

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.977 of 2019
and
C.M.P.No.21005 of 2019

1.Kumarasamy

2.Rajamani

..Appellants/Appellants/1st & 2nd Defendants
Vs.

1.Subramaniam @ Subbanna Gounder

..1st Respondent/1st Respondent/Plaintiff

2.Sivakumar

..2nd Respondent/2nd Respondent/3rd Defendant

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.30 of 2018 on the file of the Sub-Court, Sathyamangalam dated 21.03.2019 confirming the judgment and decree passed in O.S.No.80 of 2016 on the file of the District Munsif Court, Sathyamangalam dated 13.04.2018.

For Appellants : Mr.Babu
for Mr.B.Kumarasamy

J U D G M E N T

The defendants 1 and 2 in O.S.No.80 of 2016 are the appellants. The suit was filed by the 1st respondent/ plaintiff seeking declaration of his title and recovery of possession.

2. According to the plaintiff, the suit property was allotted to his father Ramasamy Gounder in the partition that took place on 08.05.1974. Ramasamy Gounder had sold the property to the plaintiff on 14.08.1974 under a registered instrument of sale. According to the plaintiff, he has been in possession of the property pursuant to the said sale. The defendants who are his brother's children attempted to interfere with his possession, taking advantage of the fact that he is residing outside the suit village. Therefore, the plaintiff had filed a suit in O.S.No.139 of 2010 seeking declaration of title and injunction.

3. In the said suit the trial court concluded that the plaintiff is the owner of the property and he is entitled to declaration of title, however since the plaintiff was not in possession of the property he is not entitled to injunction. On the said finding, the suit in O.S.No.139 of 2010 was dismissed on 13.07.2012. Aggrieved the plaintiff preferred an appeal in A.S.No.18 of 2014 on the file of the Sub-Court, Sathyamangalam. The appeal came to be disposed of on 16.07.2015 giving liberty to the plaintiff to file a fresh suit seeking declaration and recovery of possession. Thereafter, the plaintiff has come forward with this suit for declaration and recovery of possession.

4. The suit was resisted by the defendants contending that the plaintiff was never in possession of the property and the suit property though was allotted to Ramasamy Gounder, the same continued to be in possession of Rangasamy Gounder, the father of the defendants along with other properties allotted to him in the partition. It is also contended that the sale deed dated 14.08.1974 is not valid and it was not acted upon. The defendants also claim that they perfected title by adverse possession.

5. The courts below on appreciation of the evidence on record concluded that the plaintiff has made out his title and the defendants have miserably failed to establish their claim of adverse possession. On the said findings and in view of the findings in the earlier suit in O.S.No.138 of 2010, the courts below decreed the suit as prayed for. Aggrieved the defendants 1 and 2 have come forward with the present appeal.

6. I have heard Mr.Babu, learned counsel for Mr.B.Kumarasamy, appearing for the appellants.

7. Mr.Babu would submit that the plaintiff is his evidence as PW1 has admitted that he was never in possession of the property pursuant to the sale deed. Therefore, he is not entitled to a decree for declaration and recovery of possession.

8. I am unable to countenance the said submission of the counsel. The truth or validity of the sale deed has not been disputed. The defendants would claim that the sale deed was not acted upon and they continued to be in possession. Once the plaintiff establishes his title to the property, he is entitled to seek recovery of possession unless the defendants prove that they have perfected title by adverse possession. Evidence to that effect is totally absent.

9. The defendants have claimed title as well as adverse possession. They have not chosen to restrict their claim

to any one of the two defences viz., defence on title or defence based on adverse possession which are conflicting pleas. In the absence of any evidence on record to show that the defendants had perfected title by adverse possession, the courts below were perfectly justified in granting a decree for recovery of possession.

10. From the evidence on record also it could be seen that the defendants have not produced any evidence to show their exclusive possession of the property for over a statutory period. On the other hand, it is seen that the plaintiff had paid kisth for the property till about 2010. Patta has also been granted in the name of the plaintiff on 07.12.2016. Therefore, it is clear that the defendants have not established their possession for over a statutory period in order to justify their claim for adverse possession. Hence, I do not find any question of law much less a substantial question of law enabling me to entertain this Second Appeal.

11. This Second Appeal is therefore dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

dsa

To

1.The learned Sub Judge,
Sathyamangalam.

2.The learned District Munsif,
Stathyamangalam.

+1cc to Mr.B.Kumarasamy, Advocate SR.No.84103

S.A.No.977 of 2019

CP (CO)
GMY (21/02/2020)