

IN THE HIGH COURT OF JUDICATURE OF MADRAS

Reserved on: 29.01.2020

Delivered on: 05.02.2020

Coram:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

S.A.No.1015 of 2007

and

M.P.No.2 of 2007

Manickammal

.... Appellant/Defendant

vs.

1.K.Manavalan

2.Rani

3.Kamakshi Ammal

.... Respondents/Plaintiffs

Second Appeal is filed against the judgement and decree dated 27.02.2007 passed by the Subordinate Judge, Kancheepuram, in A.S.No.64 of 2006 reversing the judgement and decree dated 15.06.2006, passed by the Additional District Munsif, Kancheepuram, in O.S.No.412 of 1999.

For appellant :: Mr.N.Ramanujam

For Respondents :: Mr.G.Thilagavathy, Sr.counsel
for M/s.S.Kamalesh Kannan

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JUDGEMENT

This second appeal is filed by the defendant in the suit as against the judgement and decree, dated 27.02.2007, passed by the Subordinate Judge, Kancheepuram, in A.S.No.64 of 2006, reversing the judgement and decree, dated 15.06.2006, passed by the Additional District Munsif, Kancheepuram, in O.S.No.412 of 1999, which was one for declaration of title and permanent injunction.

2.The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.

3.The appellant herein is the defendant and the respondents are the plaintiffs in the suit. The plaintiffs have approached the Additional District Munsif, Kancheepuram, by filing O.S.No.412 of 1999, seeking for declaration of title and permanent injunction. Subsequently, the plaintiffs amended the suit and prayed for recovery of possession as well in regard to the suit schedule property.

4.The plaint averments, in brief, would run thus:

According to the plaintiffs, the father of plaintiffs 1 and 2 and the husband of the 3rd plaintiff, viz., Kesavalu Naidu, became owner of the suit schedule property by virtue of Court Auction Sale, in E.P.No.384 of 1967, in S.C.No.1418 of 1966, of Kancheepuram District Munsif Court, dated 16.8.1968, in favour of one Rajagopal, who was Benami of the said Kesavalu Naidu. The sale was confirmed on 28.9.1968 and the Sale Certificate was also issued on 11.11.1968, which was marked as Ex.A1. It appears that a Claim Petition was filed by the appellant/defendant, in E.A.No.818 of 1967 in E.P.No.384 of 1997 in S.C.No.1418 of 1966, which was dismissed on 23.04.1968, by confirming the sale in favour of Kesavalu Naidu, the father of plaintiffs 1 and 2 and the husband of the 3rd plaintiff. Further, the Benami Rajagopal has sold the suit schedule property to the first plaintiff by another Sale Deed, dated 17.01.1985, which was marked as Ex.A8. Therefore, by virtue of two Sale Deeds, one in 1968 and another in 1985, the plaintiffs became absolute owners of the suit property. When their peaceful possession and enjoyment was sought to be disturbed by the defendant, as she was claiming title to the suit property by virtue of a Sale Deed, which was given in her favour in 1965, the suit was filed by the plaintiffs to protect their interest and title to the suit property.

5.On behalf of the appellant/defendant, a written statement was filed strongly resisting the claim of the plaintiffs. The defendant's case was that she derived title to the suit property and she was in possession of the suit schedule property for more than two decades. According to her, although the Sale Certificate was issued on 11.11.1968 (Ex.A1), the plaintiffs failed to take possession of the suit property by filing appropriate application. Therefore, the possession remained with the defendant and since her possession was open and continuous for more than the statutory period of 12 years,

she perfected her title by adverse possession. Therefore, the defendant prayed for dismissal of the suit on the ground of extinguishment of right and also on the ground that the suit filed by the plaintiffs in 1999 was hit by Limitation Act i.e. Section 27 read with Article 65 of the Limitation Act.

6.The trial Court, which went into the issues and the evidence let in on behalf of the parties, has agreed with the various contentions raised on behalf of the defendant and ultimately dismissed the suit. According to the trial Court, although the plaintiffs appeared to have purchased the property in the Court Auction in 1968, under Ex.A1, and also further from Rajagopal in 1985 (Ex.A8), there was no evidence to show that the plaintiffs took possession of the property. On the other hand, the trial Court accepted the case of the defendant that the possession remained with her for several decades and therefore, there was extinguishment of right under the provisions of the Limitation Act, as contended by the defendant.

