

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2018

PRONOUNCED ON : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.100 of 2015

V.Ravi ... Appellant /3rd Respondent/
3rd Defendant
Vs.

1.Sakunthala Ammal
2.M.Gopi
3.M.Raji
4.Kalavathi
5.Poonkodi ...R1 to R5/Appellants 1 to 5/Plaintiffs 1 to 5
6.V.Santha Moorthy ... R6/R2/D2
7.V.Sathiyamoorthy ... Respondents No. 7/R5/D5

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 08.04.2014 passed in A.S.No.109 of 2011 on the file of the Sub-Court, Ranipet, Vellore District, reversing the Judgment and Decree dated 30.09.2011 passed in O.S.No.155 of 2007 on the file of the District Munsif cum Judicial Magistrate No.1, Walajapet.

For Appellant : Mr.K.Thangavelu

For Respondent : Mr.K.V.Ananthakrushnan
Nos.1 to 5

For Respondent : Mr.K.Mohana Murali
No.6

Respondent No.7 : No appearance
set exparte vide order
dated 07.08.2018

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 08.04.2014 passed in A.S.No.109 of 2011 on the file of the Sub-Court, Ranipet, Vellore District, reversing the Judgment and Decree dated 30.09.2011 passed in O.S.No.155 of 2007 on the file of the District Munsif cum Judicial Magistrate No.1, Walajapet.

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

3.Suit for possession.

4.The case of the plaintiffs, in brief, is that the suit property originally belonged to Palani Ammal by way of a registered sale deed dated 12.12.1971 and she has been in the possession and enjoyment of the same in her own right and after her demise, her son viz., Munirathinam inherited the suit property and enjoying the same and Munirathinam was also having his other properties adjacent to the suit property including a Mill and in possession and enjoyment of the properties. During 1981, due to enmity, the first defendant, who was the Vice Chairman of the Municipality, started interfering with the peaceful possession and enjoyment of the suit property by Munirathinam and hence, Munirathinam filed a suit for declaration and injunction against the first defendant in O.S.No.421 of 1981 on the file of the District Munsif Court, Ranipet and the said suit was dismissed and challenging the same, Munirathinam preferred A.S.No.51 of 1986 before the Sub-Court, Vellore, the said appeal was allowed on 29.04.1987 and thereby, the title of Munirathinam in respect of the suit property was declared and the relief of permanent injunction was also granted in his favour and as against the same, the first defendant preferred second appeal to the High Court in Second Appeal No.496 of 1988 and the same was dismissed on 29.09.1999 and thus, the title of the suit property in favour of Munirathinam was confirmed and even after the same, the first defendant started giving trouble to Munirathinam through his sons viz., the defendants 2 & 3 and accordingly, at his instigation, the second defendant trespassed into the suit property illegally and high handedly put up a structure and the defendants 1 to 3 are not law abiding citizens and the efforts taken by Munirathinam to remove the encroachment ended in vain and the defendants 2 & 3 have no right whatsoever in respect of the suit property but they are unlawfully squatting in the suit property and meanwhile, Munirathinam died on 16.06.2006 leaving behind the plaintiffs as his legal heirs and hence, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5.The case of the second defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. After denying the plaint averments, it is stated that the second defendant entered into a lease agreement with the original owner of the suit property viz., Mrs.Valliammal in the year 1985 and obtained service connection in his name and running M/s.Lakshmi Fabrication Works in the suit property from 1985 till date and admitting that Munirathinam is having other properties adjacent to the suit property including a Mill, however, would state that the plaintiffs have come forward with the false suit and according to the second defendant, the plaintiffs had never enjoyed the suit property at any point of time and on the other hand, it is only the second defendant, who has been running the abovesaid Fabrication works in the suit property for more than 23 years and accordingly, on account of his long and continuous possession and enjoyment, he has prescribed title to the suit property by way of adverse possession and it is false to state that the first defendant, after the judgment passed in A.S.No.51 of 1986, continued to interfere with the possession and enjoyment of Manirathinam in respect of the suit property through his sons and on the other hand, the second defendant is in the possession and enjoyment of the suit property pursuant to the lease arrangement with Valliammal as abovestated and the second appeal is pending in the High Court as against the judgement and decree passed in A.S.No.51 of 1986 and therefore, the suit is liable to be dismissed.

6.The case of the third defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The third defendant is a Dumb and Deaf person and hence, the suit laid by the plaintiffs against him without a guardian for him is not maintainable and liable to be dismissed and after denying the plaint averments, according to the third defendant, he is not a party to the earlier proceedings and therefore, the same is not binding upon him and on the other hand, according to the third defendant, he is the absolute owner of the suit property on the strength of the purchase of the same from Valliammal on 06.07.1989 and accordingly, the third defendant and his predecessors in title had been in the possession and enjoyment of the suit property for several decades continuously and uninterruptedly and thereby, the third defendant has prescribed title to the suit property by prescription and the plaint is hit by resjudicata and also barred by limitation and the plaintiffs have no cause of action to institute the suit and the suit is liable to be dismissed.

