

IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on:22.11.2018

Delivered on:29.01.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.649 of 2017

and

C.M.P.No.16059 of 2017

1.Amudha

2.Rani

3.Kanchana

4.Sumithra

5.Rajendiran

...Appellants/Defendants

Vs

Krishnaveni

...Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 03.03.2017 made in A.S.No.33 of 2013 on the file of Subordinate Judge, Vellore confirming the Judgment and Decree dated 26.06.2012 made in O.S.No.491 of 2005 on the file of the District Munsif Judge, Gudiyatham, Vellore.

For Appellants : Mr.Tranquebar Dorai Vasu
for Mr.S.Muthukumar

For Respondent : Mr.K.A.Ravindran

JUDGMENT

The instant Second Appeal is filed questioning the Judgment and Decree of the Subordinate Judge Vellore in A.S.No.33 of 2013, in and by which the learned Subordinate Judge had confirmed the Judgment and Decree passed by the learned District Munsif, Gudiyatham in O.S.No.491 of 2005. O.S.No.491 of 2005 is a suit filed by the respondent herein for a declaration that she is the absolute owner of the suit property; to direct the defendants to surrender peaceful possession of the suit property to the plaintiff and failing their voluntary vacation the same shall delivered through Court and also to direct the defendants to pay the cost of the suit.

2.Plaintiffs case:

2.1.It is the case of the plaintiff that she had purchased the suit property from one Pappammal and Chinammal under a registered sale deed dated 13.07.1964 for a valid consideration. Though the sale deed had shown the property as measuring an extent of 6 ½ cents however, within the boundaries described in the schedule of property that had been sold to the plaintiff is the total extent available was 8¾th cents. She would submit that originally the property belonged to one Chinammal by way of the sale deed dated 01.09.1941 from the Government of Tamil Nadu and thereafter, she along with her son Munirajulu Naidu had sold the same to Pappammal under the sale deed 20.08.1961 with a right to get reconveyance of the same within a period of three years from the date of sale. The said Chinammal however did not get reconveyance. Thereafter the said Pappammal and the Chinammal had jointly executed the sale in favour of the plaintiff in the year 1964. The plaintiff would submit that right from the date of purchase and prior to her, her predecessors in title have been in possession of the entire extent 8¾th cents, therefore, she had absolute title to the property in excess of an extent of 6 ½ cents.

2.2.It was the case of the plaintiff that she was residing at Chennai and living with her son and therefore she had permitted the 1st defendant to stay in the suit property. The 1st defendant is none other than her brother-in-law. It appears that taking advantage of her absence the 1st defendant had clandestinely got the revenue records mutated in his name. Immediately on coming to learn about this, the plaintiff got the same retransferred by giving an objection to the Tahsildar in the year 1992. The 1st defendant vacated the suit property and surrendered possession to the plaintiff.

2.3.However, once again taking advantage of her absence defendants 2 to 5 who are daughters of the 1st defendant and the 6th defendant, his son in law that is husband of the 2nd defendant, entered into a sale whereby the defendants 1 to 5 sold the suit property to the 6th defendant and taking advantage of the plaintiff's absence trespassed into the suit property. The defendants are in unlawful possession of the suit property from 25.07.2003. Therefore, leaving the plaintiff with no other alternative except to file the suit.

3.Defendants case:

3.1.The 6th defendant had filed a written statement which was adopted by the other defendants. It was his case that the property belonged to Chinammal and though she had executed sale deed in favour of Pappammal, possession was never handed over to Pappammal. The 1st defendant and his family were living in the suit property for over Sixty years and revenue records stood in

the name of the 1st defendant. Pappammal who received the entire amount did not execute the reconveyance deed. The extent of the suit property is $8\frac{3}{4}$ cents and the plaintiff had only purchased $6\frac{1}{2}$ cents. It is the case of the defendant that since the defendants 2 to 5 were in need of money they had executed a sale deed in favour of the 6th defendant. Another defense that was taken was that the boundaries of the suit property did not tally with the actual boundaries on site.

3.2.The suit was originally decreed and on an appeal in A.S.No. 21 by 2010, the Appellate Court remanded the matter back to the trial Court with a direction to frame an additional issue with reference to adverse possession. The learned District Munsif, Katpadi, after remand had framed additional issue which reads as follows:

"whether the 1st defendant as perfected his title to the suit property by way of adverse possession?"

3.3.It is seen that after remand no further witness has been examined by either side nor documents marked. The suit which was originally pending on the District Munsif, Katpadi had been transferred to the District Munsif, Gudiyatham by order in Tr.O.P.22 of 2011.