7.Moreover, it was the plea of the defendant before the trial Court that there were inconsistent pleas taken by the plaintiffs that originally they derived title through the Sale Certificate issued to the auction purchaser, stating that the said Rajagopal, who was the purchaser of the property, was the Benami of Kesavalu Naidu-father of the first and second plaintiff and husband of the third plaintiff and subsequently, another case of title was set up by them that the said Rajagopal sold the property to the first plaintiff vide sale Deed dated 17.01.1985. Since, the plea was inconsistent in regard to the title, the trial Court accepted the contention raised by the defendant. In fact, the trial Court observed that there was evidence, as evidenced through various exhibits, to show that the defendant remained in possession of the suit property. The trial Court has also held that the burden was on the plaintiffs to prove that they were in possession of the suit property prior to 16.08.1968, as according to the plaintiffs' plea, the defendant took possession of the property only after that date from the plaintiffs. The trial Court has also held that there was absolutely no document to show that the plaintiffs were in possession and enjoyment of the suit property twelve years before the suit was filed. The trial Court heavily relied on the plea of the defendant in regard to the application of Limitation Act i.e. Section 27 of the Limitation Act, which defines about extinguishment of right to property. The trial Court had also held that under Article 65, the period of limitation for recovery of possession was 12 years and since the suit property was purchased on 17.01.1985(Ex.A8), the suit should have been

filed for recovery of possession before 17.01.1997, but it was actually presented only on 08.06.1999. Therefore, on the consideration of legal position, the plaintiffs were not entitled to the reliefs and finally dismissed the suit. As against the dismissal of the suit, the plaintiffs have filed A.S.No.64 of 2006 before the Subordinate Judge, Kancheepuram.

8.The lower Appellate Court, after consideration of various contentions and also perusing the materials and the pleadings placed on record, has reversed the findings of the trial Court and allowed the appeal filed by the plaintiffs. According to the lower appellate Court, when originally a suit was filed by the defendant in O.S.No.493 of 1968, the same was dismissed on the ground that she had no title and the said finding of the trial Court had become final and no appeal was filed. Moreover, the appellate Court had also found that the defendant filed yet another suit in O.S.No.153 of 1985 for declaration of her title and permanent injunction, claiming title by adverse possession, as according to her, she was in possession of the suit property for more than the statutory period and her possession was open and continuous. The trial Court, however, dismissed the suit on 28.02.1992 and while dismissing the suit, the trial Court has given extensive finding that the defendant herein was not in possession of the property at all and therefore, not entitled to claim title by adverse possession. As against that, A.S.No.43 of 1992 was filed by the defendant, which was also dismissed holding that she was not in possession of the suit property. In the background of these findings, which had become final and no further appeal was filed by the defendant, the lower appellate Court found that those findings became uncontested and unchallenged and had become final and therefore, the defendant's claim that she was in continuous possession, once again, in other proceedings, had to be discountenanced outright. The lower appellate Court has also found that as far as the various exhibits filed showing tax receipt etc., both the plaintiffs and the defendant had such evidence and however, after analysing the documents, including the earlier suit proceedings and the appeal proceedings, the appellate Court found that it could be safely concluded that the plaintiffs were in possession of the suit schedule property and therefore, the defendant cannot claim any right over the same. The appellate Court, accordingly, allowed the appeal and as against the said judgement and decree, the present second appeal has been filed by the defendant.

9.The second appeal was admitted by this Court on the following Substantial Questions of Law:

"1.Whether the lower appellate Court is correct in not holding that the suit is barred

under Section 27 read with Article 65 of the Limitation Act as the Court Auction purchaser and the first respondent failed to apply for delivery of possession through Court, after Ex.A1 and Ex.A8, respectively, within the period of limitation?

2.Whether the lower appellate Court is correct in not holding that the sale certificate dated 11.11.1968 issued by the District Munsif Court, Kancheepuram to Rajagopal viz., Ex.A1 has become non est and the has no title to convey?"

