



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.11.2019**

WEB COPY

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A. (MD) No.518 of 2019
and
C.M.P. (MD) No.10314 of 2019

Selva Sivalinga Nadar

... Appellant

vs.

1.Pugal Neela Kowsigan

2.Senthilan

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 14.03.2019 passed in A.S.No.12 of 2014 on the file of the Sub Court, Valliyur, confirming the judgment and decree dated 24.10.2013 passed in O.S.No.115 of 2010 on the file of Additional District Munsif Court, Valliyur.

For Appellant : Mr.T.Selvan

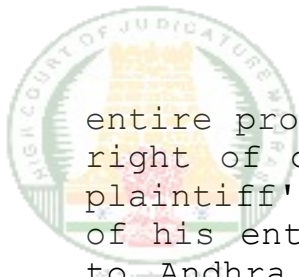
JUDGMENT

The unsuccessful plaintiff before both the Courts below is the appellant before this Court. This second appeal arises from out of a suit for declaration and permanent injunction filed by the plaintiff who had also sought for an alternative relief of recovery of possession.

2.The parties to the second appeal are referred to in the same array as in the suit.

3.The facts in brief which are necessary for disposing of the above second appeal are herein below narrated:-

4.The plaintiff would contend that the suit schedule property originally belonged to his father Periyasamy Nadar. His mother was one Chellammal and the plaintiff was their only child. When the plaintiff was around nine years of age in 1953, his father had passed away and therefore, as per the prevalent law of Hindu Succession, it was only the plaintiff who was entitled to the



entire property of his father Periyasamy Nadar. The mother had no right of ownership over the property. After the demise of the plaintiff's father, the plaintiff was in possession and enjoyment of his entire property. In the year 1969, the plaintiff had left to Andhra Pradesh in pursuit of work. Though he had left the State, the plaintiff frequently came to his native village and was taking part in the agricultural work.

5.The plaintiff would submit that his mother passed away in the year 2001. While she was alive, she was taking care of the land in his absence. The plaintiff would further contend that in the year 2007, he had taken a computer patta of the suit schedule property and was surprised to see that his name was referred to in the patta as Perumal Nadar, S/o.Selva Sivalinga Nadar. The plaintiff would submit that the patta ought to have read as Selva Sivalinga Nadar S/o. Perumal Nadar. The plaintiff therefore took out an application to the District Revenue Officer to correct the mistake and the District Revenue Officer on receiving a report from the Revenue Divisional Officer, Cheranmahadevi and the Thasildar, rejected the plaintiff's request by order dated 18.01.2010. The plaintiff's mother does not have the right to alienate the property and had also not alienated or created an encumbrance with reference to the suit property.

6.The plaintiff would further submit that if there is such a document, the same is a result of fraud and would not be binding on the plaintiff. The person who claims the right to the property on the basis of such document, is not entitled to the same. The plaintiff would submit that he has been in possession of the property ever since the year 1953 and had, in fact, mortgaged the property in the year 1964 and the mortgage was discharged in the year 1977. Therefore, it is the case of the plaintiff that it was only he, who had been asserting the right as owner to the property throughout.

7.The suit property is Punja lands having no irrigation facility. In view of the order of the District Revenue Officer, the 1st defendant is attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. He is residing 35 kms., away from the suit property and is not living in the Village. Since pending the suit, the 1st defendant had alienated the property to the 2nd defendant, the 2nd defendant was also impleaded as the 2nd defendant in the suit. Hence the suit.

8.The 1st defendant had filed a written statement denying the claim of the plaintiff. He would contend that in 1953, Periyasamy Nadar had created a Will in respect of some properties and gave his other properties and the suit property to his second wife, Chellammal for her maintenance and this right became an absolute



right after the enactment of the Hindu Succession Act, 1956.

