R.S.No.9/1 of Ariyankuppam Commune, Pooranankuppam, bearing door No.1/2 ad-measuring 150 1/2



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East to West, 27 1/4 feet North to South.

- The suit property was allotted to the share of Subbaraya Nattar, the paternal grandfather of the respondents/plaintiffs through a partition deed dated 13.02.2013 (Ex.A2).
- Subbaraya Nattar had 3 sons by name 1. Murugesan @ Chidambaram, 2.Rajamanickam and 3.Rangasamy @ Rajagopalan (first defendant) and a daughter by name Adhilakshmi @ Saradambal.
- The respondents 1 to 3 are the legal heirs of late Murugesan, while respondents 4 to 7 are the legal heirs of late Rajamanickam.
- The first appellant herein is the son of late Rangasamy @ Rajagopalan.
- The suit property is a joint family property and the father of the first appellant herein had executed a settlement deed dated 26.05.1986, a copy of which is marked as Ex.A4 and both the first appellant and his father late Ramasamy @ Rajagopalan (first defendant) attempted to trespass into the suit property.

4. The first defendant filed his written statement and the same was adopted by the second defendant (first appellant herein). Their contention is that the suit property exclusively belonged to the first defendant and that it does not form part of the property described in the partition deed Ex.A2. The mistake as to the title of the property mentioned in the settlement deed dated 26.05.1986 was found only after receipt of suit summons and immediately a rectification deed dated 05.10.1988 (Ex.B1) was made. It is also contended by them that they have prescribed title to the suit property by adverse possession and prescription.

5. Both the courts below had decreed the suit in favour of the respondents/plaintiffs.

6. The second appeal is filed on the following substantial question of law.

Whether the lower appellate court having held that it has no pecuniary jurisdiction to entertain the appeal is right in law in deciding the appeal on merits without returning the appeal for presentation to proper court?

7. Mr.T.V.Krishnamachary, learned counsel appearing for the appellants would contend that the suit property described in the plaint is not mentioned in Ex.A2 and the name of the village also differs. The properties mentioned in Ex.A2 are extracted herein.



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Description of the said dry lands called Punjai, bearing No.421, situated at teh Tavalakuppam Village, Ariankuppam Commune at the south of the lands of Ponnuswamy nattar at the east of that of Atchudapadayatchy ... registered in the name of said Ramaswamy matter, having an extent of forty kuzhees seven by eight taxed at Rs.1-0-8 and estimated at Rupees one hundred.

That called under the same name bearing No.404 registered in the same name situated at the said place at the west of the lands of Ponnuswamy matter, and at the south of that of the latter of Alangary conougou having an extent of 34 kuzhees seven by sixteen taxed at 0-6-1 and estimated at Rs.90/-

8. The trial court has held that the disputed property is the property described in the plaint. The observation of the trial court (which is also upheld by the first appellate court) is extracted hereunder.

"As regards the identity of the property, there is no dispute except the defendants taking a stand that it does not belonged to Subbaraya Nattar, but D-1 is enjoying it in his own right for the last 80 years.

No doubt, it is for the plaintiffs to make out the title to the impugned property vested in their grandfather. To vouchsafe it, they mainly relied on Ex.A2/partition Deed, Ex.A11/Settlement of patta and Ex.A12/Sketch showing the property bearing R.S.9/1 besides the defendants' own document namely the settlement deed dated 26.05.1986. Among the documents exhibited, the document No.4, effected by D1 in favour of D2 made it manifest that the suit property belonged to Subbaraya Nattar. The schedule of property contained in Ex.A4 tallies with the one specified in Ex.A11. Likewise, R.S.No.9/1 corresponds with the one cited in Ex.A12. Ex.A2 is the origin for identifying the suit property and to whom it belonged."

9. The above observation is based on assessment of facts and I do not see any infirmity in the said findings of the trial court. More over, even in Ex.A4, the property settled in favour of the first appellant is described as a property which originally belonged to Subbaraya Nattar through the partition deed (Ex.A2). The rectification deed is only subsequent to the filing of the suit. Further more, the first appellant, who claims that the suit property is the exclusive property of his father (the first defendant), has not adduced any evidence to substantiate their contention. It is also their contention that they have prescribed title by adverse possession and



prescription.

10. Adverse possession is a legal principle that applies when a person, who does not have legal title to a piece of property and attempts to claim ownership based upon possession or occupation of the land without the permission of its legal owner. The appellants case is that the suit property is the exclusive property of late Rangasamy @ Rajagopalan, the first defendant. Therefore, they cannot claim adverse possession and prescription over the suit property. More over, adverse possession requires that an occupation should be

[i] hostile to the real owner.

[ii] Actual possession of the land, which should be open.

[iii] Exclusive and continuous possession over the period prescribed under the statute.

11. Both the courts below have concurrently held, ofcourse, after analysing the entire evidence on records, that the appellants have not prescribed title by adverse possession and prescription to the suit property and the reasons assigned by both the courts below in this regard are well founded and do not warrant any interference by this court.

12. Subbaraya Nattar died during the year 1923. As per the Customary Law prevailing in Pondicherry, prior to the extension of the Hindu Succession Act 1963, only the male issues of Subbaraya nattar are entitled to the suit property and all his three sons are each entitled to 1/3rd share in the suit property.

13. Mr.T.V.Krishnamachary, learned counsel for the appellants vehemently argued that when the first appellate court found that it has no pecuniary jurisdiction to try the appeal, it should not have given any findings on merits. It is true that the first appellate court had given a finding that it has no pecuniary jurisdiction, as per Section 52 of the Pondicherry Court Fees and Suits Valuation Act 1972. However, the first appellate court has also gone into merits of the case. At the most, it can be held to be an irregularity, which would not vitiate the decree, in the facts and circumstances of the present case. The first appellate court has not reversed the findings of the trial court. In the light of the fact that the trial court has properly assessed the entire evidence on record, I do not find any reason to once again remit back the records to the lower appellate court with a direction to return the memorandum of appeal for presentation to the proper court, applying the provisions of Order VII Rule 10 of the Code of Civil Procedure read with Section 109 of the Code of Civil Procedure. More over, the present appeal is filed by the appellants only under Section 100 of the Code of Civil Procedure. Hence, the second appeal fails.



14. In the result, the second appeal is dismissed. No costs.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

1. The II Additional District Judge, Pondicherry.
2. The Principal Sub Judge, Pondicherry.

Copy to:

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

+1cc to Mr.T.D.Vasu, Advocate sr.no.73091
+1cc to Mr.T.V.Krishnamachary, Advocate sr.no.72374

S.A.No.314 of 1996

ssi(co)
nr 24/01/2019