

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.479 of 2014 &

M.P.No.1 of 2014

Poongothai

.. Appellant/2nd Defendant

Versus

1.Nagalingam

2.Vasuki

..Respondents 1 & 2/Plaintiffs

3.S.M.Buhari

..3rd Respondent/1st Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 12.07.2013 passed in A.S.No.7 of 2013 on the file of Sub Court, Chidambaram, confirming the judgment and decree, dated 22.11.2012 passed in O.S.No.52 of 2009 before the District Munsif-cum-Judicial Magistrate, Portonovo.

For Appellant : Ms.R.Meenal

For Respondents 1 & 2 : Mr.B.Manimaran

R3 : Given up

JUDGMENT

The second defendant in O.S.No.52 of 2009, on the file of District Munsif-cum-Judicial Magistrate, Portonovo, is the appellant herein. One Kaliammal and Nagalinam, as plaintiffs, filed the suit for declaration of title over the suit property and for recovery of possession. During the pendency of the suit, the first plaintiff-Kaliammal died and her daughter-Vasuki was impleaded as the third plaintiff.

2. The case of the plaintiffs is that the first plaintiff purchased the suit property under Ex.A1 registered sale deed on 09.07.1979 as a guardian of her minor son Poorasamy. The said Poorasamy died about 20 years ago as a bachelor. It is further stated that the first defendant was requested to arrange for a labourer to look after their properties, as such, the second defendant was permitted to occupy the suit properties in the year 2004. However, subsequently, she was not doing her work properly, so she was asked to hand over possession, but she demanded Rs.10,000/-. It is further stated that the second defendant illegally obtained electricity service connection in the year 2009 and hence, the suit.

3. The suit was resisted by the second defendant, contending that her parents occupied the suit property and constructed the house. When the second defendant was in pregnancy, her husband deserted her and after delivering the child, the second defendant started residing along with her daughter for more than 20 years. It is further stated that her parents are residing separately along with her sister. The title of the plaintiffs over the suit property was denied and she claimed right by way of adverse possession.

4. Before the trial Court, in order to prove the case of the plaintiffs, P.Ws' 1 and 4 were examined and Exs.A1 to A10 and X1 and X2 were marked. On the side of the defendants, D.Ws' 1 to 3 gave evidence and Exs.B1 to B8 were produced. On consideration of the evidence adduced by the parties, the trial Court, decreed the suit. On appeal, the finding of the trial Court was confirmed and hence, this appeal.

5. Ms.R.Meenal, learned counsel for the appellant would urge that the Courts below failed to note that the plaintiffs have not proved their case and when there was absolutely no evidence to show that the appellant was a labourer under the respondents herein, the suit ought to have been dismissed. It is also argued that the tax receipts and electricity bills relating to the suit property would show that the appellant had prescribed title by adverse possession.

6. Per contra, the learned counsel for the respondents Mr.B.Manimaran would contend that the plaintiffs had established their title through Exs.A1 to A5. But, the appellant without proper pleading, attempted to prove her title by way of adverse possession, which was rightly rejected by the Courts below. It is further contended that the concurrent finding of facts do not warrant interference and there is no question of law arises for consideration in this appeal.

7. Heard the rival submissions and perused the materials placed on record.

8. In the matter on hand, the suit came to be filed for declaration of title over the suit property and for recovery of possession. According to the plaintiffs, the suit property belonged to one Duraisami Padayatchi and the first plaintiff purchased it under Ex.A1 for the benefit of her minor son Poorasamy. Ex.A5 is the parent document, which shows that the vendor of the first plaintiff, viz., Veerasami owned the property. It is the case of the appellant / defendant that her parents occupied the property and constructed the house. Though it is admitted that the father of the second defendant is

residing just opposite to the house of the suit property, but he was not examined to establish that the construction was made by him. Exs.B1 to B8 house tax receipts, family card, election ID card were rejected by the Courts below, as there is no indication therein that they relate to the suit property.

9. The defendant also denied the title of the plaintiffs. Ex.A1 sale deed shows that the suit schedule property was purchased by the plaintiff for his minor son, but unfortunately, he died later, as a bachelor. Ex.X1 patta and X2-house tax receipts stand in the name of the plaintiffs. It is settled proposition of law that the person, who pleads adverse possession has to specifically aver and prove. But, in the case on hand, no specific pleading has been made that the defendants occupied the property and they have been enjoying the same adverse to the original owner.

10. For the reasons stated supra, I find no illegality or perversity in the concurrent findings of the Courts below. In fine, the Second Appeal fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Subordinate Judge
Chidambaram.

2.The District Munsif-cum-Judicial Magistrate,
Portonovo.

Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Ms.R.Meenal, Advocate sr 106017

+1 CC to Mr.B.Manimaran, Advocate sr 105528.

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MP(CO)
SP(16/09/2020)