

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2018

PRONOUNCED ON : 18.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.563 of 1999

K.M.Babu

...Appellant/Plaintiff

Vs.

The Executive Officer,
Anjaneyar Arunachaleswarar Devasthanam,
Korattur.

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by Subordinate Judge, Poonamallee on 30.11.1998 in A.S.No.47/1997 confirming the decree and judgment passed in O.S.No.1304/1988 on 25.06.1997 by the District Munsif, Poonamallee.

For Appellant : Mr.S.Balasubramanian

For Respondent : Mr. P.V.Arul Pazham Nee

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 30.11.1998 passed in A.S.No.47/1997, on the file of the Subordinate Court, Poonamallee, confirming the judgment and decree dated 25.06.1997 passed in O.S.No.1304/1988 on the file of the District Munsif, Poonamallee.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that the plaintiff is the adopted son of Poongavana Chowdary and he was taken in adoption when he was two years old and since the adoption, the plaintiff was living with Poongavana Chowdary till his death in or about 1970 and the suit property is a grama

natham property and enjoyed by the plaintiff's adoptive father as his own, till his death along with the plaintiff and after his demise, the plaintiff has been in continuous possession and enjoyment of the same by paying house tax etc., and the plaintiff has put up a terraced building in the suit property in or about 1979, obtained electricity service connection and accordingly, enjoying the suit property continuously by paying necessary electric charges and on account of the long and continuous possession and enjoyment beyond the statutory period, he has also perfected his title to the suit property by way of adverse possession and the defendant is a stranger to the suit property and at the instigation of others, objected the plaintiff from plucking the fruits in the suit property and also threatened to dispossess the plaintiff from the suit property without any legal authority and accordingly, he has been constrained to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and it is false to state that the plaintiff is the adopted son of Poongavana Chowdary and the defendant also denies that the plaintiff is in possession and enjoyment of the suit property on the date of the suit and prior thereto and hence, not entitled to obtain the relief of permanent injunction and the suit property belongs to Tmt.Thimmakka, wife of Poongavana Chowdary and she, as the sole heir, gifted the suit property to the defendant by way of a settlement deed dated 26.5.1988 and the temple authorities accepted the gift and obtained the transfer of the property and enjoying the same and the plaintiff has not properly valued the suit property and paid the Court fee and the suit is therefore liable to be dismissed.

6. In support of the plaintiff's case PWs 1 to 3 were examined, Exs.A1 to A11 were marked. On the side of the defendant, DWs 1 to 4 were examined, Exs.B1 to B6 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

"(i) Whether the judgment and decree of the Courts below are legally sustainable inasmuch as they have failed to note that the appellant being in possession of the suit properties is entitled to a decree for injunction?

(ii) Whether the judgment and decree of the Courts below are legally sustainable inasmuch as they have not followed the judgment reported in 1997 (1) CTC 407?"

9. It is not in dispute that the suit property is a grama natham. Materials placed on record go to show that the plaintiff claims title, possession and enjoyment of the suit property on the footing that the suit property belonged to Poongavana Chowdary and that he being the adopted son of Poongavana Chowdary, after the demise of Poongavana Chowdary, it is the case of the plaintiff that he has been in possession and enjoyment of the suit property by putting up terraced house, paying tax, electricity charges etc., and thereby has title, possession and enjoyment of the suit property and according to the plaintiff, inasmuch as the defendant attempted to interfere with his possession and enjoyment, according to him he has been necessitated to lay the suit for the relief of permanent injunction.

10. Per contra, the defendant has disputed the claim of the plaintiff that he is the adopted son of Poongavana Chowdary and according to the defendant, the suit property belonged to Thimmakka and she had settled the suit property in favour of the defendant and thereby, it is only the defendant who has possession and enjoyment of the suit property pursuant to the said settlement and therefore, the plaintiff's suit should be rejected.

