

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.Nos.518 and 517 of 2007
and
M.P.No.1 of 2007

Nathamuni,
rep.by his brother-in-law and
Caretaker Thangamuthu @ Appan
... Appellant/Appellant/Plaintiff in
S.A.No.518 of 2007

Thangamuthu @ Appan ... Appellant/Appellant/Plaintiff in
S.A.No.517 of 2007

vs.

Bon Secours Religious Charitable and
Educational Society,
rep.by its mother-General
Rev.Mary Etelvina
RCM Middle School,
Amman Koil Street,
Poonamallee Contonment Area,
Ponnamallee,
Chennai-600 056

... Respondent/Respondent/Defendant in both S.As.

Second Appeals filed against the judgement and decree dated 29.09.2006 passed by the Subordinate Judge, Poonamallee, in A.S.Nos.40 and 41 of 2005, confirming the judgement and decrees dated 31.10.2003 passed by the District Munsif, Poonamallee, in O.S.Nos.1157 of 1983 and 251 of 1996.

For appellants :: Mr.T.Girish for
in both Appeals Mr.Srinath Sridevan

For Respondent :: Mr.R.Krishnaswamy
in both Appeals

COMMON JUDGEMENT

The appellants herein are plaintiffs in the suits O.S.Nos.1157 of 1983 and 251 of 1996, on the file of the District Munsif, Poonamallee. The prayer and parties in both the suits are one and the same. The suits were filed for declaration and mandatory injunction as against the respondent/defendant.

2.The appellant in S.A.No.518 of 2007 has filed the suit in O.S.No.1157 of 1983, on behalf of the so called title holder of the property, claiming to be the caretaker of the suit scheduled property, for which, declaration of title was sought along with mandatory injunction. Another suit in O.S.No.251 of 1996 was filed by the said Thangamuthu @ Appan, who is none other than the brother-in-law of the plaintiff in suit O.S.No.1157 of 1983, claiming to be his legal heir, seeking the same prayer i.e. for declaration of title over the same property. Since the subject property is one and the same and the relief sought in both the suits is also same and these second appeals arise out of the common judgement delivered in both the suits, both these second appeals are taken up together for disposal.

3.According to the appellant in S.A.No.517 of 2007, the owner of the property viz., his uncle (Nathamuni), was posted somewhere in North India and was missing for a few decades and during the said period, he being the only legal heir, was taking care of the premises, viz., the suit scheduled property and therefore, sought declaration that he is the absolute owner of the suit property.

4.The trial Court, which dealt with the claim of the plaintiff, in O.S.No.1157 of 1983, who claims to be the close relative of Nathamuni and caretaker of the subject property, has found that he did not have any locus-standi to lay the suit, as the word 'caretaker' was not recognised by the provisions of the Civil Procedure Code. In fact, a detailed finding was given by the trial Court in Paragraph Nos.14 and 15 of the judgement, which are extracted hereunder:

"14.Before deciding whether Nathamuni or the defendant is the owner of "B" Schedule property, it has to be decided the locus standi of the plaintiff in filing the suit. In O.S.No.1157 of 1983, the plaintiff introduces a new word to law i.e. 'Caretaker', which term is not recognised by C.P.C. to file a suit in a representative category. The plaintiff Thangamuthu, who has filed both the suits in

two forums for the same property and for the same cause of action, has failed to produce any evidence to show that he has taken any care with regard to the said Nathamuni or to the property, except his kist receipts. Thangamuthu said that Nathamuni had left to Northern part of India on promotion. But, he cannot produce any evidence with regard to his contentions or the relationship with Nathamuni. If Nathamuni had really left on promotion and if Thangamuthu is really a caretaker, then he could have clearly traced out the whereabouts of Nathamuni through his office or with other contacts. But the plaintiff could not do so, but lamented to be recognised as a caretaker of Nathamuni.

15) Further, as far as the suit O.S.No.1157 of 1983 is concerned, the learned counsel for the plaintiff fairly conceded with the contentions of the learned counsel for the defendant in the above line to my discussion. Hence, the first issue in O.S.No.1157 of 1983 is decided against the plaintiff."

