

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

Second Appeal No.973 of 2002
and
C.M.P.No.7787 of 2002

1.Viswanatha Padayachi (died)

2.Annakkali Ammal (died)

3.Arasan

4.Ranganayaki

5.Kuppusamy

(Appellants 2 to 5 are brought on record as Legal representative of the deceased Sole Appellant vide order of Court dated 09.01.2007 made in C.M.P.No.65 of 2007)

(Memo is recorded. Appellants 3 to 5 are recorded as LRs of the deceased second appellant vide order of Court dated 04.01.2018 made in memo dated 04.01.2018 in SA.No.973 of 2002)

... Appellants/Defendants

Vs.

Ranganathan

Respondent/ Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and the decree dated 28.11.2001 in A.S.No.16 of 2001 on the file of the Principal Sub Court, Vridhachalam preferred against the Judgment and the decree dated 18.08.2000 in O.S.No.383 of 1988 on the file of the Additional District Munsif's Court, Vridhachalam.

For Appellants : Mrs.R.Meenal

For Respondent : Mr.V.Bhiman for

Mr.M.Marudhachalam

J U D G E M E N T

The plaintiff filed the suit for declaration and recovery of possession. The Lower Court decreed the suit and the same was confirmed by the Lower Appellate Court, against the concurrent findings the defendant filed the present Second Appeal.

2.The sum and substance of the plaint averments are as follows:

i. The plaintiff purchased a property vide registered document dated 17.06.1981 from one Vasu Devaki Ammal and her sons for the sale consideration of Rs.6,000/-. The said property is situated in S.No.359/9. After re-survey, the patta for the said property was re-numbered as 1140 and re-surveyed as S.No.359/9A. From the date of purchase, the plaintiff paid the kist and the property was also assessed to property tax.

ii. In the year 1984, the defendant encroached the property as if the defendant purchased the property from the legal heirs on 15.04.1978 and thereafter, he formed a varapu in between his land and the defendant land. In the year 1984, the defendant damaged the varapu by riding his tractor and encroached 10 cents. Immediately thereafter, the plaintiff made a representation to the Tahsildar for measuring the property. Accordingly, the surveyor measured the property and found 10 cents were encroached by the defendant. Thereby, the plaintiff filed a suit for declaration declaring that the 10 cents belonged to the plaintiff and for recovery of possession.

3.The sum and substance of the reply statement is as follows:

i. Originally the property measuring 2.58 acres belonged to one Chinnasamy Chettiyar. The said Chinnasamy Chettiyar had two sons namely Rajamanicka Chettiyar and Krishnamurthy Chettiyar. The said Rajamanicka Chettiyar filed a suit in O.S.No.67 of 1954 for partition on the file of the Sub Court, Cuddalore, against his brother Krishnamurthy Chettiyar and his wife. The said suit was compromised on 28.09.1956. The western portion was allotted to Rajamanicka Chettiyar and Eastern portion was allotted to Krishnamurthy Chettiyar.

ii. The defendant purchased the property from Krishnamurthy Chettiyar, an extent of 1.29 acres on 15.04.1978. Prior to the purchase of 1.29 acres from Krishnamurthy Chettiyar the defendant also purchased 10 cents orally from Krishnamurthy Chettiyar for a sale consideration of Rs.90/-. From the date of purchase in the year 1977 and subsequently in the year 1978, the petitioner is enjoying the property without any disturbance either from the vendor of the property or from the plaintiff. Accordingly, the defendant possessed the title by way of oral

sole as well as adverse possession. Accordingly, the defendant prescribed the title based on the oral sale deed. The plaintiff knows about the defendant's possession from the date of purchase. In order to prevent the right of the defendant, the plaintiff filed the vexatious suit before the Court.

4. After trial, the Lower Court decreed the suit. As against the order of the Lower Court, the defendant preferred an appeal before the Lower Appellate Court. The Lower Appellate Court confirmed the decree passed by the Lower Court. As against the Judgement and Decree of the Lower Appellate Court, the defendant has filed this Second Appeal.

5. At the time of admission this Court framed the following substantial question of law:

"1. Whether in law have not the Courts below failed to see that the plaintiff has to stand or fall on his case and cannot succeed on the weakness of the defendant's case?

