

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :11.07.2018
PRONOUNCED ON:01.08.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2325 of 2004

1.Mutha Boyan @ Muthusamy

2.G.M.Arumugam

...Appellants/Plaintiffs

Vs.

1.The District Collector,
The District Collectorate Office,
Erode, Erode District.

2.The Revenue Tahsildar
The office of the Revenue Tahsildar,
Gobichettipalayam,
Gobichettipalayam Taluk.

3.The Assistant Divisional Engineer,
The Highways Department,
Gobichettipalayam,
Gobichettipalayam Taluk.

...Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 20.09.2004 in A.S.No.17 of 2004 on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 12.04.2004 in O.S.No.315 of 2001 on the file of the District Munsif's Court, Gobichettipalayam.

For Appellants : Mr.R.Subramanian

For Respondents : Mr.M.Venkadesh Kumar
Government Advocate (CS)

J U D G M E N T

Challenge in this second appeal is directed against the judgment and decree dated 20.09.2004 passed in A.S.No.17 of 2004 on the file of the Principal Subordinate Court,

Gobichettipalayam, confirming the judgment and decree dated 12.04.2004 passed in O.S.No.315 of 2001 on the file of the District Munsif Court, Gobichettipalayam.

The second appeal has been admitted on the following substantial questions of law.

(i) Whether are not the decree and judgment of the Courts below vitiated in dismissing the suit as barred under section 14 of Tamil Nadu Land Encroachment Act in the absence of any plea regarding maintainability and any issue to that effect.

(ii) Whether in law have not the Courts below overlooked that the plaintiffs having encroached the property in 1959 and being in continuous possession openly to the knowledge of the defendant have prescribed title by adverse possession overlooking Exhibit A.36 dated 01.09.1970.

2. Considering the scope of the issues involved between the parties as regards the lis lying in a narrow compass, it is not necessary to dwell into the facts of the case in detail.

3. Admittedly, the suit property is a Salai Porambokm land belonging to the Government. The plaintiffs have laid the suit against the defendants for the reliefs of declaration and permanent injunction. The declaration is sought for by the plaintiffs as regards their title to the suit property on the plea of adverse possession. However, it has not been explained by the plaintiffs' counsel as to how such a suit for the declaration of the plaintiffs' title on the plea of adverse possession could be maintained. As rightly put forth, in the light of the decisions of the apex court reported in 2014 (1) SCC 669 [Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another] and 2018 (11) SCC 449 [Dharampal (Dead) Through Lrs Vs. Punjab Wakf Board and others], it is found that the declaration of ownership of land on the basis of adverse possession cannot be sought for by the plaintiffs and the claim of ownership by adverse possession can be only made by defence when arrayed as defendants in proceedings against them and accordingly it is found that the plaintiffs' suit seeking declaration of ownership by adverse possession cannot be sustained in the eyes of law.

4. As above noted, the plaintiffs claiming to be in the possession of the suit property for several years and according to the plaintiffs, they have been enjoying the suit property

openly and continuously to the knowledge of one and all including the defendants by exercising hostile attitude beyond the statutory period and hence, according to the plaintiffs, they had prescribed title to the suit property by way of adverse possession. However, on a perusal of the plaint averments, it is found that the suit property being the Poramboke land, the plaintiffs themselves had been requesting the Government continuously for granting patta in their favour as regards the suit property. Such being the position, the plaintiffs having acknowledged the title of the Government and been making requests for granting patta in their favour, it is found that the claim of the plaintiffs that they had prescribed title to the suit property on the plea of adverse possession as such cannot be countenanced.

5. No doubt the plaintiffs have come forward with same documents such as, house tax receipts, EB bills, etc., and on the basis of the same, they endeavour to seek the claim of title to the suit property by way of adverse possession. However, when it has not been established by the plaintiffs that, to the knowledge of the defendants in particular, they had put up the superstructure in the suit property and paying the tax in respect of the same and also paying the EB charges etc., merely on the production of some documents with reference to the same, we cannot safely conclude that the plaintiffs have prescribed title to the suit property on the basis of adverse possession. Even the documents projected by the plaintiffs would go to show that they are not continuous and shown to be issued to the knowledge of the defendants in favour of the plaintiffs by asserting title on themselves, and such being the position, the abovesaid documents by themselves would not entitle the plaintiffs to claim title to the suit property on the plea of adverse possession.

6. The plaintiffs' counsel would contend that the plaintiffs are shown to be in the settled possession of the suit property and on that footing, relying upon the decision of the apex court reported in 2004 (1) SCC 769 [Rama Gowda (dead) By Lrs Vs. M.Varadappa Naidu (Dead) By Lrs and another] , it is contended by him that the defendants should be enjoined from disturbing the plaintiffs' possession and enjoyment of the suit property. No doubt, in the abovesaid decision, the apex court has held that the person in the settled possession of a property in dispute is entitled to protect his possession against all, except the true owner. Further in the abovesaid decision, the parties thereto namely the plaintiffs as well as the defendants were unable to project their claim of title to the property in dispute and on that basis, acknowledging the plaintiffs' possession of the suit property, it is found that the apex court had upheld the plaintiffs' case on the basis of complete and

settled possession. However, in so far as the present case is concerned admittedly the Government is the owner of the suit property. As abovenoted the plaintiffs suit for the relief of declaration on the plea of adverse possession is not sustainable in the eyes of law. Moreover, the materials placed on record do not advance the case of the plaintiffs that they had prescribed title to the suit property by way of adverse possession. In such view of the matter, it is found that as rightly contended by the counsel appearing for the Government, the above said decision of the apex court would not be useful to sustain the plaintiffs' case as such.