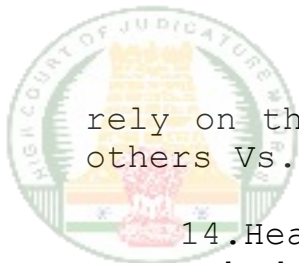
9. On 16.08.1982, the plaintiff's mother had sold the suit property to one Mathew Abraham due to the debts incurred by her during the famine and drought. The property changed several hands and ultimately, the 1st defendant purchased it on 19.05.2003. The 1st defendant pleaded that the suit was barred by limitation. He would further submit that for over 30 years, the 1st defendant and his predecessors in title have been enjoying the property. He therefore, sought for a dismissal of the suit.

10. The 2nd defendant had also reiterated the contention pleaded by the 1st defendant and submitted that the property was purchased by him on 19.08.2009. He would further contend that the property had been sold by the plaintiff's mother on 16.08.1982, it had thereafter changed hands thrice over before the 2nd defendant had purchased. He therefore sought for a dismissal of the suit.

11. The learned Additional District Munsif, Valliyur had framed 8 issues for consideration and ultimately, the learned Additional District Munsif, Valliyur, by order dated 24.10.2013, dismissed the suit contending that the sale executed by the plaintiff's mother was well within the knowledge of the plaintiff. Further, the suit has not been instituted within a period of 12 years from which possession of the 1st defendant had become adverse to the plaintiff. The suit was also dismissed on the ground that there was a non-joinder of necessary parties as well as the plaintiff has not impleaded the purchaser of the property prior to the purchase made by the 1st defendant.

12. Challenging the said judgment and decree dated 24.10.2013, the plaintiff has filed an appeal in A.S.No.12 of 2014 on the file of the Sub Court, Valliyur. The learned Subordinate Judge, Valliyur, by his order dated 14.03.2019, was pleased to confirm the judgment and decree of the trial Court. Challenging the concurrent judgment of both the Courts below, the plaintiff is before this Court.

13. Mr. T. Selvan, learned counsel appearing on behalf of the appellant/plaintiff would contend that the plaintiff was not aware about the sale by his mother and only in the year 2007, the plaintiff had come to know about the sale by his mother. He would further contend that the plaintiff had mortgaged the suit property in the year 1964 and had discharged the same in the year 1977 and therefore, he had been asserting the right as owner and the purchase being made without reference to the plaintiff would render the sale void. With regard to limitation, the learned counsel would submit that from the date of knowledge, the suit is in time. With respect to the plea of adverse possession, he would



rely on the judgment of this Court in the case of Karupaathal and others Vs. Muthusami and another reported in (2013) 7 MLJ 457.

14. Heard the learned counsel appearing for the appellant and perused the papers.

15. Originally the sale by the mother of the plaintiff had taken place in the year 1982. It is the catagoric case of the plaintiff that although he had been living in Andhrapradesh, he has been coming to the Village regularly and attending all the functions. Therefore, it is impossible to believe that the plaintiff has not come to know about the sale executed by his mother and the property has changed hands as early as in the year 1982. The suit has been filed only in the year 2010 much beyond the period of limitation. That apart, the suit property has changed hands thrice over prior to the purchase by the 1st defendant. The plaintiff has not impleaded any of them. Therefore, the suit is also bad for non-joinder of necessary parties.

16. In these circumstances, I find no infirmity in the judgment and decree passed in A.S.No.12 of 2014 on the file of the Sub Court, Valliyur and the judgment relied upon by the appellant does not apply to the facts of the present case. Therefore, I find no question of law for entertaining the present second appeal.

17. Accordingly, this Second Appeal is dismissed and the judgment and decree passed in A.S.No.12 of 2014 on the file of the Sub Court, Valliyur is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

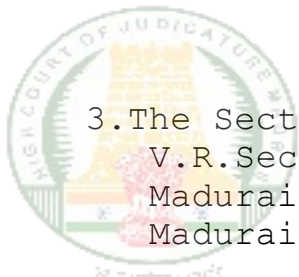
Sub Assistant Registrar (CS)

mm

To

1. The Subordinate Judge,
Valliyoor.

2. The Additional District Munsif,
Valliyoor.



3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.T. SELVAN, Advocate (SR-97899[F] dated 13/11/2019)

S.A. (MD) No.518 of 2019

12.11.2019

_KM/ (24.01.2020) 5P 6C