

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2174 of 2002

Virudhachalam Municipality,
Rep. by its Commissioner,
Virudhachalam

... Appellant/appellant/
2nd defendant
Vs.

1.Deivasigamani
2.Selvaraj
3.Sankar
4.Durairaj

... Respondents/Respondents 2 to 5/
Plaintiff

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and Decree dated 25.10.2000 in O.S.No.944 of 1986 on the file of the Additional District Munsif Court, Virudhachalam as confirmed by the Judgment and Decree dated 30.04.2002 made in A.S.No.11 of 2001 on the file of the Principal Sub-Court, Virudhachalam.

For Appellant : Mr.M.Laigat Ali

For Respondents : No Appearance

JUDGMENT

The unsuccessful appellant / second defendant, the Virudhachalam Municipality having lost the case before the Trial Court as well as the First Appellate Court has filed the second appeal.

2.The sum and substance of the case of the appellant is as follows:

The plaintiff's father Dharmalinga Padayachi purchased the suit 'A' property from one Meenakshiammal on 06.11.1973. The said Meenakshiammal, in turn purchased the property from one Krishnamoorthy Padayachi on 07.03.1973. Prior to the date of the sale, Krishnamoorthy and before him, his father was in enjoyment of the suit 'A' Schedule property sold by Krishnamoorthy, for more than twelve years and prescribed title by adverse

possession. So, the plaintiff alone has got title to the suit 'A' Schedule property. The plaintiff leased out a portion of 'A' Scheduled property to one Rajamanickam Pillai, and later his father Dharmalinga Padayachi, filed a suit for declaration and possession, for recovery of past mesne profits and for determination of future mesne profits.

3.The suit was numbered as O.S.No.71 of 1978 on the file of the District Munsif Court, Vridhachalam. When the suit was pending, lessee Rajamanickam Pillai died and his sons and wife were impleaded as his legal representatives and the suit was tried and dismissed by the District Munsif Court, Vridhachalam, as against which the plaintiff's father i.e. Dharmalinga Padayachi, filed an appeal suit before the Subordinate Court, Chidambaram in A.S.No.3 of 1980 and the said appeal was transferred to Sub Court in A.S.79/81. The First Appellate Court set aside the order passed by the Trial court and granted relief in favour of the plaintiff's father. As against the First Appellate Court order, the Legal representatives of the Rajamanickam Pillai, have filed the Second Appeal in S.A.1743 of 1982 and the said Second Appeal was also dismissed and Lower Courts' decision has been upheld by the competent Court.

4.The second defendant has no right over any portion of the suit property. Yet, the second defendant has demolished the building that existed over suit 'B' Schedule property and encroached to an extent of East - West 20½ and North - South 30 of the Eastern portion of 'A' Scheduled property under the guise of laying road. The encroached portion is described in 'B' Schedule of the plaint.

5.The action of second defendant is illegal and against the law. By the act of second defendant, the plaintiff has sustained a loss of Rs.5,000/- being cost of construction of walls and roof, so the plaintiff has issued a notice to the second defendant on 11.02.1986 to pay a sum of Rs.5,000/- and also to surrender possession of 'B' Schedule property, but the second defendant issued a reply notice dated 23.04.1986 with false allegations. Moreover, the second defendant replied in its notice that they are not liable to pay any compensation, as the building was demolished only by the Highways Department.

6.The plaintiff has issued another notice to both defendants calling upon them to pay Rs.5,000/- and to handover possession of 'B' Schedule property and claiming damages at Rs.85/- per mensem from 01.02.1986. At the time of demolition, the plaintiff leased out the entire portion of the building to three various persons namely Devagi, Rajambal and Rajamanickam Pillai, thereby getting a sum of Rs.85/- per mensem. The defendants are also liable to pay the above said sum to the

plaintiff from the date of demolition namely the last week of January 1986, upto the delivery of the 'B' Schedule property. The plaintiff has already claimed damages for use and occupation from 01.02.1986.

7.The written statement filed by the second defendant / appellant is as follows:

The defendant contended that the plaintiff had no title over the suit 'A' & 'B' schedule properties. The alleged sale deeds dated 07.03.1973 and 06.11.1983 are false ones. Neither Krishnasamy nor Meenachi have title over to sell the property. They have never enjoyed the same. The plaintiff who had purchased the property from the person who had no title over the said property. The plaintiff had never taken possession from the vendor and enjoyed the same at any point of time. Therefore, the plaintiff and his predecessors in title have no right, title and interest in the suit 'A', 'B' schedule properties. Therefore, the plaintiff claiming title through them is not maintainable.

8.This defendant is not a party in O.S.No.71 of 1978, hence, the judgment of the case would not bind on this defendant. This defendant is also not a party in A.S.No.79 of 1981 and S.A.No.1743 of 1982 and not aware of the nature of the case. The plaintiff is not entitled for any claim under the said decisions of the suit.

9.The plaintiff and his predecessors in title were in possession and enjoyment of the property for more than the statutory period is not true. Neither of them enjoyed the 'A' & 'B' schedule properties at any point of time. Therefore, the plaintiff's claim of adverse possession is false and he is not entitled to claim of adverse possession since he had never been in possession of the properties.

10.The allegation made by the plaintiff that this defendant had demolished a building in 'B' schedule property is totally false. This defendant never demolished any building of the plaintiff. After receiving the notice from the plaintiff, this defendant verified the records at their end and found the alleged demolition was carried out only by the Highways department and not by this defendant and this defendant is not responsible for any loss.

