

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2019

CORAM:The Hon'ble Mr.Justice N.Seshasayee

S.A.No.598 of 2006

1.V.L.Kishtappa Chettiyar(Deceased)
2.K.Jayaraman ...Appellant/Plaintiff
(2nd Appellant brought on record as LR of the
deceased sole Appellant Vide order of
Court dated 17.9.14 made in
C.M.P.Nos.233 to 235/14)

Vs.

1.Ramamurthy Naidu
2.Kannammal (Deceased) ...Respondent/Defendants
(R1 recorded as LR of the deceased
R2 vide order of Court dated 15.06.07
made in C.M.P.No.1599/07 in
S.A.No.598/06)

Prayer:- Second Appeal filed under Section 100 of Civil
Procedure Code against the Judgment and Decree dated 24.11.2005
in A.S.No.68 of 2005 of the learned Sub Ordinate Judge, Ranipet
reversing the judgement and decree dated 22.03.2005 in
O.S.No.161 of 2003 of the learned District Munsif, Ranipet.

For Appellant :Mr.P.Guru Ramachandran
For Respondent-1 :M/s.K.Janani for Mr.N.S.Sivakumar

JUDGMENT

The plaintiff has laid a Suit for bare injunction. He was
successful before the trial Court but, in an appeal preferred by
the defendants, he lost the suit. Hence, he has come forward
with the present second appeal. The parties would be referred to
by their ranks before the trial court.

2.1The case of the plaintiff is that the suit property
belongs to him, in which he has a thatched house - a hut
perhaps. The plaintiff was allotted this property in a family
partition that took place on 25.09.1951. Ever since he has been
in continuous possession of the suit property. The defendants
are strangers to the property and they have no right over the
same. While so, prior to the institution of the suit, the
plaintiff has put up a foundation for putting up a better
structure, besides a septic tank and erected concrete pillars in
the suit property. From about 20.11.2003, plaintiff's possession

is being disturbed by the defendants. Hence, the suit for permanent injunction was laid.

3. In the written statement, the defendants concede the title of the plaintiff to the suit property but have pleaded they are in continuous and uninterrupted possession and enjoyment of the suit property for the past more than 45 years to the knowledge of the plaintiff and hence, they have perfected title by adverse possession. While so, some time in June 2003, the first defendant made preparations to construct a RCC building in the suit property, and hence pulled down the old katcha house. They have also obtained electricity service connection.

4. Before the trial Court, both the plaintiff and the first defendant have adduced oral and documentary evidence. The trial Court on appreciating the evidence, decreed the suit, which the first Appellate Court has reversed.

5. Inasmuch as the defendants has conceded the title of the plaintiff to the suit property, the issue is, who is in possession of the suit property. The first Appellate Court has held that the plaintiff has produced Ext.A.2 to Ext.A.4, for proving his possession, but they were all of the year 1987, and he has hardly produced any documents to indicate that he was in possession at the time when the suit was laid. Turning to the defendant's evidence, the first Appellate Court has found that Ext.A.4 to Ext.A.10 would indicate that the defendants have been in possession both before the institution of suit and after filing the suit, and it is based on these findings, it dismissed the suit.

6. Challenging the said decree, the plaintiff is now before the Court. This second appeal is admitted on the following substantial questions of law:

1) Whether the plaintiff is entitled to a Decree of permanent injunction when the plaintiff's possession over the suit property is proved and admittedly possession follows title in the absence of adequate evidence to prove the possession?

2) Whether the trespasser can claim title against the lawful owner of the suit property?

3) Whether the Defendants are in possession of the suit property over the statutory period of limitation?

7. The learned counsel for the appellant/plaintiff argued that since the plaintiff's title is admitted by the defendants, necessarily the presumption that possession follows title must be pressed into service. Once this is done, the first Appellate Court ought to have decreed the suit as was done by the trial Court.

8. Per contra, the learned counsel appearing for the respondents/defendants argued that the critical issue in a suit for bare injunction is whether the plaintiff is in possession on the date of filing of the suit and if it is found that the defendant is in possession, and if the same is settled possession and not recent possession, the same is protected in law. Here the earliest documents produced by the defendants is Ext.B.12, pass book, dated 22.11.1985. The other document in Ext.B-10 is a consumer card relating to electricity consumption issued by the Electricity Board that dates back to 1995. It is followed by Ext.B.9, the bill raised by BSNL sometime in 2003 and yet another document is Ext.B-8, which is dated in 2002. They would show that the defendants have been in settled possession.

9.1 As already indicated, since plaintiff's title to the site is conceded by the respondent/defendant, there is hardly any controversy over it. The issue is all about whose building is there in the suit property. The property tax assessment is made in the name of plaintiff and they are of the year 1987. This would imply, the house, if there is any that was originally available in the suit property belonged to the plaintiff.

9.2 The plaintiff as P.W.1, in his evidence has stated that this house was originally leased out to one Krishnan and he did not know the defendants. In fact, he goes on to make a statement that there is no house bearing No.1A in Mundi Street, whereas the plaint speaks to the contra. Of course, there is also evidence to indicate that this house was demolished and preparations were afoot to put up a new structure. So far as the plaintiff is concerned, he claims that he has put up the same. Turning to the defendants, the first defendant claims that he has put up a new structure.

9.3 The plaint however is devoid of any material particulars regarding the same and for that matter, the written statement is also substantially silent on this. However, the predominant evidence available on record indicates that the defendants have been in possession even prior to the suit and that it has continued well after the suit.

10. Here the defendants plea adverse possession. To start with, in the written statement, this pleading is incomplete, in that nowhere the defendants have pleaded that they are in possession of the suit property hostile to the title of the plaintiff title over the suit property. It is not the duration of possession that matters, but the hostile animus that is significant.

11. Since the defendants are found to be in settled possession which though fall short of one founded on acquisition of title to the suit property by adverse possession, the plaintiff would not be entitled to a decree of injunction against the defendants, and his only remedy lies in seeking recovery of possession, if he is so interested.

12. There is no merit in the second appeal and the same is dismissed and the Judgment and Decree, dated 24.11.2005 made in A.S.No.68 of 2005 on the file of the learned Subordinate Judge, Ranipet reversing the judgement and decree dated 22.03.2005, made in O.S.No.161 of 2003 by the learned District Munsif, Ranipet is upheld. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

tsg

To

1.The Subordinate Judge, Ranipet.

2.The District Munsif, Ranipet.

Copy to

The Section officer

VR Section

High Court, Madras 104.

+1 CC to Mr.N.S.Sivakumar, Advocate sr 52045.

S.A.No.598 of 2006

SR(CO)

SP(18/09/2019)