



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.12.2018

Pronounced on: 17.12.2018

Coram

The Honourable Dr. Justice G. Jayachandran

Second Appeal No. 1299 of 2004

Vasanth,
W/o. Chandran Chettiar,
No. 593, Gandhi Road,
Panruti,
Cuddalore District. ... Plaintiff/Appellant

/versus/

Kasthuri,
W/o. Shanmugam,
No. 43, Avvai New Street,
Panruti, Cuddalore District. ... Respondent/Defendant

Prayer: This Second Appeal is filed under Section 100 of the Civil Procedure Code, 1908, praying against the Judgment and decree made in A.S.No.2 of 2001 and memorandum of cross objections dated 22.04.2002 on the file of the Learned Subordinate Judge, Panruti in reversing the Judgment and Decree made in O.S.No.661 of 1994 on the file of the District Munsif, Panruti dated 16.11.2000.

For Appellant : Mr. V. Ramesh

For Respondent : No appearance

J U D G M E N T

The plaintiff is the appellant in this Second Appeal.

2. The plaint averments are:-

The suit property initially owned by one Mr. Sankaranarayana Chettiar. He settled the property to one Govinda Chettiar on 17.05.1963. Govinda Chettiar died leaving three sons. One of his son Panduranga Chettiar filed Insolvency Petition No. 8 of 86 and was declared as insolvent. His properties were sold in public auction. 1/3rd of his share in the suit property was purchased by the plaintiff through Court auction held on 09.12.1991. From the other two legal heirs of Govinda Chettiar, he purchased the remaining 2/3rd share through sale deed dated 27.03.1994.

3. The defendant a tenant under the erstwhile owner for a rent of Rs.200/- per month in a portion of the suit property. After purchase of the property by the plaintiff, the defendant refused to pay the rent. Notice to vacate was issued to her on 30.04.1996. The defendant neither vacated nor replied to the notice. Hence suit for vacant possession and recovery of rental arrears and damages for use and occupation.

4. In the written statement, the defendants deny the title of Sankaranarayanan Chettiar and his settlement deed in favour of Govindasamy Chettiar. The claim of the plaintiff over the 1/3 share in suit property through Court auction purchase pursuant to I.P.No.8/84 and 2/3rd from the other 2 sons of Govinda Chettiar are denied. Besides denying the title, the defendant also emphatically denied any Landlord-Tenant jural relationship between her and the plaintiff.

5. It is further contended by the defendant in her written statement that, her husband occupied the suit property 40 years ago when it was vacant and un-occupied. She does not know who owns the land. Her husband put up a thatched hut and living there peacefully without any disturbance. Her husband got his driving license in the year 1963, showing the suit property as his residence. 15 years prior to filing of the suit, she got water supply connection 12 years prior to the suit, she got electricity service. In the year 1980, her husband removed the thatched hut and constructed mud wall house. Having been in possession for more than 40 years, she and her husband have perfected the title by adverse possession.

6. In response to the written statement, the plaintiff has filed reply statement. In the reply statement, it is stated that the title of Sankaranarayan declared by competent Civil Court in O.S.No.330/44. The mother-in-law of the defendant was permitted to put up mud wall house and the monthly rent payable was adjusted towards the construction costs. Govinda Chettiar, the predecessor in title was collecting rent. Only on his consent/permission Electricity connection and Water connection were given in the name of the defendant's husband. Therefore, the claim of adverse possession is denied.

7. In the written statement, the defendant has contended that without recording delivery of vacant possession of 1/3rd undivided share of Panduranga Chettiar from Court auction purchase, the suit for possession is not maintainable.

8. The trial Court, after considering the plaint, written statement, reply statement, additional written statement, re-joinder has framed the following issues:-

(i). Whether the plaintiff is entitled for possession as prayed.

(ii). Whether the plaintiff is entitled for arrears of rent.

(iii). Whether the plaintiff is entitled for damages of Rs.1000/-

(iv). What the relief the plaintiff is entitled.

Additional Issues:

(i) Whether the sale deeds in favour of the plaintiff is valid.

(ii).Whether the suit is barred under Section 47 of Civil Procedure Code.

9. To prove the case, the plaintiff has examined 3 witnesses and 14 documents, 14 Exhibits were marked. On the side of the defendant, 5 witnesses and 19 documents were marked. Through witnesses, 9 Exhibits were marked as X series.

