

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Judgment Reserved on : 07.09.2017

Judgment Pronounced on : 12.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.BASKARAN

S.A.No.843 of 2006

Gnanaprakasam (Deceased)

2.G.Theresammal

3.G.Savarimuthu

4.G.Divyanathan

5.G.Zakariyas

6.G.Selvanathan

7.G.Sagayamary

8.G.Bonibas

(Appellants 2 to 8 brought on record as LRs. Of deceased appellant vide order of this Court dated 10.08.2017 made in M.P.No.2 & 3 of 2010 in s.A.No.843 of 2006) ... Appellants/LRs of deceased defendant

Vs.

Arokiasamy

... Respondent/Plaintiff

This second appeal has been filed under Section 100 of CPC, against the judgment and decree dated 27.07.2005 passed by the learned Subordinate Judge, Kallakurichi, in A.S.No.127 of 2003, confirming the Judgment and decree dated 23.06.2003 passed by the learned Principal District Munsif, Kallakurichi, in O.S.No.805 of 1999.

For Appellants : Mr.R.Thiagarajan

For Respondent : Mr.A.Thiagarajan Senior Counsel
for Mr.S.Rameshkumar

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 27.07.2005 passed by the learned Subordinate Judge, Kallakurichi, in A.S.No.127 of 2003, confirming the Judgment and

decree dated 23.06.2003 passed by the learned Principal District Munsif, Kallakurichi, in O.S.No.805 of 1999.

2. Brief facts of the case is as follows:-

The suit property is the house property which was purchased by the plaintiff for a sum of Rs.300/- on 27.07.1972. Subsequently, he leased out the property to the defendant. The defendant was in possession and enjoyment of the suit property as lessee. The plaintiff and defendant are distance brothers and relatives. Since the plaintiff was in service and away from the suit property, he was constrained to lease out the property to the defendant, but the defendant changed the patta in his name and paid tax in his name. After knowing the said facts, the plaintiff protested the issue of patta in the name of the defendant and subsequently, after contest, the patta was changed in the name of the plaintiff. Now, the defendant is making attempts to disturb the possession of the plaintiff. Hence, the plaintiff came forward with the suit for declaration and injunction.

3. On the other hand, according to the defendant, the plaintiff purchased the suit property and then the plaintiff orally sold the suit property to the defendant during 1974 for a sum of Rs.100/-. The property is continuously assessed for Tax in the name of the defendant and he only is paying the tax. The claim of the plaintiff that the property was leased to the defendant is totally false. The defendant has also prescribed title by way of adverse possession. The patta No.50 for the suit property was allotted in the name of defendant and the same was subsequently cancelled due to protest of the plaintiff. The revision filed against the same is still pending. Thus, the defendant sought for dismissal of the suit.

4. After contest, the trial Court decreed the suit as prayed for. Aggrieved upon that the defendant preferred the first appeal before the first appellate Court. After contest, the first appellate Court dismissed the appeal and confirmed the decree and judgment of the trial Court. Hence, the unsuccessful defendant has preferred the second appeal.

5. The learned counsel appearing for the appellants has raised the following substantial question of law in this appeal at the time of admission :-

(i) Whether the Courts below are right in rejecting the contention of the Appellant with regard to the oral sale despite the production of the original sale deed under Ex.B.1 from his custody?

(ii) Whether the conclusion of the Trial Court as well as the Appellate Court can be sustained in the light of the custody of the original sale Deed dated 27.7.1972 under Ex.B.1 in the hands of the Appellant.

(iii) Whether the Courts below are right in negating the right of the Appellant in the light of the Property tax receipts under Exs.B-2 to B-1 which are in the name of the Appellant which would substantiate that the Appellant had exercised ownership over the property by virtue of the oral sale in his favour?

6.The learned counsel appearing for the appellants would submit that the defendant is in possession and enjoyment of the suit property on the basis of oral sale and original parent document(sale deed) was also handed over by the plaintiff. Custody of the original sale deed with the defendant is only on the basis of the purchase made by the defendant. On the strength of the oral sale and mutation, revenue records were changed in the name of the defendant and the defendant has also paid tax on evidenced by tax receipts marked as Ex.B2 to Ex.B10. Patta was also changed in the name of the defendant which was marked as Ex.B11, but, the Court below without considering these aspects negated the claim of the defendant for adverse possession and the same is against law. Hence, the appeal has to be allowed.

7.The learned counsel appearing for the respondent/plaintiff would submit that the trial Court as well as the first appellate Court came to correct conclusion on the basis of both oral and documentary evidence. There is no infirmity in the findings of both the Courts below. Therefore, the appeal has to be dismissed.

8.I have heard the rival submissions and also perused the materials available on record.