7.In support of the plaintiffs' case, PW1 was examined and

Exs.A1 to A5 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B7 were marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to dismiss the plaintiffs' suit. On appeal, the first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred, decreed the suit as prayed for. Impugning the same, the third defendant has preferred the present second appeal.

9.At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

" Whether the Appellate Court not erred in not giving a finding on the question of Limitation for possession under Article 64 of the Limitation Act, particularly, when the respondents 1 to 5 pleaded that the appellant trespassed into the suit property dispossessing them from their possession?"

10.Materials placed on record go to show that the suit property originally belonged to Palaniammal by way of the registered sale deed dated 12.12.1971, the certified copy of which has been marked as Ex.A5. Munirathinam is the son of Palaniammal and accordingly, it is stated by the plaintiffs that Munirathinam inherited the suit property from Palaniammal and accordingly, enjoying the same and he was also having other properties adjacent to the suit property including a Mill and accordingly, it is stated by the plaintiffs that Munirathinam had been enjoying the suit property and the other properties adjacent thereto and inasmuch as the first defendant, on account of hostile attitude, interfered with his possession and enjoyment of the suit property unlawfully, according to the plaintiffs, Munirathinam had been necessitated to lay the suit for the reliefs of declaration and permanent injunction in O.S.No.421 of 1981 on the file of the District Munsif Court, Ranipet. The certified copy of the judgment dated 11.04.1985 passed in the abovesaid suit has been marked as Ex.A1. It is found that the said suit had been dismissed by the said Court. Challenging the same, it is found that Munirathinam had preferred the first appeal in A.S.No.51 of 1986 on the file of the Sub-Court, Vellore and the first Appellate Court is found to have accepted the case of Munirathinam and accordingly, granted the reliefs of declaration and permanent injunction in favour of

Munirathinam by judgement dated 29.04.1987 and the certified copy of the said judgment has been marked as Ex.A2. Challenging the same, it is found that the first defendant had preferred the second appeal in the High Court and the second appeal preferred by the first defendant in S.A.No.496 of 1988 had come to be dismissed on 29.09.1999 and the certified copy of the judgement has been marked as Ex.A3.

11.The plaintiffs are the legal heirs of Munirathinam, who had died on 16.06.2006, the death extract has been marked as Ex.A4. Now, according to them, even after the declaration of title of Munirathinam and the grant of appropriate reliefs in favour of Munirathinam by the Court in A.S.No.51 of 1986, the first defendant had been attempting to interfere with the possession and enjoyment of Munirathinam in respect of the suit property illegally and high handedly and it is stated that at his instigation, his sons viz, the defendants 2 & 3 had unlawfully encroached into the suit property by using their muscle power and put up a structure and the efforts of Munirathinam to evict them ended in vain. Thus, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

12.The first defendant having died pending the suit, it is found that his legal heirs had been brought on record. The second defendant has resisted the plaintiffs' suit by contending that he had taken the suit property on lease from the original owner Valliammal in the year 1985 and accordingly, running M/s.Lakshmi Fabrication works in the suit property since 1985 and thus, it is stated that neither Munirathinam nor the plaintiffs had been in the possession and enjoyment of the suit property at any point of time and on the other hand, it is only the second defendant, who has been in the possession and enjoyment of the suit property continuously and uninterruptedly beyond the statutory period for more than 23 years and thus, it is stated that the second defendant had prescribed title to the suit property by way of adverse possession. Similarly, the third defendant has taken a plea that he had acquired title to the suit property by way of purchase from Valliammal on 06.07.1989 and since then, it is only he, who has been in the possession and enjoyment of the suit property and he and his predecessor in title had been enjoying the suit property continuously and uninterruptedly by paying tax etc., beyond the statutory period and thus, acquired title to the suit property by way of adverse possession.

13.The third defendant in the written statement has also taken a plea that he is a dumb and deaf person and the plaintiffs have not taken steps to appoint guardian for him to defend the proceedings and on account of the failure of the

plaintiffs to take steps with reference to the same, the suit laid by the plaintiffs is not maintainable.