10. After considering the oral and documentary evidences, the Trial Court has held that the plaintiff, to prove his title, relied upon the judgment and decree passed in O.S.No.330 of 1994 [Ex.A.3] in favour of his vendor. The settlement deed of Sankaranarayanan Chettiar in favour of Govinda Chettiar [Ex.A.4]. The Court auction sale through Insolvency Proceedings 8/86 and sale deeds Ex.A.11, in respect of the remaining 2/3rd share were considered by the Trial Court and has held that the plaintiff has title over the suit property.

11. The Trial Court has considered the Property Tax Book [Ex.B.9], Electricity consumption card [Ex.B.10], Electricity receipts [Ex.B.11], notice issued by the Municipality [Ex.B.12], Tax Demand notice [Ex.B.14], Tax receipts [Ex.B.15 to Ex.B.18], the applications and connected records for Electricity service connection which are marked as X.1 to X.5, Tax receipts for the year 1982 to 1991 issued by the Municipality. The application of the defendant husband to construct lavatory and work completion certificate are marked as Ex.X.6 to Ex.X.8.

12. For proof of Landlord-tenant relationship, the evidence of PW.3 [Lakshmanan] has been considered by the Trial Court. PW.3 has spoken about the rent paid by the defendant for the suit property. According to this witness, he used to collect rent from the tenants on behalf of Mr.Kasiviswanathan, predecessors in title. However, the Court below has not accepted the contention of Landlord-tenant relationship since, the plaintiff has not examined his vendor to show that they have let the defendant to enjoy the property and collecting the rent. Since, the evidence of PW.3 was not corroborated by any other

witness or documentary evidence, the Trial Court has held that the Landlord-tenant relationship was not proved.

13. Regarding the claim of adverse possession, the trial Court has considered the deposition of PW.1 and PW.2. Pointing out that the defendant, while claiming adverse possession in the written statement, has deposed contrary to the plea, and said the property was originally owned by his maternal grandmother and Patta was given to her but, she has lost the Patta. Having failed to prove their possession is adverse to the interest and the title of the plaintiff or her predecessors in title, the trial Court has held that continuous enjoyment alone will not confer a persons' title by adverse possession. It should be adverse to the interest of true owner and the person who claims adverse possession should not claim title over the property. He should admit the title on the other persons, but claims possession with him continuously and with knowledge of the true owner. In this case, the trial Court has found that the defendant has not established the said requirements for the adverse possession.

Further two other principles relevant in cases where adverse possession to be decided are:

(i) "If a person enters into a possession unauthorisedly, his possession may be construed to be trespasser"

(ii) Mere possession for long time, will not convert a permissive possession into adverse possession."

14. In the written statement of the defendant has categorically said that she does not know the real owner. She is aware of the fact that the property which she is enjoying is somebody else land's. The intention of holding the land adverse to others interest is absent. In the written statement itself, the defendant has admitted that she or her husband are not aware of the plaintiff and they have denied the title. In the deposition, they have claimed title to their ancestral, hence the element of enjoying the property with knowledge and adverse to the owner is absent. In such circumstances, the claim of adverse possession cannot be countenance.

15. With this finding, the trial Court has granted declaration that the plaintiff have title over the property and defendant cannot claim adverse possession and directed the defendants to handover the possession within a period of three months, in respect of arrears of rent and damages, the claim of the plaintiff was declined.

16. Aggrieved by the judgment and decree passed by the Trial Court directing the defendant to vacate the suit premises and handover the vacant possession, the defendant has preferred A.S.No.2 of 2001 on the file of Subordinate Court, Panruti, Cuddalore District. The plaintiff has also preferred a cross appeal in respect of the other relief declined by the Trial Court. The First Appellate Court, on re-appreciation of the facts and law has held that without seeking relief of declaration regarding title, suit for possession is not maintainable. The first Appellate Court has observed that the plaintiff has failed to prove that the defendant was tenant either under him or under his predecessors in title. Contrarily, the defendant has proved that she is in enjoyment of the property getting Electricity connection, water connecting in her name. Availled loan from the Corporation to construct lavatory. The Appellate Court has held that at no point of time, the defendants were tenant under the plaintiff. Therefore, merely based on the sale deeds, the plaintiff cannot seek for possession without declaration. In the absence of Landlord-Tenant relationship between the plaintiff and the defendant, the judgment of the Trial Court to deliver possession to the plaintiff is not sustainable. Accordingly, the Lower Appellate Court has allowed the appeal and set-aside the judgment of the Trial Court and dismissed the suit.

