



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A(MD)No.450 of 2015

WEB COPY

Sivaramakrishnan

... Appellant/Appellant/Plaintiff

Vs.

N.V.R.Sethuramalingam Pillai

... Respondent/Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 02.03.2015 passed in A.S.No.11 of 2011 on the file of the Court of the Subordinate Judge, Ramanathapuram, in confirming the judgment and decree dated 29.11.2010 passed in O.S.No.11 of 2010 on the file of the District Munsif Court, Rameshwaram

For Appellant : Mr.M.Solaisamy
For Respondent : Mr.J.Barathan

* * * * *

JUDGMENT

The unsuccessful plaintiff before the courts below is the appellant before this Court.

2. This Second Appeal is directed against the judgment and decree in A.S.No.11 of 2011 passed by the learned Subordinate Judge, Ramanathapuram, confirming the judgment and decree of the learned District Munsif-cum-Judicial Magistrate, Rameswaram, in O.S.No.11 of 2010. The parties are arrayed in the litigated status as in the trial court.

3. The plaintiff had filed the suit for declaration that the suit property belongs to him and for injunction restraining the defendant from interfering with his possession and enjoyment.

4. Plaintiff's case:

It is the plaintiff's case that he and his family had entered into the suit property in the year 1995 and constructed a house therein. In order to avoid future problems, the plaintiff had entered into an agreement with the defendant to purchase 5 cents of land for sale consideration of Rs.700/- per cent. The entire sale consideration of Rs.3500/- was paid by the plaintiff to the defendant. However, despite receiving the entire sale



consideration, the defendant was refusing to execute a sale deed as promised. In the year 1996, further sum of Rs.8000/- was received by the defendant as promised to conclude the sale in respect of the suit property. However, the promise was observed in the breach. The plaintiff would contend that from the year 1975, he has been in hostile and continuous possession of the property. The plaintiff would contend that the defendant had started interfering with his possession and therefore, he has been constrained to come forward with the suit for the reasons mentioned above.

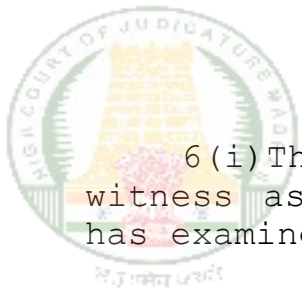
5. Defendant's case:

The defendant had denied the entire allegations contained in the plaint. It is his case that the extent of 28.5 ares in Survey No.747 consist of 10 houses and all of them belong to the defendant herein. The larger extent of the suit property was purchased by his father Rakkappapillai in court auction sale and the property was delivered to him by order of the court on 04.08.1928. After purchase, his father had put up 10 houses in the year 1965. The father of the plaintiff died when he was very young and since he was the son of the defendant's father's sister, the defendant's father had brought them to Rameswaram and provided for them and put them in possession of the suit property. The defendant's father was taking care of the day-to-day expenses of the plaintiff and his mother. In fact, it is the defendant who has conducted the marriage between the plaintiff and his wife. It is only after the marriage that the attitude of the plaintiff had undergone a change. The amounts that have been paid by the plaintiff was only towards rent which he started to pay once he had started earning. The defendant had also taken a plea of non-joinder since he has executed a settlement deed in favour of his daughter Rajini Meenatchi and the plaintiff has not impleaded her as party defendant.

6. Trial court:

The District Munsif-cum-Judicial Magistrate, Rameswaram had framed the following issues:

- i) Whether the plaintiff perfected the title to the suit property by way of adverse possession?
- ii) Whether the defendant is in possession of the property as tenant and permissive occupant as claimed by defendant?
- iii) Whether the plaintiff is entitled to the relief of declaration as prayed for?
- iv) Whether the plaintiff is entitled to the relief of permanent injunction as claimed by him?
- v) Whether the suit is bad for non-joinder of proper and necessary party?
- vi) To what other relief the plaintiff is entitled to?



6(i) The plaintiff had examined himself as P.W.1 and other witness as P.W.2 and marked Ex.A.1 to Ex.A.30 and the defendant has examined himself as D.W1.1 and marked Ex.B.1 to Ex.B.11.

6(ii) The trial court has given a finding that the plaintiff had not perfected title by adverse possession since he was in permissive occupation of the suit property and therefore, had given a finding against the plaintiff and answered the issues 1 and 2 against the plaintiff. The issues 3 and 4 were also answered against the plaintiff. But however, with reference to non-joinder, the issue was answered in favour of the plaintiff. Ultimately, the suit was dismissed.

7. Appellate Court:

Challenging the said judgment and decree, the plaintiff had filed A.S.No.11 of 2011 on the file of the Subordinate Judge, Ramanathapuram. The learned Subordinate Judge also confirmed the judgment and decree of the trial court and dismissed the appeal. Challenging the order, the appellant is before this Court.

8. Originally, notice of motion was ordered in the above matter and counsels had entered appearance for the respondent.

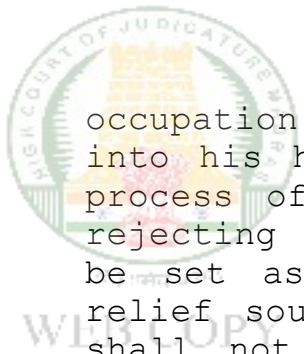
9. After hearing the arguments, this Court has framed the following substantial question of law:

- i) Whether the courts below are correct in law in dismissing the suit for injunction despite declaring that the possession had been admitted and the plaintiff has been able to prove that there has been a disturbance to his possession?

Both learned counsels had addressed arguments on the same.

10. Discussion:

From a reading of the pleadings and the judgments of both the courts below, it is clear that the plaintiff has been put in permissive occupation by the defendant's father and therefore, the courts below have rightly held that the plaintiff cannot claim adverse possession since his original possession of the suit property itself is only on account of permission that was granted to him and at no point of time, he has not asserted his right as owner of the property. However, both the courts below have held that the plaintiff is in possession of the suit property and the same is also admitted by the defendant. It is evident from Ex.A.24 and Ex.A.25. The plaintiff's wife has been lodging complaints against the defendant stating that their possession has been disturbed by the defendant. It is no doubt true that the defendant is the absolute owner of the property. However, considering the fact that the plaintiff has been put in permissive



occupation of the suit property, the defendant cannot take law into his hands and evict the plaintiff without resorting to due process of law. Therefore, the judgment of the courts below in rejecting the relief of injunction is erroneous and is liable to be set aside. Accordingly, the same is set aside. The second relief sought for by the appellant/plaintiff that the defendant shall not interfere with the possession and enjoyment of the plaintiff except by due process of law is granted.

11. In fine, this Second Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To,

- 1.The Subordinate Judge, Ramanathapuram
- 2.The District Munsif, Rameshwaram

+1 CC to M/s.T.R. JEYAPALAM, Advocate (SR-87729[F] dated 19/09/2019)

+1 CC to M/s.M.SOLAISAMY, Advocate (SR-88107[F] dated 20/09/2019)

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