

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Second Appeal No.1307 of 2010

1.Mr.Arumugham,
S/o.Chinnakaliappan.

2.Shanmugam,
S/o.Chinnakaliappan. Appellants/Defendants 1&2

Vs

1.Palaniammal, 1st Respondent/Plaintiff
W/o.Suppramaniam.

2.Annakodi,
W/o.Rangasamy. 2nd Respondent/3rd Defendant

Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.06.2010 passed by the Sub-Court, Gobichettipalayam in A.S.No.54 of 2009 confirming the Judgment and decree of the District Munsif, Gobichettipalayam made in O.S.No.226 of 2003, dated 31.07.2009.

For Appellants : Mr.M.Narayanaswamy

For Respondent-1 : Mrs.S.Yohalakshmi,
For Mr.M.Guruprasad

JUDGMENT

The defendants 1 and 2 in O.S.No.226 of 2003, on the file of the District Munsif Court, Gobichettipalayam, are the appellants herein. The plaintiff has laid the suit for declaration of her title and for recovery of the suit property. The trial Court decreed the suit and in an appeal filed by the present appellants in A.S.No.54 of 2009 on the file of Sub-Court, Gobichettipalayam, the first appellate Court dismissed the same and confirmed the decree of the Trial Court. Challenging the

said decree, the present appeal is preferred. The parties would be referred to as per their rank in the suit.

2. The suit property is described as a plot of 73.5 sq. ft. with a residential building. This property, according to the plaintiff, was purchased by a certain Subramanian under Ext.A-1 Sale Deed dated 26.08.1981. He having been passed away, his right devolved on his wife, the plaintiff and his only daughter, the third defendant. The defendants 1 and 2/the appellants herein are the brothers of said Subramanian. The defendants were put in possession of the suit properties as a permissive occupant and hence were required to vacate, Vide a suit notice dated 28.08.2003, but as they refused to vacate, the plaintiff was constrained to institute the suit.

3. Denying the plaintiff allegations, including the title of Subramanian to the suit property, the defendants 1 and 2/ appellants would plead that even assuming the plaintiffs have any title to the property, they could be evicted only upon a notice issued under Sec. 106 of the Transfer of Property Act, 1882. Secondly, the plaintiff had issued a lawyer's notice dated 04.07.2003 alleging that she had entered into a sale agreement with them on 13.07.1997 for sale of the suit property for a total consideration of Rs.60,000/- and that they had paid a sum of Rs.10,000/- as advance, and that despite several requests to perform their part of the contract, they refused to do the same. Thirdly, that these defendants are in open, hostile and continuous possession of the suit property for well over the statutory period and thus, they have perfected title to the suit property by adverse possession.

4.1. During trial, the plaintiff has examined herself as P.W.1 and the first defendant/the first appellant was examined as D.W.1. As indicated earlier, the title deed in favour of Subramanian was marked as Ex.A1, and the suit notice dated 28.08.2003 was marked as Ex.A2. The only document, which the appellants have produced is Ex.B1, a lawyer's notice dated 04.07.2003 alleged to have been issued by the plaintiff. In the course of cross examination of P.W.1, Ex.B1 notice seemed to have been confronted to her and she had denied it.

4.2. Appreciating the evidence before it, more specifically, on the strength of Ex.A1 Sale Deed, the Trial Court has found the title to the suit property in favour of the plaintiff, and proceeded to hold Ex.B1 notice unreliable, as it was not proved by the defendants that the same was actually issued by the plaintiff, more so in the face of her denial during trial, and decreed the suit. The first appellate court followed the suit and confirmed the said decree.

5. This appeal was admitted on the following substantial questions of law:-

"1. Whether the Courts below are right in holding that the plaintiff is entitled to the relief of declaration and possession of the property without specifically finding as to what is the nature of possession of the defendant? Whether it is either permissive occupation or as licensee or not?

2. Whether the Lower Courts are correct in ignoring and eschewing Exhibits B-1, especially when the plaintiff herself has admitted that possession was given to the appellant in 1997?

3. Whether the Lower Courts have erred in deciding the plea of adverse possession without considering the pleadings and evidence adduced by the defendant."

6. The learned counsel for the appellants submitted that it is not in dispute that the defendants are in possession of the suit property at the least since 1985, and given that the fact that the suit is laid only in 2003, it is evident that the defendants have perfected title by adverse possession. Alternatively, the plaintiff has issued Ex.B-1 notice dated 04.07.2003, wherein she has indicated about a sale agreement dated 13.07.1997 which she had entered into with these appellants, but she has chosen to suppress it in the plaint and consequently, she would not be entitled to any relief whatever so claimed.

7. Refuting the said argument, Mrs. Yohalakshmi, learned counsel for the first respondent/plaintiff would contend that the defendants though denied the title of the plaintiff in the written statement, yet the tenor of their pleadings indicates a sweeping denial. After all, the same defendants have pleaded adverse possession, which would necessarily imply that they have conceded the title of the plaintiff. At any rate they have not produced any document to demonstrate a superior title to the suit property. Arguing further the learned counsel would contend that both the Courts below have categorically found that defendants 1 and 2/appellants, have not proved that the Ext. B-1 notice was actually issued by the plaintiff. This is a concurrent finding of fact by the Courts below, and unless it is demonstrated that this finding was arrived by a wrong reading of the evidence on record, this Court may not interfere with the same.

8. On perusing the records and after carefully considering the rival submissions, this Court finds that the defendants have not been able to establish that the plaintiff has no title to the

suit property. Now, turning to Ext.B-1, on which considerable emphasis and reliance was placed by the appellants' counsel, both the Courts below have concurrently held that the issuance of this notice by the plaintiff has not been proved and this court does not find the reasoning of the courts below on this is wrong. This apart, even if Ext.B-1 were presumed to be genuine (for which there is no evidence), yet it has zero significance on the title of the plaintiff. All that Ext.B-1 alleges is that there was an agreement of sale dated 13.07.1997, and if the statement is true, still it needs to be stated that a mere agreement of sale does not create any interest in the property dealt with thereunder, and consequently, Ext.B-1 has no efficacy to dislodge the title of the plaintiff. Curiously enough while the defendants creat a hype over Ext.B-1, yet in their written statement they have not taken up a position as to whether there was a sale agreement, and if their possession of suit property was pursuant to the said sale agreement. Positioning Ext.B-1 in that context, this Court holds that it has little bearing on the rights of the plaintiff to seek her title declared and to have the property recovered from defendants 1 and 2.

9. In final analysis, this Court finds no merit in the appeal and the same is dismissed, but in the context of the case, there would be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Subordinate Judge, Gobichettipalayam.

2.The District Munsif, Gobichettipalayam.

3.The Section Officer, V.R.Section, High Court, Madras.

+1 cc to M/s.M.Guruprasad, Advocate Sr.No.1817

+1 cc to M/s.M.Naraayanasamy, Advocate Sr.No.1957

S.A.No.1307 of 2010

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CSL/13.03.2019