7. The Courts below seem to have negated the suit also on the ground that the plaintiffs' suit is barred under section 14 of the Tamilnadu Land Encroachment Act. In this connection, the plaintiffs' counsel contended that by way of the present suit, the plaintiffs have not questioned any action initiated by the authorities concerned under the said Act and hence the rejection of the plaintiffs' suit on the above point is erroneous. No doubt, in the present suit, the plaintiffs have not contested the correctness of any order issued by the authorities concerned under the abovesaid Act and therefore, it is seen that the determination of the Courts below in negating the plaintiffs' suit as barred under section 14 of the Tamilnadu Land Encroachment Act, as such, cannot be maintained. However, the Courts below had not based their conclusion for dismissing the plaintiffs' suit on the sole reliance of Section 14 of Tamilnadu Land Encroachment Act and on the other hand, a perusal of the judgment and decree of the Courts below would go to show that the Courts below had held that the plaintiffs have failed to establish their legal possession and enjoyment of the suit property and accordingly when admittedly the suit property belongs to the Government, on that basis holding that the Government is entitled to dispossess the plaintiffs' from the suit property in the manner known to law and further holding that the plaintiffs cannot maintain the suit for permanent injunction against the true owner, on that footing, dismissed the plaintiffs' suit. In such circumstances, it is found that the contention of the plaintiffs' counsel that the Courts below had erred in dismissing the plaintiffs' suit as such cannot be countenanced.

8. The suit has been laid by the plaintiffs seeking for the reliefs of declaration and the consequential permanent injunction. When the relief of declaration sought for by the plaintiff is unsustainable in the eyes of law, it is seen that the plaintiff cannot be granted the consequential relief of permanent injunction. In addition to that as above noted, the plaintiffs have failed to establish the plea of adverse possession and on the set of documents projected by them, the

same by themselves would not be useful to sustain the said plea. Hence, it is found that the judgment and decree of the Courts below dismissing the plaintiffs' suit do not warrant any interference.

9. The plaintiffs' suit for the relief of declaration on the plea of adverse possession found to be not maintainable and the plaintiffs' having failed to establish the plea of adverse possession as above pointed out, the second substantial question of law formulated in the second appeal is accordingly answered against the plaintiffs. The dismissal of the plaintiffs' suit by the Courts below by taking recourse to section 14 of Tamilnadu Land Encroachment Act as such cannot be sustained. The first substantial question of law is accordingly answered.

10. The plaintiffs' counsel further relied upon the decisions reported in 2004 (1) SCC 778 [Mohinder Kumar Vs. State of Haryana], 1998 (3) LW (1) S.Subramaniyan & Co., rep. By its Partner S.Subramaniam Vs. The State of Tamilnadu] and 1968 (3) SCR 662 [Dhulabhai Etc Vs. State of Madhya Pradesh and another]The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

11. In the light of the above discussions, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Principal Sub Court,
Gobichettipalayam.

2.The District Munsif,
District Munsif's Court,
Gobichettipalayam.

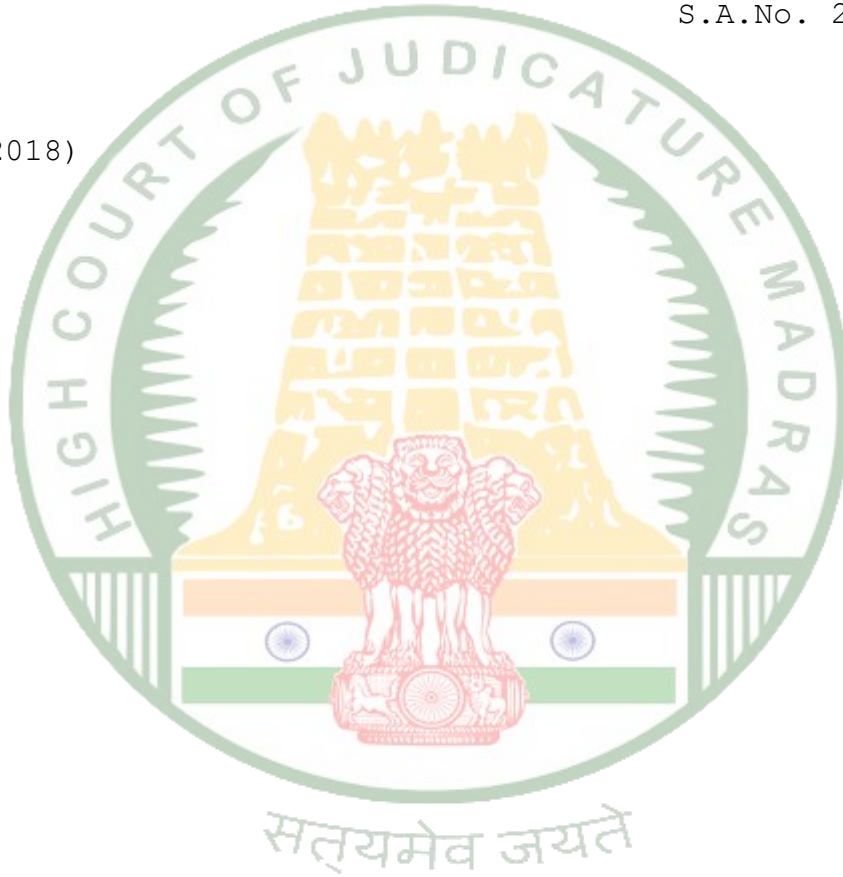
Copy to

The Section Officer,
VR Section,
High Court.

+ 1 cc to M/s. R. Subramanian, Advocate Sr.52573
+ 1 cc to the Additional Government Pleader Sr.52538

S.A.No. 2325 of 2004

GP (CO)
EU (23/10/2018)



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