17. The Second Appeal is filed challenging the legality of the First Appellate Court judgment. The learned counsel appearing for the appellant would submit that the plaintiff claim title over the property based upon the title of his vendor. There is no need to file a suit for declaration to declare the title over the property since, the defendant were in occupation of the property, as tenant under the vendor of the plaintiff. Their entry into the property was as a tenant. The suit for recovery of possession and damages for use and occupation is sufficient when there is no doubt about the title.

18. The Trial Court, considering the evidence had allowed the suit for possession. The Lower Appellate Court has failed to see that the plaintiff has got a valid title through the auction purchase of 1/3rd share in Insolvency Proceedings and 2/3rd shares of the suit property through Ex.A.11 and Ex.A.14. Having absolute title over the property, the reasoning of the Trial Court that without seeking declaration, suit for possession is bad is contrary to the settled Principle of law.

19. While, PW.3 has spoken about the Landlord-tenant relationship between the mother-in-law of the defendant and the predecessors in title of the plaintiff, the Appellate Court has failed to appreciate the evidence of PW.3 let in by the

plaintiff and has erroneously held that the plaintiff failed to establish the jural relationship of landlord tenant.

20. In the grounds of appeal, the following substantial questions of law were raised.

(i). When the claim of the defendant that he has perfected his title by adverse possession does not find favour with the Courts below whether Lower Appellate Court erred in law in dismissing the suit for recovery of possession?

(ii). When the plaintiff purchased 1/3rd share in suit property from the Official Receiver in insolvency and the remaining 2/3rd shares from the other sharers under Ex.A.6, Ex.A.11 and Ex.A.14, whether the lower Appellate Court erred in law in rejecting the relief of recovery of possession by holding that the plaintiff has not proved tenancy relationship between the parties.

(iii). When the defendant's mother-in-law was inducted in to possession of the suit property by the plaintiff's predecessors in interest, Whether the Lower Appellate Court not erred in law in holding that the jural relationship between the parties was not proved by the plaintiff.?

(iv). Whether the lower Appellate Court misconstrued and mis-appreciated evidence and record.

21. It is contended by the learned counsel for the Appellant that both the Courts have held the claim of the defendant that she has perfected the title by adverse possession is un-found. While so, the Appellate Court ought to have confirmed the judgment of the Trial Court instead, dismissed the suit in toto, without appreciating the law that when the title is not in dispute, suit for declaration regarding title is unwarranted.

22. Further, the learned counsel for the appellant has rightly pointed out that when the defendant has taken plea of adverse possession, she has to prove the three ingredients necessary for establishing the adverse possession namely nec vi, nec clam, nec precario. The defendant has admitted in the written statement itself that they have occupied the land which was vacant for 40 years ago and not aware of the true owner and enjoying it as a true owner, ever since they entered into the property. The defendant had denied the title of Mr.Sankaranayaranan Chettiar, Mr.Govinda Chettiar and the

plaintiff who are the real titleholders in sequence. Whereas the right of the predecessors in title has already been proved through Court decree in O.S.No.330 of 1944 and the property being purchased by the plaintiff through Court auction.

23. The claim of the defendant that the suit property was Government poramboke and later Patta was issued to grandmother of the plaintiff, go against their own claim of adverse possession. Therefore, having failed to prove the claim of adverse possession which requires open, continuous and hostile enjoyment, the prayer of delivery of vacant possession sought by the plaintiff ought to have been confirmed by the Appellate Court.

24. The Courts below have unanimously held that the plaintiff has derived valid title through the Court auction sale as well as the sale deeds executed by the other two sharers. Admittedly, the possession is with the defendant. When there is no dispute in respect of title, though the defendant has denied the title and claims title upon himself at once breath and claim adverse possession on the other breath, declaratory relief regarding title is superfluous. The document produced by the plaintiff and relied upon clearly and convincingly establishes the title in favour of the plaintiff. In such circumstances, the Appellate Court ought not to have reversed the finding of the trial Court on the ground that the plaintiff has not sought relief of declaration.

25. It is the case of the defendant that they have title through Patta issued by the Government, which the defendant has failed to prove. The alternative case of the defendant is that they have perfected the title by adverse possession.

26. If one pleads adverse possession, he has to prove that he has disclaimed true owner's title under which he came into possession. He must have the animus of asserting open and hostile title to the knowledge of true owner and latter should have allowed the former, without any let or hindrance, to remain in possession and enjoyment of the property adverse to the interest of true owner until the expiry of the prescribed period.

27. In this case, when the statutory notice was issued by the plaintiff in the year 1994, the defendant has not expressed through reply that he has come into possession with the knowledge of the true owner and the true owner has allowed

him to remain in possession of the property, without let or hindrance, thereby he has perfected title by adverse possession.

