

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.12.2017
Judgment pronounced on: 06.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A.Nos.947 & 948 of 1999
and
CMP.Nos.9691 and 9692 of 1999

Nazibuddin ... Appellant in S.A.No.947/1999
M.M.Dharia Bivi ... Appellant in S.A.No.948/1999

Vs.

Chelladurai ... Respondent in both the Appeals.

Common Prayer : Second Appeals are filed under Section 100 of the Civil Procedure Code, against the Judgments and Decrees dated 23.07.1996 in A.S.Nos.66 & 67/1996 on the file of the Court of Additional Subordinate Judge, Nagapattinam, confirming the Judgment and Decree passed in O.S.Nos.188 & 228/1993 dated 24.04.1995 on the file of the Court of District Munsif, Nagapattinam.

For Appellants : M/s.A. Muthukumar

For Respondent in both the S.A.s. : No appearance

COMMON JUDGMENT

S.A.No.947 of 1999 has been filed by the defendant against the Judgment and Decree passed in A.S.No.66 of 1996 dated 23.07.1996 on the file of the Additional Subordinate Judge, Nagapattinam, confirming the Judgment and Decree passed in O.S.No.188 of 1993 on the file of the District Munsif, Nagapattinam, dated 24.04.1995.

S.A.No.948 of 1999 has been filed by the plaintiff against the Judgment and Decree passed in A.S.No.67 of 1996 dated 23.07.1996 on the file of the Additional Subordinate Judge, Nagapattinam, confirming the Judgment and Decree passed in O.S.No.228 of 1993 on the file of the District Munsif, Nagapattinam, dated 24.04.1995.

2. The respondent herein in both the second appeals has filed a suit in O.S.No.188 of 1993 on the file of the District

Munsif, Nagapattinam for the relief of permanent injunction restraining the appellant herein in S.A.No.947/1999 from interfering with his peaceful possession and enjoyment of the suit property. The appellant in S.A.No.948/1999 has filed a suit in O.S.No.228/1993 on the file of the District Munsif, Nagapattinam for recovery of possession of the suit property. The learned District Munsif, Nagapattinam, by his Common Judgment dated 24.04.1995, had decreed the suit in O.S.No.188/1993 and dismissed the suit in O.S.No.228/1993. Aggrieved by the same, the appellants herein have filed appeals in A.S.Nos.66 and 67/1996 respectively on the file of the learned Additional Subordinate Judge, Nagapattinam. The learned Additional Subordinate Judge, Nagapattinam, by his separate Judgments dated 23.07.1996 had dismissed both the appeals confirming the judgment and decree passed by the trial court. Aggrieved by the same, the appellants herein have filed the present second appeals.

3. For the sake of convenience, the parties are referred to as described in O.S.No.228/1993 on the file of the District Munsif, Nagapattinam.

4. The averments made in the plaint filed in O.S.No.188/1993 on the file of the District Munsif, Nagapattinam are, in brief, as follows:

4.1. The property measuring about 451/3 cents(136 kuzhis) situated in SR.No.49/4 of Koothur Tiruvarur Taluk is in possession and enjoyment of the plaintiff. The plaintiff's father constructed a house and he was in possession and enjoyment of the said property for more than 35 years. He was enjoying the same by paying the house tax, etc., and he died in the year 1988 and thereafter, the plaintiff in that suit succeeded to the said property and he has been in possession and enjoyment of the same.

4.2. The defendant is in no way connected with the suit property. However, he threatened the plaintiff that he should vacate the suit property and hence, he filed a suit for permanent injunction restraining the defendant in that suit from interfering with his peaceful possession and enjoyment of the same.

5. The averments made in the written statement filed by the defendant in O.S.No.188/1993 on the file of the District Munsif, Nagapattinam are, in brief, as follows:

The defendant's mother viz., N.M.Dhariya Beevi had filed a suit in O.S.No.158/1993 claiming that she is the owner of the suit property. Subsequently, she filed another suit in O.S.No.228/1993 for recovery of possession of the suit

property. A portion of the suit property belongs to the defendant's father and another portion belongs to defendant's mother. Patta also stands in the name of defendant's mother. The defendant's father was in possession and enjoyment of the suit property by planting coconut trees, mango trees, bamboo trees etc., Further he constructed three thatched houses. On 01.04.1966, the plaintiff's father Marimuthu came into possession of the suit property by executing a maintenance deed. The said deed was periodically renewed. Out of three houses, one has been dilapidated and in two houses, the plaintiff is residing. Suppressing those facts, the plaintiff has filed the above suit and hence, the suit is liable to be dismissed.