11. Materials placed on record go to show that the suit property was originally owned by Poongavana Chowdary. As far as the claim of the plaintiff that he has been taken in adoption by Poongavana Chowdary, absolutely there is no material forthcoming to sustain the same. On the other hand, as per the Will dated 05.07.84, executed by Thimmakka, examined as DW4, wife of Poongavana Chowdary in favour of the plaintiff and the cancellation deed dated 25.5.88 marked as Ex.B2, executed by DW4, all go to show that the plaintiff is only the foster son of Poongavana Chowdary and not the adopted son. Therefore, it is seen that the claim of the plaintiff that he has been taken in adoption by Poongavana Chowdary as such cannot be accepted in any manner and rightly rejected by the Courts below. The plaintiff has not placed any material to hold that he has been taken in adoption duly by Poongavana Chowdary and his wife Thimmakka DW4. In fact, the plaintiff has not even whispered when the adoption has been taken place and whether he has been treated as the adopted son by the society at large pursuant to the so called adoption. Therefore, the Courts below are justified in holding that the plaintiff is not the adopted son of Poongavana Chowdary and Thimmakka.

12. No doubt, at one point of time, the suit property had been bequeathed to the plaintiff by Thimmakka by way of Ex.B1 Will and thereafter, it is found that the said Will had been cancelled by DW4 on 25.5.1988 and the cancellation deed has come to be marked as Ex.B2. It is thus found that inasmuch as the plaintiff has neglected to maintain Thimmakka and on the other hand, throw her out of the suit property. It is found that Thimmakka, as the absolute owner of the same, at one point of time, though thought it fit to bequeath the property in favour of the plaintiff by way of Ex.B1 Will, later cancelled the same by way of Ex.B2 cancellation deed and thereafter, it is found that the title holder had settled the property in favour of the defendant by way of a settlement deed dated 26.5.1988, marked as Ex.B3 and considering the recitals contained therein as well as the documents marked as Exs.B4 to B6, as rightly determined by the Courts below, it is found that Ex.B3 Will had been accepted by the defendant and pursuant to the same, it is seen that only the defendant has got the title to the suit property.

13. The plaintiff also claims title to the suit property by way of adverse possession. However, when the documents produced by the plaintiff do not support his case that he has been in possession and enjoyment of the suit property by exerting his title to the knowledge of the real owner, openly and continuously, exhibiting animus attitude and beyond the statutory period, as rightly determined by the Courts below, the plea of adverse possession putforth by the plaintiff also to acquire title to the suit property, cannot be accepted.

14. In the light of the above discussions, it is found that the plaintiff has no title whatsoever to the suit property. The plaintiff has failed to establish his plea of adverse possession also claiming title to the suit property. It is found that only the defendant has a valid title to the suit property. In such view of the matter, it is found that the plaintiff is only a trespasser in respect of the suit property and therefore, cannot seek the relief of permanent injunction as against the true owner, namely, the defendant. As rightly determined by the Courts below, the documents produced by the plaintiff marked as Exs.A1 to A9 by themselves would not confer a valid claim of title to the suit property on the plaintiff and also not be useful to hold that the plaintiff is in lawful possession and enjoyment of the suit property. Accordingly, it is found that the Courts below have rightly held that the plaintiff cannot maintain the suit for permanent injunction against the title holder, namely, the defendant. Further, the case of the plaintiff that the defendant attempted to disturb his possession illegally is not fortified by placing acceptable and reliable materials. Therefore, the cause of action for the suit also remains not established and in such view of the matter, the

Courts below had rightly dismissed the plaintiff's suit.

15. Materials placed on record also go to show that the plaintiff despite knowing the true value of the suit property, undervalued the same and laid the suit by paying improper court fees and the said fact had been adverted by the Courts below and accordingly, it is seen that the plaintiff has not come forward with the suit with clean hands to seek the equitable relief of permanent injunction.

16. In the light of the above discussions, the plaintiff being the trespasser in respect of the suit property and failing to establish that he has a valid title to the suit property and on the other hand, when it is seen that, it is only the defendant who has a valid title to the suit property and further, when the plaintiff has failed to establish that the defendant had attempted to disturb his possession and enjoyment illegally, accordingly, it is found that the Courts below are justified in rejecting the plaintiff's case on the footing that the plaintiff cannot maintain the suit for permanent injunction as against the real and true owner and in such view of the matter, no interference is called for in the judgment and decrees of the Courts below. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

17. Resultantly, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Poonamallee.
2. The District Munsif Court, Poonamallee.
3. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Balasubramanian, Advocate, S.R.No.28630
+1cc to Mr.P.V.Arul Pazham Nee, Advocate, S.R.No.28595

S. A.No.563 of 1999

EV(CO)
CS/12/06/18