9.On perusal, the suit property originally belonged to the plaintiff and the same is not disputed by the defendant. The only contention raised by the defendant is that he has purchased the suit property from the plaintiff on the strength of oral sale during 1974 for Rs.100/-. The original sale deed of the plaintiff Ex.B1 was handed over to him. On that strength alone he paid tax and patta also changed in his name. This is the specific contention on the side of the defendant. Admittedly, the plaintiff has purchased the suit property for a sum of Rs.300/- on 27.07.1972. According to the defendant, he has purchased the suit property from the plaintiff in the year 1974

for a sum of Rs.100/- as vacant site. After purchase of the suit property, he has constructed thatched house and he is in possession and enjoyment of the same. Through the additional written statement, the defendant took the plea of adverse possession, except the oral evidence of the defendant himself no documentary evidence were produced by the defendant to prove the adverse possession. Both the Courts below have negatived the claim of the defendant on the ground that in the year 1972, the plaintiff has purchased the suit property for a sum of Rs.300/-, but in the year 1974, the plaintiff sold the property to the defendant orally for a sum of Rs.100/- which is less than the sale amount of the plaintiff. As such it is unbelievable. There is no reason stated by the defendant for such low value sale. Further more, any sale more than the value of Rs.100/- as per Section 54 of the Transfer of Property Act must be made only by way of registered instrument. but, the defendant has not taken any registered instrument to prove the sale. Hence, on the above said two grounds, the trial Court as well as the first appellate Court negatived the claim of the defendant and upheld the contention of the plaintiff. Further, the possession will not constitute adverse to the original owner. So the plea of adverse possession was negatived by both the Courts below, since the defendant failed to prove his 12 years uninterrupted and continuous possession of the suit property average to the interest of the plaintiff. In such circumstances, mere payment of tax and production of Ex.B2 to Ex.B10 receipts alone will not cloth any right to the defendant. The ownership of the suit property is not transferred to the defendant. Without transfer of ownership of the suit property, the right of the defendant cannot be upheld and the same cannot be recognised under law. Hence, both the Courts below has rightly negatived the claim of the defendant. In the light of the above discussions and keeping in mind the evidence available on record, this Court comes to the conclusion that there is no error or infirmity on the findings of both the Courts below. The substantial question of law raised by the appellant is answered against him. As such, there is no merit in the appeal and the same is liable to be dismissed.

10.In the result, the second appeal is dismissed. No costs. The Judgment and Decree dated 27.07.2005 in A.S.No.127 of 2003 passed by the learned Subordinate Judge, Kallakurichy is confirmed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Kallakurichy.

2.The Principal District Munsif Court,
Kallakuriuchy.

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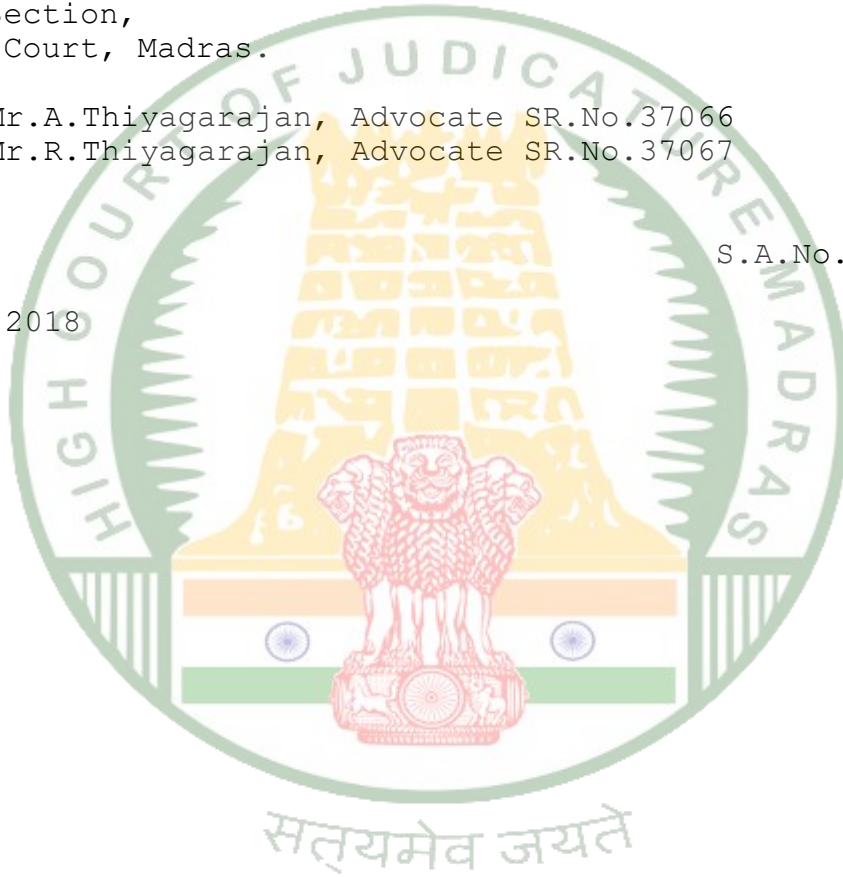
The Section Officer,
V.R.Section,
High Court, Madras.

+1 cc to Mr.A.Thiyagarajan, Advocate SR.No.37066

+2 cc to Mr.R.Thiyagarajan, Advocate SR.No.37067

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MG (CO)
CSL/28.12.2018



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