2. Whether in law, has not the lower appellate Court misread the judgment and wrongly applied the pronouncement in 1994 (1) M.L.J. 426, which is not applicable to the facts of the case?"

6. The learned counsel appearing for the appellant would submit that the defendant purchased the property in the year 1977 in respect of 10 cents by way of oral sale deed. Thereafter the plaintiff purchased 1.29 cents from one Krishnamurthy Chettiyar who is none other than the brother of Rajamanicka Chettiyar. However, the plaintiff purchased the property only in the year 1981 and the plaintiff was well aware of the purchase of 10 cents, prior to his purchase. Thereafter, the defendant enjoyed the property and the defendant prescribed the title by way of adverse possession. Hence, without considering the oral sale deed and the enjoyment of the defendant, the Lower Court as well as the Lower Appellate Court erroneously decreed the suit in favour of the plaintiff.

7. Mr. V. Bhiman, learned counsel appearing for the respondent would submit that originally the property was owned by one Chinnaasamy Chettiyar. Thereafter, the property was divided equally in between the brothers Rajamanicka Chettiyar and Krishnamurthy Chettiyar. The plaintiff purchased the property from the Legal Heirs of Rajamanicka Chettiyar, an extent of 1.29 acres for valuable sale consideration. The defendant also purchased the property from Krishnamurthy Chettiyar in the year 1978 with regard to the 1.29 acres of the property. However, for 10 cents, the defendant did not mark any document to show his title and enjoyment over the property. Even the defendant did not establish the oral sale deed before the Lower Court and he has not established the case with regard to the title over

the property of 10 cents.

8. On a perusal of the material records, admittedly the property was owned by one Chinnasamy Chettiyar to an extent of property of 2.58 acres. Thereafter, the said property was divided in between the brothers by way of compromise in O.S.No.67 of 1954. Accordingly, the legal heirs of Chinnasamy Chettiyar divided the property into 1.29 acres each, respectively and the plaintiff purchased the property from the legal heirs of Rajamanicka Chettiyar on 17.06.1981 and prior to his purchase the defendant purchased the property on 15.04.1978 from Krishnamurthy Chettiyar. While such being the position, the defendant claiming 10 cents through oral sale deed is not sustainable on the ground that the oral sale deed was not established by any of the witnesses examined as DWs. In the absence of any documentary proof with regard to 10 cents, the defendant have no right to enjoy the property.

9. With regard to the adverse possession, the plaintiff did not plead the basic requirement of adverse possession. On one hand, the defendant is claiming 10 cents through oral sale deed and on the other hand the defendant is claiming adverse possession against the plaintiff property. Unless, the defendant admitted the title in favour of the plaintiff, the defendant is not entitled to claim the adverse possession against the plaintiff.

10. With regard to the second question of Law, whether the lower appellate Court misread the Judgment and wrongly applied the Judgment reported in 1994 (1) M.L.J. 426. Admittedly the Patta will not confer any title of the property; Patta is a piece of evidence to establish his possession of rights. In the absence of title, Patta cannot be relied as title of the suit property.

11. Admittedly, after purchase, the plaintiff mutated the revenue records. Accordingly, Revenue authorities granted patta in favour of the plaintiff. Though patta does not confer title over the property, however after purchase the plaintiff possessed the property from the proper legal heirs and thereafter, mutated the Revenue records in order to prove his possession. In view of the above, the substantial questions of law are answered against the appellant/defendant.

12. In the result, the Second Appeal is dismissed. The Decree and Judgment dated 28.11.2001 in A.S.No.16 of 2001 on the file of the learned Principal Sub Judge, Vridhachalam, confirming the Judgment and the decree dated 18.08.2000 in O.S.No.383 of 1988 on the file of the learned Additional District Munsif, Vridhachalam, is confirmed. The lower Court

had granted three months time to handover possession of the property to the plaintiff. In view of the dismissal of the above said Second Appeal, this Court directs the appellant/defendant to handover the possession of the property of 10 cents to the respondent/plaintiff, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sub Judge,
Vridhachalam.
2. The Additional District Munsif,
Vridhachalam.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1 CC to Mr.M. Marudhachalam, Advocate sr 10331.
+1 CC to Mr.R. Subramanian, Advocate sr 10070.

Second Appeal No.973 of 2002

CNR (CO)
SP (05/04/2018)

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