

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.748 of 2017
and C.M.P.No.18687 of 2017

N.Janardhanan ... Appellant/Plaintiff in Trial Court

Vs

1. Haridoss

Padma Bhalla (deceased)

2. Susheel Bhalla

3. Anil Bhalla

Rep by their Power of Attorney Agent

Haridoss

.. Respondents/Defendants 2,4 & 5 in
Trial Court.

PRAYER : This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.5 of 2014 on the file of the Additional Subordinate Judge at Chengalpet dated 12.04.2016 that had confirmed the judgment and decree passed in O.S.No.252 of 1997 on the file of the District Munsif Court at Chengalpet dated 30.03.2012.

For appellant : Mr.Vijay Krishna

J U D G M E N T

The plaintiff, who is the appellant herein aggrieved by the unanimous decisions of the Courts below, has preferred the above Second Appeal.

2. The appellant has claimed title over the suit property in Survey No.25/4A measuring an extent of 0.10 acres out of 1.03 acres. It is stated that the suit property originally belonged to one Pushpammal, who obtained the said property from one Gangaiah Mastri by way of Exchange Deed dated 29.09.1970. Later, the legal heirs of the said Pushpammal took over the possession of the suit property after her death and sold 0.10 cents out of 0.20 cents to the appellant by way of Sale Deed dated 09.04.1984. It is the case of the appellant / plaintiff that he has been in continuous possession and enjoyment of the

suit property. As the respondents tried to interfere with his possession, the suit has been filed for declaration of title, for permanent injunction, for mandatory injunction and for recovery of possession.

3. The appellant also has claimed right and title to the suit property by adverse possession. In paragraph 8 of the plaint, it is stated that the plaintiff and his predecessors in title have got perfected title to the suit property by adverse possession and prescription. In paragraph 7 of the plaint, the plaintiff has stated that he has been in possession and enjoyment of the suit property as absolute owner, by exercising all acts of ownership thereon and also claimed that UDR patta stands in his name. As the claim of ownership and the claim of title by adverse possession, are mutually exclusive reliefs, the appellant/plaintiff having taken inconsistent pleas, was rightly non-suited by the Courts below. It is admitted that the suit property initially belonged to one Gangaiah Mastri and Survey No.25/4 fell to the share of Gangaiah Mastri and his brother as per Ex.A-6-Partition Deed. On 28.03.1968, there was a partition between Gangaiah Mastri and his three brothers. In the Oral partition, there was no mention about Survey No.25/1, as it was already sold by them through their Power Agent Venkatasamy. Therefore, the question of re-conveying the same property to the plaintiff, does not arise. The Exchange Deed alleged by the plaintiff has also got no legal sanctity. As the plaintiff has not proved his right or title over the suit property, either by producing documents or by oral evidence, the Courts below have dismissed the relief of declaration of title. So far as the possession is concerned, though the plaintiff has claimed adverse possession, he has not stated as to whether it is to the knowledge of the true owner. The animus to hold the property adverse to the interest of the true owner has also not been made out. However, having made inconsistent pleas, the suit was rightly dismissed by the Courts below and there is no reason to interfere with the same.

4. In the light of the above, in the absence of any substantial question of law arising out of the said facts, the Second Appeal is dismissed, confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Additional Subordinate Judge, Chengalpet
2. The District Munsif, Chengalpet

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GJ II(CO)
TR(07/03/2018)



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