5. The above finding would clearly demonstrate that the trial Court has negatived the claim of the appellant/plaintiff in O.S.No.1157 of 1983 on the ground that a 'caretaker' could not maintain a suit, on behalf of the title owner of the property, even assuming that his uncle has any title over the property, notwithstanding the rival claim of the defendant. In fact, it appears from Paragraph No.15 of the judgement of the trial Court that the learned counsel appearing for the plaintiff had also fairly conceded the position and it is seen that the suit ultimately came to be dismissed on the ground of locus-standi of the plaintiff to file the suit.

6. As far as the other suit O.S.No.251 of 1996 is concerned, it was filed by the said Thangamuthu @ Appan in the capacity of a legal heir of the said Nathamuni and the trial Court has held that the plaintiff did not establish his relationship with the so called owner of the property Mr.Nathamuni. In fact, the trial Court has held that for the same property, the second suit has been filed without withdrawing the earlier suit i.e. O.S.No.1157 of 1983 and found that the second suit was nothing but abuse of process of Court. According to the trial Court, the plaintiff has not produced any legal heirship certificate and it was the contention of the plaintiff that since the whereabouts of the title holder of the property was not known for more than 7 years, it was presumed

that he could have died. But, no declaration to that effect has been obtained from the competent Court by the plaintiff and therefore, he cannot simply plead presumption of death on the basis of his own self-serving averments that the said Nathamuni was not heard or seen for more than 7 years and accordingly, dismissed the suit O.S.No.251 of 1996.

7.As against the judgement and decrees of the trial Court, Appeals in A.S.Nos.41 and 40 of 2005 have been filed before the Sub-Court, Poonamallee, which were dismissed by a common judgement, dated 29.09.2006, whereby confirming the judgement and decrees of the trial Court. As against the said judgement and decrees, the present Second Appeals have been filed.

8.The Second Appeals were admitted by this Court, vide order dated 26.06.2009, on the following Substantial Questions of Law:

"1)Whether the plaintiff in the instant case does not have the competence and capacity to institute this present suit?

2)Whether the plaintiff in the instant case will not fall within the definition of legal representative, as set out in Sec.2(11) of the CPC, and whether the Courts below did not fall into error in failing to consider the same?

3)Whether the Courts below are correct in holding that the plaintiff must first seek a declaration of Nathamuni's death when the statutory presumption enacted in Sections 107 and 108 of the Evidence Act, is a rule of evidence?"

9.Heard the learned counsel for the appellants and the learned counsel appearing for the respondent.

10.On consideration of the common judgement of the trial Court, this Court finds that there is no question of law, much less substantial question of law, would arise for consideration in the present Second Appeals and the Second Appeals could be entertained on that basis and disposed of on merits. This Court finds that on reconsideration of the entire issue, in terms of the provisions of C.P.C., the appellants/plaintiffs have not come up with any question of law for this Court to consider the grounds of appeals on law or on merits, either. Since the trial Court has dismissed the suit O.S.No.1157 of 1983 on a consideration of locus-standi of the plaintiff, who could not

maintain the suit and the finding of the trial Court in respect of the status of a 'caretaker' in O.S.No.1157 of 1983, was perfectly in order in terms of the provisions of C.P.C., this Court does not find any infirmity in the ultimate conclusion reached by the trial Court, while dismissing the suits.

11. According to the trial Court, there were several questions remained unanswered and the plaintiff in O.S.No.251 of 1996 did not prove that he was the only legal heir of the so called title owner Mr. Nathamuni and that the said Nathamuni did not have any other legal heirs or relations surviving him.