14. Though the defendants 2 & 3 would claim that the original owner of the suit property is one Valliammal, however, with reference to their abovesaid case, there is no material placed on record worth acceptance. Accordingly, it is found that without any basis, the defendants have projected a claim, as if the suit property originally belonged to Valliammal and not to Palaniammal. If really, the suit property originally belonged to Valliammal, as rightly contended, necessary materials pointing to the same would have been placed by them before the Courts below. Further, when the defendants have failed to establish the ownership of the suit property in favour of Valliammal, their further case that they had been enjoying the suit property pursuant to the lease arrangement with Valliammal as put forth by the second defendant and pursuant to the purchase of the suit property from Valliammal as put forth by the third defendant cannot be countenanced and the abovesaid pleas have to be rejected. If really, Valliammal had been the true owner of the suit property, evidence, pointing to the same, would have been projected. Further, if really, the second defendant had entered into a lease arrangement with Valliammal as projected in the written statement, materials evidencing the same would have been placed on record. However, there is no proof placed on the part of the second defendant as such to hold that he has taken the suit property validly on lease from Valliammal and accordingly, enjoying the same by running a fabrication works in the suit property since 1985. Further, the third defendant had also not placed any materials to hold that he had acquired title to the suit property from Valliammal. Accordingly, it is found that the defendants unable to sustain their claim of title to the suit property through Valliammal, have taken the plea of adverse title to the suit property by putting forth the case that the suit property is in their possession and enjoyment, openly, continuously and uninterruptedly beyond the statutory period. However, according to the plaintiffs' case, only after the upholding of the title of Munirathinam in respect of the suit property in A.S.No.51 of 1986, the defendants had encroached into the suit property unlawfully and when the defendants have not placed any material worth acceptance to sustain their claim of title, legal possession and enjoyment of the suit property, it is evident that the defendants have come to occupy the suit property only by unlawfully and illegally encroaching into the same. Accordingly, it is found that inasmuch as it is only Munirathinam, who had title to the suit property and the High Court also concurred with the said determination of the first appellate Court in favour of Munirathinam and thereby, dismissed the appeal preferred by the first defendant as abovenoted.

Accordingly, it is seen that all along, the first defendant had been one way or the other attempting to interfere with the possession and enjoyment of Munirathinam in respect of the suit property and resultantly, Munirathinam had been necessitated to lay the proceeding as abovestated against the first defendant. Even after the title of Munirathinam had been upheld in the abovesaid proceedings, it is found that the first defendant through his sons had unlawfully and illegally obtained the possession of the suit property by encroaching into the same and hence, it is seen that the plaintiffs had been necessitated to lay the suit for recovery of possession after the demise of Munirathinam.

15. When the plaintiffs' predecessor in title to the suit property has been declared by this Court in Second appeal No.496 of 1988 by confirming the judgment of the first appellate Court passed in A.S.No.51 of 1986, it is found that the defendants cannot be allowed to contest the case of the plaintiffs' title to the suit property any more. Even otherwise, when the defendants have not placed any material to establish their claim of pucca title to the suit property as projected in the written statement, it is found that the defendants have no title to the suit property whatsoever as claimed by them.

16. The only plea that has to be adjudicated is the plea of adverse possession raised by the defendants. Further, as rightly determined by the first appellate Court, when the documents projected by the defendants do not in any manner advance their said plea and when the plaintiffs' predecessor in title, Munirathinam had been asserting his title to the suit property right from 1985 onwards and when the documents projected by the defendants in the nature of electricity receipts marked as Exs.B1 to B5 and the professional tax receipt marked as Ex.B6, the abovesaid documents not in any manner supporting the plea of adverse possession and accordingly, it is found that the first appellate Court, on an appreciation of the abovesaid materials in the right perspective and taking into consideration, the principles of law outlined by the apex Court and our High Court qua the law of adverse possession accordingly, and correctly held that the defendants have miserably failed to establish their long, continuous and uninterrupted possession and enjoyment of the suit property by exhibiting animus attitude against the plaintiffs and their predecessor in title and on the other hand, when the materials projected would go to show that Munirathinam had been asserting his title to the suit property right from 1985 onwards, accordingly, it is found that the suit having been laid by the plaintiffs, on the basis of Munirathinam's title, which had been upheld by the High Court as abovenoted and when the defendants have failed to establish that their possession and enjoyment of the suit property had been

adverse to the title of the plaintiffs 12 years prior to the filing of the suit, in such view of the matter, it is found that, as rightly determined by the first appellate Court, the defendants have failed to establish their case of adverse possession in any manner and thus, it is found that the plaintiffs are entitled to obtain the possession and enjoyment of the suit property from the appellant as claimed by them. Therefore, it is found that the plea of limitation projected by the defendants falls to the ground and similarly, the plea of adverse possession projected by the defendants in respect of the suit property also deserves rejection. The substantial question of law formulated in the second appeal is accordingly, answered against the third defendant/appellant. As abovenoted, the second defendant has not preferred any appeal challenging the judgement and decree of the first appellate Court.