11.The allegation that this defendant had trespassed east to west 20½ feet; north to south 30 feet in 'A' schedule property is false. The Highways department had removed the encroachments made by the plaintiff for which this defendant had

no say. The alleged encroachment was in R.S.No.224 on the National Highways Road. So, the Highways have removed the obstructions and encroachments. Therefore, if at all there is any damages had been caused to the plaintiff, it can be compensated only by the said Highways department and not by this defendant.

12.At the time of admission, this court framed substantial questions of law as follows:

a)Whether the suit is bad for non-joinder of necessary party.

b)Whether a mere suit for injunction declaratory relief is maintainable when admittedly the suit 'B' Schedule property belongs to the Highways Department?

c)Whether the onus of proving the title and enjoyment vest with the plaintiff or defendant. Lower Court mistakenly placed the onus on the side of the defendant?

d)Whether the suit is maintainable against this appellant when admittedly they are neither the owner of the disputed property nor damaged the construction?

13.The learned counsel appearing for the appellant would submit that admittedly, the 'B' Schedule properties form part of 'A' schedule properties. The respondent / plaintiff claims 'B' schedule properties situated in R.S.218/5 is originally false. In fact, the 'B' schedule properties are situated in R.S.224, the same belonging to Highways department.

14.The Highways department in order to lay roads for public usage, removed the encroachments. Thereafter, the Virudachalam Municipality taken over the same for maintaining the road. Since the second defendant is not a party in the earlier proceedings instituted by the plaintiff as against one Rajamanickam Pillai, the same is not binding on the second defendant. Moreover, the plaintiff without impleading the Highways department, claiming compensation from the second defendant, which is not sustainable and since R.S.224 belongs to Highways department, without impleading the Highways department, the plaintiff had instituted a suit, which is not sustainable as per law and this suit is hit by non joinder of necessary parties. The only remedy available to the plaintiff is that he should establish his title over the suit property for claiming compensation. Till then, the claim of compensation does not arise. Accordingly, this second defendant is not liable to pay any compensation and the prayer made in the suit is not maintainable.

15.No one appeared on behalf of the respondent / plaintiff. However, this Court decides to proceed the case, based on the available materials and upon perusing the judgments

and decrees of the Trial Court and First Appellate Court.

16.It is admitted in the case that there is a dispute between the plaintiff and his tenants for which the respondent / plaintiff filed a suit for recovery of compensation from the lessee Rajamanickam Pillai. The respondent / plaintiff in order to prove his title over the property has produced Ex.A1 & A2. The said documents were initially brought under R.S.218/5, which belonged to one Krishnamoorthy. On 07.03.1973 the property was sold to one Meenakshiammal. The plaintiff purchased the property dated 05.11.1973 from one Meenakshiammal. The said documents were marked as Ex.A1 & A2.

17.Since, the lessee Rajamanickam Pillai, refused to vacate the premises, the respondent / plaintiff filed a suit in O.S.No.71 of 1978. The same was dismissed as against the plaintiff. Aggrieved by the judgment passed by the Trial Court, the plaintiff preferred an appeal in A.S.No.79 of 1981, which was re-numbered as S.A.No.1743 of 1982. The First Appellate Court, accordingly, decreed the same in favour of the respondent / plaintiff. Later, this Court confirmed the First Appellate Court decision. The said judgments were marked as Ex.A3 , A13 and A15.

18.The learned counsel appearing for the appellant clearly construed that no notice was sent to the respondent / plaintiff for removal of encroachment either by the Highways department or by the Virudhachalam Municipality. In this aspect also, this Court believes that the second defendant without any authority has brought the property under its control and demolished the 'B' schedule property in order to lay road, which is not permissible in the eye of law. The second defendant has not marked any documents to prove that the property belongs to Highways department and since the respondent / plaintiff has proved his title by marking sale deeds as well as the decision of the Trial Court, this Court believes Ex.A3, A13 and A15.

19.Therefore, the respondent / plaintiff is the owner in respect to the property in R.S.218/5. Accordingly, the plaintiff procured his title by way of the decision of this Court in S.A.No.1743 of 1982, but, the Appellant / second defendant / Virudhachalam Municipality has not filed any documents to show that the land belongs to Highways department and also no documents were produced by the Virudhchalam Municipality to show that the demolition was carried out by the Highways department and the second defendant got the approval from the Highways department for the maintenance work of the road. In the absence of of the documents, this Court has to go by the decision of the Lower Court, confirming the title in favour of the respondent / plaintiff.

20.In view of the above, this Court does not find any error in the judgments and decrees passed by the Trial Court and the First Appellate Court. Accordingly, the substantial questions of law have been answered against the appellant / second defendant.

20.In the result, this second appeal is dismissed and the Judgment and Decree dated 25.10.2000 in O.S.No.944 of 1986 on the file of the Additional District Munsif Court, Virudhachalam as confirmed by the Judgment and Decree dated 30.04.2002 made in A.S.No.11 of 2001 on the file of the Principal Sub-Court, Virudhachalam is confirmed. No costs.

Sd/-

Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

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To.

1.Additional District Munsif Court
Virudhachalam.

2.The Principal Sub-Court
Virudhachalam.

Copy to

The Section Officer,
V.R. Section, High Court,
Madras. (2 copies)

+1cc to Mr.liagat ali, Advocate, S.R.No. 6671

S.A.No.2174 of 2002

rsy(CO)
TR(26/02/2018)

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