4.Trial Court:

4.1.The learned Trial Court Judge proceeded to decree the suit. The learned District Munsif declared the title of the plaintiff to the suit property and directed the defendants to surrender the Possession. The learned District Munsif has clearly held that the plaintiff by way of a title deeds Ex.A.1 to Ex.A.3 had proved her right title to the suit property and the defendants who had pleaded adverse possession had not let in any evidence, whatsoever to prove the same.

4.2.The learned Judge further held that the defendants has failed to prove that they have been in continuous and hostile possession of the suit property and therefore in the light of the title deeds standing in the name of the plaintiff, plaintiff was entitled to the decree as prayed for.

5.Appellate Court:

5.1.The said Judgment and decree in O.S.No.491 of 2005 was taken up on appeal to the Subordinate Judge, Vellore in A.S.No. 33 of 2013. The learned Subordinate Judge confirmed the Judgment and Decree of the learned District Munsif and also held that the defendants miserably failed to prove adverse possession. Though, the defendants stated that they have been in continuous possession for over sixty years the defendants had failed to prove the same. This coupled with the fact that the title stood in the name of the plaintiff the learned Subordinate Judge also confirmed the Judgment and Decree of the learned

District Munsif.

6.Second Appeal:

6.1.Challenging this concurrent Judgment and Decree the appellants are before this Court. When the matter was listed for admission before this Court on 22.02.2018, my predecessor had ordered notice to the respondent returnable by four weeks. The Court had also observed that the defendants/appellants had no objection for confirming the decree with respect to 6 ½ cents and it was only with regard to excess land that a dispute existed. After notice been served on respondent, she had entered appearance through counsel. The matter was listed before me and the appeal was taken up for hearing.

6.2.Mr.Tranquebar Dorai Vasu, learned counsel who appeared for counsel for the appellant Mr.S.Muthukumar would submit that under the documents Ex.A.1 to Ex.A.3, the plaintiff was only conveyed an extent of 6 ½ cents and there is no explanation as to how the extra land had come into the possession of the plaintiff. He would further argue that the plaintiff cannot claim adverse possession for the excess 2.25 cents since she is not in possession of the same. He further submitted that the plaintiff has to prove her title to the additional 2.25 cents. There cannot be decree in her favour in respect of the suit property and therefore the Judgment and decree of the Courts below has to be reversed.

6.3.Per contra, Mr.K.A.Ravindran, learned counsel who had entered appearance on behalf of the respondent would contend that even in the plaint the plaintiff has submitted that she is in possession of an extent of 6 ½ cents by virtue of a sale in favour of her in the year 1964 and the remaining extent of 2.25 cents by adverse possession. She has clearly pleaded that the property which was actually enjoyed by Chinnammal measured an extent of 8¾th cents and it was this property that was conveyed to the plaintiff.

6.4.He would further argue that the defendants have not let in any evidence whatsoever to show as to how they have come into possession of the suit property, though the plaintiff had clearly stated that she had put the 1st defendant in permissive occupation of the suit property being her brother-in-law. He would submit that the appellants have not made out any question of law warranting the interference of this Court.

7.From a perusal of the Ex.A.1 to Ex.A.3 it is seen that Chinnammal had purchased an extent of East-West 95 links and North-South 70 links (6 ½ cents within specified boundaries). It is the case of the plaintiff that within the aforesaid boundaries the total extent of land actually available was an extent 8¾th cents. This is also confirmed by the defendants who in their written statement would admit that the property which has been described within four boundaries as the suit schedule

property actually measure 8 $\frac{3}{4}$ th cents. The patta that has been granted to the plaintiff based on possession also shows that at extent of 8 $\frac{3}{4}$ th cents (0.03.5 Hectare) is available in S.No.1/2 A 6 in Patta No.224. The Pattadhar is the plaintiff and even the Chitta registered would also show that the plaintiff is in enjoyment of the total extent of 8 $\frac{3}{4}$ th cents. The defendants who had come forward with the case that they have been in possession and enjoyment of the suit property for over 60 years has not narrated as to how they had come into possession of the suit property and has also not supported the same by providing any corroborative evidence.

8.The Courts below have rightly held that the person who pleads adverse possession does so after recognising the title of the other party to the suit property and likewise by pleading adverse possession the defendant have admitted the title of the plaintiff. The onus is cast upon defendants to prove the point of time from when they are in possession adverse to that of the real owner this has not been proved by the defendants. I find no infirmity in the Judgment and Decree of the Courts below.

In the result, Second Appeal stands dismissed as it does not involve any Substantial Question of law to be settled by this Court. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1.The Subordinate Judge,
Vellore.

2.The District Munsif Judge,
Gudiyatham,
Vellore.

+1cc to Mr.S.Muthukumar, Advocate, S.R.No.7951
+1cc to Mr.K.A.Ravindran, Advocate, S.R.No.7068

S.A.No.649 of 2017 &
C.M.P.No.16059 of 2017

NMI (CO)
GSP (28/02/2019)