10.Mr.N.Ramanujam, the learned counsel appearing for the appellant/defendant would submit that the trial Court has considered the evidence properly and accepted the case of the defendant that the possession was with the defendant for more than the statutory period and therefore, applied the legal principle of extinguishment of right over the property, as defined under Section 27 read with Article 65 of the Limitation Act. Moreover, the trial Court has also appreciated the inconsistent stand taken by the plaintiffs stating that they acquired title to the property under Ex.A1, viz., Sale Certificate, issued by the Court in pursuance of the Court auction held on 16.08.1968, as according to the plaintiffs, the purchaser in the Court auction was the Benami of the first and second plaintiff's father Kesavalu Naidu at that point of time. Subsequently, another sale was effected by the said Rajagopal to the first plaintiff on 17.01.1985, which was marked as Ex.A8, and apparently, the pleas taken by the plaintiffs were inconsistent. Therefore, the trial Court has rightly appreciated such inconsistent pleas. As far as the evidence part of it is concerned, the trial Court has appreciated the evidence in support of the defendant that the plaintiffs did not prove their possession in regard to the suit property, whereas, there were evidence to show that the defendant remained in possession of the suit property for more than two decades. Therefore, the learned counsel for the appellant/defendant would submit that the trial Court was right in dismissing the suit filed by the plaintiffs.

11.The learned counsel for the appellant/defendant would submit that on the other hand, the lower appellate Court has completely misdirected itself in relying too much on the findings given by the Courts in respect of the earlier suit proceedings and appeal proceedings and reversed the findings of

the trial Court. According to the learned counsel, the lower appellate Court has completely erred in not applying the law of limitation, viz., the extinguishment of right to property, when the plaintiffs did not prove that they were in continuous possession and enjoyment of the suit property. In fact, the lower appellate Court has held that the plaintiffs ought to have been in possession of the suit property, since the defendant did not prove her continuous possession. The approach of the lower appellate Court was faulty and incorrect for the reason that the plaintiffs, who set up their case for title and possession, ought to have proved their case and their claim cannot be decided on the basis of assertion on the part of the defendant. On the whole, the lower appellate Court has completely erred in reversing the judgement of the trial Court and therefore, pleaded that the second appeal may be allowed, by upholding the judgement and decree of the trial Court.

12.Mrs.G.Thilagavathy, the learned Senior counsel appearing for the respondents/plaintiffs would strongly contend that the trial Court has completely misdirected itself by overlooking the earlier proceedings initiated by the defendant herself. In fact, according to the learned Senior counsel, originally O.S.No.493 of 1968 was filed by the defendant claiming title on the basis of the Sale effected in her favour in 1965, which was negative by the trial Court. In that case, the trial Court has held that the defendant had no title over the suit property. That finding had become final, as no further appeal was filed. Thereafter, the defendant, in order to squat on the property, filed another suit in O.S.No.153 of 1985 for declaration of title and for injunction, wherein, the trial Court once again dismissed the said suit by its judgement dated 28.02.1992, which was marked as Ex.A12 in the suit proceedings. In the said suit also, the trial Court has clearly and categorically held that the defendant herein, who was the plaintiff in that suit, was not in possession of the suit property at all and while giving the finding, the trial Court has confirmed the title and possession of the plaintiffs herein. As against the said judgement, A.S.No.43 of 1992 was filed by the defendant herein and the appeal was also dismissed on 15.12.1992. Both in the trial proceedings as well as in the appeal proceedings, the Courts have held that the defendant had not been in possession at all, as claimed by her, and therefore, application of Section 27 of the Limitation Act did not arise.