6. The averments made in the plaint filed in O.S.No.228/1993 on the file of the District Munsif, Nagapattinam are, in brief, as follows:

The plaintiff's husband had purchased a portion of the suit property vide registered sale deed dated 04.03.1963 and another portion was purchased by him vide registered sale deed dated 20.07.1969. The plaintiff had purchased a portion of the suit property vide registered sale deed dated 22.08.1981. The plaintiff's husband was in possession and enjoyment of the suit property by planting trees like coconut, bamboo, mango, etc., He has also constructed three thatched houses. The house tax was assessed in his name. After his death, the plaintiff succeeded to the said property as a legal heir. On 01.04.1966, the defendant's father, Marimuthu came into possession of the aforesaid property by executing a maintenance deed dated 01.04.1966. Subsequently, on 01.04.1971, 05.02.1977, 02.10.1980 and 23.04.1983, the same kind of maintenance deeds were executed by the defendant's father. One thatched house has been dilapidated. In two houses, the plaintiff and his father were in possession. The defendant and his father had executed maintenance deed dated 25.07.1986 and 21.10.1988 and they were inducted into the suit property only for the purpose of maintaining the suit property. After the death of defendant's father, the defendant is maintaining the said property. On 16.07.1993, the plaintiff had issued a lawyer's notice requesting the defendant to vacate and handover the possession of the suit property. After receipt of the said notice, the defendant had sent a reply through his counsel with false averments. But he refused to vacate the suit property and hence, the plaintiff was constrained to file a suit for delivery of possession of the suit property.

7. The averments made in the written statement filed by the defendant in O.S.No.228/1993 are, in brief, as follows:

It is false to state that the suit property was purchased by the plaintiff and her husband. It is also false to state that the defendant's father had executed maintenance deeds on various

deeds and subsequently, the defendant and his father had executed maintenance deeds. The suit property was absolutely belonged to the defendant's father. He enjoyed the suit property openly and continuously without any interruption for more than thirty five years. The defendant's father only constructed a house in the suit property. The defendant's father died in the year 1990. Thereafter, as a legal heir, the defendant succeeded to the suit property and enjoying the same as owner of the suit property for more than forty years. The defendant's father alone planted trees in the suit property. The plaintiff has paid house tax without knowledge of the defendant and that it would not give any right over the suit property. The plaintiff has already filed a suit in O.S.No.158/1993 for the relief of permanent injunction stating that she is in possession and enjoyment of the same. But, subsequently she filed the present suit stating that the defendant and his father were inducted into the suit property only to maintain the suit property and hence, he has to deliver possession of the suit property. Since the defendant is in possession and enjoyment of the suit property as owner for more than forty years, the plaintiff is not entitled for delivery of possession of the suit property. Therefore he prayed to dismiss the said suit.

8. Based on the aforesaid pleadings, the learned District Munsif, Nagapattinam, framed necessary issues and tried the suits jointly. During trial, on the side of the plaintiff, three witnesses were examined as PW1 to PW3 and Exs.A1 to A37 were marked on the side of the defendant. The defendant examined himself as DW1 and marked Exs.B1 to B10.

9. Learned District Munsif, Nagapattinam, after considering the materials placed before him found that the defendant has perfected title by adverse possession and accordingly, dismissed the suit in O.S.No.228/1993 and decreed the suit in O.S.No.188 of 1993 which was filed by the defendant. Aggrieved by the same, the appellants herein have filed appeals in A.S.Nos.66 & 67 of 1996 on the file of the Additional Subordinate Judge, Nagapattinam.

10. Learned Additional Subordinate Judge, Nagapattinam had dismissed both the appeals confirming the Judgment and Decree of the learned District Munsif, Nagapattinam. Aggrieved by the same, the appellants have filed the present second appeals.

11. At the time of admitting the second appeals, this court has formulated the following substantial question of law :

"When the title of the plaintiff to the suit property has been upheld by the court below, whether the plaintiff is not entitled to recovery of possession of the suit property?"

12. The learned counsel who was appearing for the respondent herein viz., Mr.S.Sathiamurthi is no more and hence, this court has directed the appellants to send a private notice by RPAD to the respondent herein. Accordingly, the appellants herein have sent a notice to the respondent by RPAD and proof of service also filed. But the respondent has not appeared. Hence, the second appeals were listed by printing the name of the respondent in the cause list. Even thereafter, he did not appear and hence, he was set ex parte. After hearing the arguments of the learned counsel for the appellants and perusing the Judgments of the courts below and records, Judgment is being passed.

13. Learned counsel appearing for the appellants submitted that the appellant in S.A.No.947 of 1999 is the son of the appellant in S.A.No.948/1999. He further submitted that the husband of the appellant in S.A.No.948/1999 had purchased portions of the suit property through registered sale deeds dated 04.03.1963 and 20.07.1969 and one portion was purchased by the appellant in S.A.No.948/1999 under a registered sale deed dated 22.08.1981. He further submitted that the defendant and his father were inducted into the possession of the suit property in the year 1966 only for the purpose of maintaining the suit property and they also executed documents to that effect on various dates. He further submitted that the husband of the appellant in S.A.No.948/1999 had constructed three thatched houses in the suit property and the defendant and his father were permitted to reside in the said houses. He further submitted that since the husband died, the appellant in S.A.No.948/1999 had issued a lawyer's notice demanding delivery of possession in the year 1993 and after receipt of the said notice, the respondent instead of complying with the said notice, he sent a reply notice through advocate containing false averments and hence, the appellant in S.A.No.948/1999 was forced to file a suit in O.S.No.228/1993 for recovery of possession. He further submitted that the respondent herein has claimed adverse possession. But he has not proved the same by adducing satisfactory oral and documentary evidence. He further submitted that the courts below failed to appreciate the evidence in proper perspective and hence, he prayed to allow both the second appeals.