17. The appellant / third defendant's counsel, during the course of arguments, would contend that inasmuch as the third defendant had taken a plea in the written statement that he is a deaf and dumb person and accordingly, the plaintiffs having failed to take steps to appoint a guardian for him, it is stated that on that ground, the plaintiffs' suit should be dismissed. In this connection, the third defendant's counsel placed reliance upon Order 32 Rule 15 CPC. It is found that it is not the case of the third defendant that he is a person of unsound mind, therefore, it is seen that he cannot seek the invocation of Order 32 Rule 15 CPC in his favour. Further, it has also not been established by the third defendant as such by placing any acceptable material to prima facie evidence that he is a deaf and dumb person and therefore, incapacitated to defend the plaintiffs' suit on account of abovesaid infirmities. With reference to the abovesaid alleged physical infirmities, the third defendant has not placed any prima facie material and on the other hand, when it is found that he had been independently contesting the plaintiffs' suit through his advocate by giving necessary instructions in support of his defence, it is found that even assuming for the sake of arguments that the third defendant is a deaf and dumb person, on account of such alleged infirmities when he is not found to be incapacitated in any manner to defend the plaintiffs' suit and on the otherhand, he is found to have defended the plaintiffs' suit through his advocate by filing his written statement etc., it is found that the third defendant is not entitled to invoke the provisions of Order 32 Rule 15 CPC, as the abovesaid provision would apply to a person of unsound mind and also to a person, who is incapable of prosecuting or defending the proceeding by reason of any mental infirmity. When it is not the case of the third defendant that he is a person of unsound mind or suffering from any mental infirmity and his only plea is that he is a deaf and dumb person and when the abvoesaid bodily infirmities as such had not

precluded the third defendant from defending the plaintiffs' suit, per contra, when it is found that he had been defending the suit as abovenoted, in my considered opinion, the third defendant cannot seek the benefit of Order 32 Rule 15 CPC to non suit the plaintiffs.

18. In addition to that, when it is found that the third defendant, on his own, has come forward with the second appeal by engaging a counsel in continuing the defence projected by him in the matter and in such view of the matter, the alleged incapacity projected by the third defendant / appellant in being unable to defend the proceeding on account of non appointment of guardian for him as such cannot be accepted. If really, the third defendant is affected by any infirmity as put forth, he would have not prosecuted the case till the stage of the second appeal. On the other hand, when it is found that he has been continuously putting forth his defence one way or the other in the manner known to law and when it is further seen that for the reasons aforesaid, he is not entitled to invoke Order 32 Rule 15 CPC, the argument put forth by the third defendant / appellant that the plaintiffs' suit should fail on account of their failure to appoint the guardian for him on account of his being a deaf and dumb person as such cannot be accepted in any manner. As abovenoted, when the third defendant / appellant has not even placed any material to evidence that he is a deaf and dumb person and thereby, incapacitated to defend the proceeding, it is seen that there is no need at all on the part of the plaintiffs to seek the appointment of guardian for him in the proceedings.

19. The third defendant not suffering from any infirmity as sought to be projected by him and even assuming for the sake of arguments that he is suffering from such infirmity, by way of the same, when it is found that he is not incapacitated to defend his proceedings and on the other hand, right from the inception, he has been defending the proceeding independently by engaging the counsel and filing his written statement and also found to have presented the present second appeal on his own by engaging a counsel and furthermore, when the third defendant/appellant has not taken any specific ground in the second appeal that the plaintiffs' suit should fail on account of the failure to appoint a guardian for him and when no substantial question of law is also projected by him, with reference to the same in the second appeal, the abovesaid argument projected by the third defendant during the course of arguments, being bereft of material and acceptability, it is found that the third defendant had not also taken the same in the grounds of second appeal.

20. In the light of the above position, it is seen that the

abovesaid arguments projected by the third defendant during the course of hearing in the second appeal and also not established even in the second appeal by placing acceptable materials and all the more, as above discussed, when the third defendant is not entitled to invoke Order 32 Rule 15 CPC for the reasons projected in the written statement, as such, the abovesaid contention projected by the third defendant is rejected in toto.

For the reasons aforesaid, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sms

To

- 1.The Sub-Court, Ranipet,
Vellore District.
- 2.The District Munsif cum Judicial Magistrate No.1,
Walajapet.

+lcc to Mr.K.V.Ananthakrushnan, Advocate, S.R.No. 66175
+lcc to Mr.K.Mohanamurali, Advocate, S.R.No. 66138
+lcc to Mr.K.Thangavelu Advocate, S.R.No. 66033

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S.A.No.100 of 2015

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