12. As stated above, the trial Court has also found that two suits have been laid for the same cause of action and found that the entire averments, which were the foundation of the second suit, did not carry much conviction of the Court about the relationship of the plaintiff/Thangamuthu with the said Nathamuni. Earlier when the suit was filed in O.S.No.1157 of 1983, the plaintiff described himself as a 'caretaker', then subsequently when the suit in O.S.No.251 of 1996 has been filed, he has changed his stand from that of a 'caretaker' to one of 'legal heir'. Therefore, the trial Court found that the claim of the plaintiff was extremely doubtful and also no materials have been produced even remotely to consider his claim, as being legal heir of Nathamuni, for the purpose of grant of relief in the suits. Therefore, the trial Court has rightly dismissed the suits, as against which, appeals have been filed in A.S.Nos.41 of 2005 and 40 of 2005, as stated above.

13. The lower appellate Court, which dealt with the appeals, has rightly taken note of the findings of the trial Court and confirmed the judgement and decrees passed by the trial Court and the judgement of the appellate Court does not suffer from any infirmity, since this Court is perfectly in agreement with the conclusion reached by both the Courts below that the appellant herein did not have any locus standi to file the suits for declaration and permanent injunction in respect of the subject property. In the absence of locus standi, both the Courts have taken a correct view in discountenancing the claim of the appellant herein, which according to this Court, do not call for any interference. Therefore, this Court finds that the second appeals are devoid of merits and the same are dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Msk

To

1.The Subordinate Judge, Poonamallee.

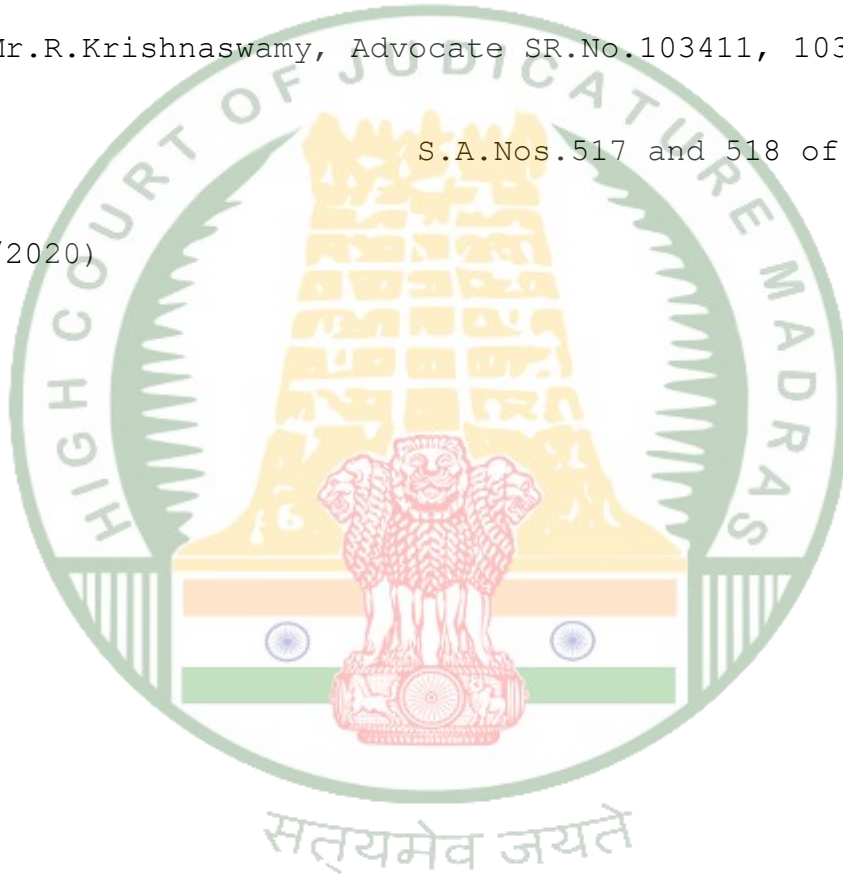
2.The District Munsif, Poonamallee.

Copy To
The Section Officer,
VR Section, High Court, Madras.

+2ccs to Mr.R.Krishnaswamy, Advocate SR.No.103411, 103412

S.A.Nos.517 and 518 of 2007

RJI (CO)
GMY (19/08/2020)



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