14. It is an admitted fact that the appellant in S.A.No.948/1999 had filed a suit in O.S.No.158/1993 for the relief of permanent injunction stating that she was in possession and enjoyment of the suit property. But the said fact was not disclosed in the plaint filed in O.S.No.228/1993. She had filed the suit in O.S.No.228/1993 for delivery of possession suppressing the fact that she had already filed a

suit in O.S.No.158/1993.

15. It is seen from the evidence of the DW1 that the suit in O.S.No.158/1993 was dismissed. The said fact was not disputed by the appellants herein. Having filed a suit stating that she is in possession and enjoyment of the suit property, suppressing the said fact, she had filed O.S.No.228/1993 stating that in the year 1966, the defendant and his father were inducted into the suit property only to maintain the suit property. She had also produced certain documents stating that the defendant and his father had executed those documents admitting her title over the suit property. Those documents were marked as Exs.A9 to A15. In those documents, it is mentioned as the defendant was inducted into the suit property as a tenant. The said fact was also suppressed by the appellants in their cases. On the contrary, they have stated that the defendant is in permissive possession and not as a tenant. So, it is clear that the appellants herein have not come to the court with clean hands.

16. It is also to be pointed out that PW1 has admitted in her evidence that the defendant is in possession of the suit property for more than thirty years. Further during her cross examination, she has admitted that from the very beginning that the defendant has not admitted her title over the suit property.

17. Taking into consideration the aforesaid facts, the courts below came to the conclusion that the respondent herein had perfected title by adverse possession over the suit property. Since the aforesaid findings are based on the facts, this Court cannot interfere in the said concurrent findings. Accordingly, the substantial question of law is answered against the appellant herein.

18. For the aforesaid reasons, the second appeals are dismissed confirming the Judgments and Decrees of the courts below. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Additional Subordinate Judge,
Nagapattinam.

2. The District Munsif,
Nagapattinam.

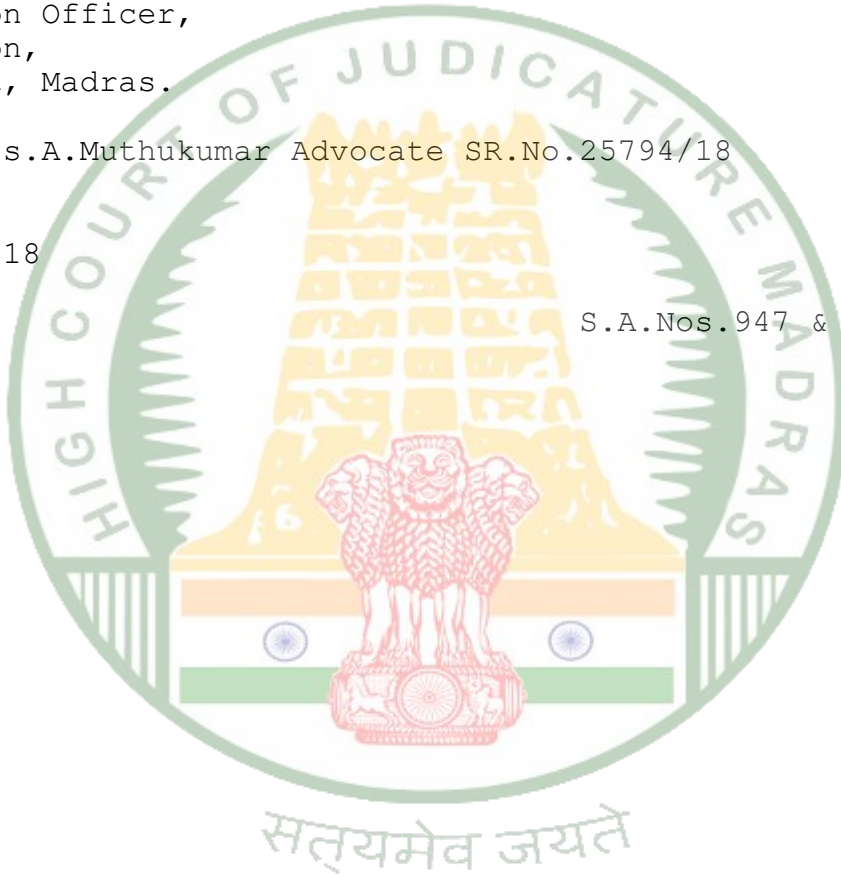
Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/s.A.Muthukumar Advocate SR.No.25794/18

RJI (CO)
sm:19.4.2018

S.A.Nos.947 & 948 of 1999



WEB COPY