28. As pointed by the Hon'ble Supreme Court in D.N.Venkatarayappa Vs. State of Karnataka reported in (1997) 7 SCC 567. The classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario. [not by violence, stealth or permission].

29. The reading of the pleadings and the evidence clearly shows that the defendant admits he entered the premises by stealth. Whereas the claim of the plaintiff is that defendant family was allowed to occupation by its predecessors in title as tenant and they were paying rent. There is some evidence in support of his claim through PW.3. Even if the said evidence is not sufficient to probalise the case of the plaintiff, the admission of the defendant that they were tenant in the house of Mr.Rathana Gounder (40 years ago), when the said house got dilapidated the family shifted to the suit property which was vacant at that time and put up thatched hut; got Water connection, Electricity connection subsequently goes to show that their entry of the suit property nothing but a trespass.

30. When a specific defence of adverse possession is made, the burden to prove the same shifts on the defendant. In this case, the defendant has failed to satisfy the ingredients required for adverse possession. Therefore, the plaintiff is bound to succeed in their suit for possession. While the Trial Court has partially allowed the suit regarding possession and disallowed the claim regarding arrears of rent and damages for use and occupation, the Appellate Court has erred in holding that without a prayer for declaration of title, relief of possession cannot be granted.

31. Therefore, the Second Appeal is allowed. The judgment and decree passed by the learned Subordinate Judge, Panruti, Cuddalore District, dated 22.04.2002 is set-aside. The judgment and decree passed by the District Munsif, Panruti, Cuddalore District, in O.S.No.661 of 1994 is restored. Three months time is granted to the defendant to hand over the possession. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To

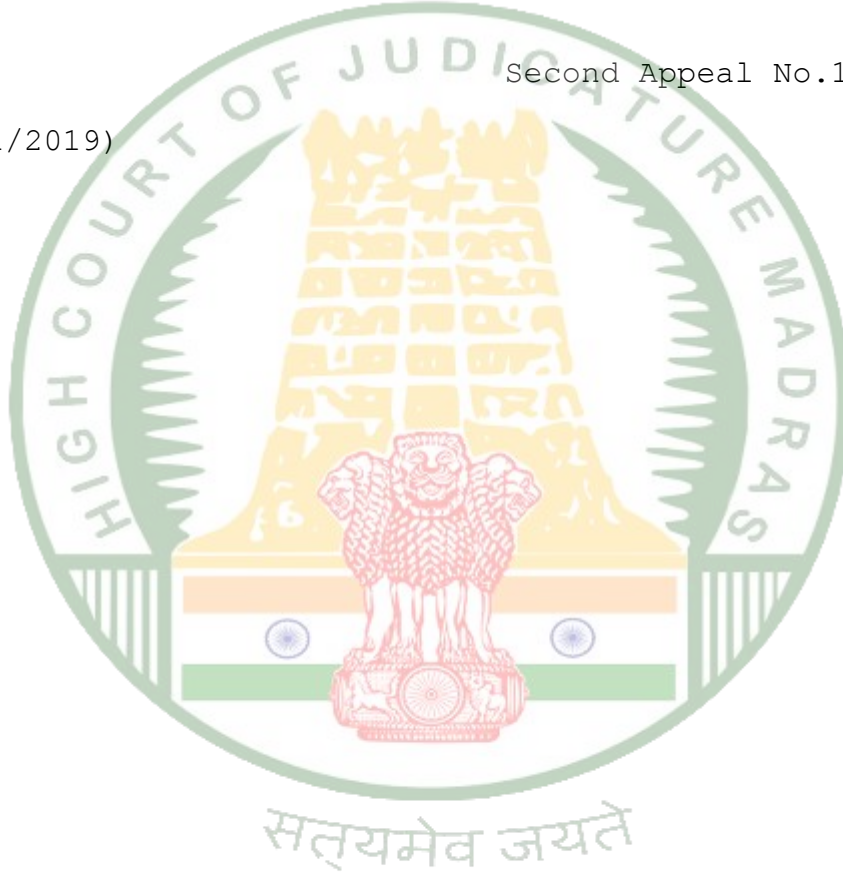
1. The Learned Subordinate Judge, Panruti, Cuddalore District.
- 2.The Learned District Munsif, Panruti, Cuddalore District.

Copy to
The section officer,
VR Section,
High court
Madras

+1cc to Mr. V.Ramesh , Advocate SR.No. 87960

Second Appeal No.1299 of 2004

A.SK(25/01/2019)



WEB COPY