13.The learned Senior counsel would submit that having lost her legal battles repeatedly, the defendant attempted to once again trespass into the property of the plaintiffs and when the present suit was laid by the plaintiffs herein, the

defendant took the same stand as if she had been in possession of the property for more than three decades and therefore, the plaintiffs are not entitled to the reliefs. Although the trial Court fell into error in dismissing the suit, the appellate Court has understood the issues and the evidence in correct perspective. In fact, the lower appellate Court has correctly appreciated the earlier proceedings initiated by the defendant and particularly, the findings rendered by the civil Courts in those proceedings had become final and therefore, there was no scope for giving another finding on the same claim pleaded by the defendant. Therefore, the learned Senior counsel would submit that the defendant, by approaching the Courts repeatedly or when she gets an opportunity to oppose, had been raising the same plea in order to defeat the legitimate rights of the plaintiffs to enjoy their property peacefully. Therefore, the learned Senior counsel would submit that the second appeal is liable to be dismissed as being devoid of merits and substance.

14. Considered the submissions of Mr.N.Ramanujam, the learned counsel appearing for the appellant/defendant and Ms.G.Thilagavathy, the learned Senior counsel appearing for the respondents/plaintiffs.

15. From the above narrative, it could be seen that the appellant herein, under some pretext or the other, has been reiterating the same position that possession has been with her all along and therefore, the plaintiffs were not entitled to the reliefs prayed for by them. When the defendant herself initiated two suit proceedings one in O.S.No.493 of 1968 and another in O.S.No.153 of 1985 and having been unsuccessful in her attempts to stay on in the property, she found that the plaintiffs present suit has been an opportunity given to her once again to assert her falsehood. The trial Court, which went into the issues, in the opinion of this Court, has miserably failed to refer to the earlier suit proceedings initiated by the defendant herself and also the appeal proceedings in A.S.No.43 of 1992. In all the proceedings, it was clearly held by the Courts that the defendant had no title whatsoever to the suit schedule property. In fact, in O.S.No.153 of 1985 the trial Court has concluded in categorical terms, on the basis of the evidence, that the defendant was not in possession of the suit schedule property at all, as claimed by her. When an appeal was filed in A.S.No.43 of 1992, the appellate Court also confirmed the findings of the trial Court and held that the defendant was not in possession at all, factually.

16. As rightly contended by the learned Senior counsel for the respondents/plaintiffs, once, in the earlier proceedings filed by the defendant herself, the civil Courts have held in

clear terms about the factum of the defendant not being in possession of the suit schedule property, it cannot be gain said that for the same stand taken by the defendant in the present suit there can be a different finding or answer. Unfortunately, the trial Court appears to be too oblivious to these factors, which are most crucial and pivotal in deciding the rival claims of the parties. This Court is unable to appreciate as to how the trial Court can accept the pleas of the defendant in the face of clear findings rendered by three Courts in the proceedings initiated by the defendant herself. When the civil Courts have given a finding in respect of the very same claim by the defendant in the Suit proceedings in O.S.No.153/85, and the same having been confirmed in A.S.No.43 of 1992, and both the proceedings have been marked as Exs.A12 and A11, how the trial Court could ignore such judicial findings and come to a different conclusion. To put it in nutshell, the findings of the trial Court appears to be perverse and legally unacceptable.

17.While holding so, the natural and inexorable conclusion this Court could come to is to accept the judgement of the lower appellate Court, which correctly reversed the findings of the trial Court. Contrarily and correctly, the lower appellate Court appreciated the crucial findings rendered by the civil Courts in O.S.No.493 of 1968 and in O.S.No.153 of 1985 and in A.S.No.43 of 1992 and held that such findings were staring at the face of the defendant and had become final and therefore, the present finding of the trial Court, taking a diametrically opposite view, was unsupported by any evidence and also not legally acceptable. In the said context, the lower appellate Court also held that Section 27 read with Article 65 of the Limitation Act would not get attracted, as possession was not proved by the defendant. The said conclusion by the lower appellate Court was perfectly in order in comparison to the conclusion reached by the trial Court holding that Section 27 gets attracted and the right of the plaintiffs stood extinguished. On the whole, this Court finds that the lower appellate Court has rectified and corrected the fundamental errors committed by the trial Court in ignoring several crucial aspects, which were in support of the plaintiffs and as against the defendant. Since the trial Court has ignored the crucial aspects and documents, the judgement and decree passed by it became too vulnerable for interference by the higher Courts.

18.More over, this Court does not also appreciate as to how the trial Court could be blind to the earlier proceedings initiated by the defendant herself and overlooked the same in order to deny the reliefs to the plaintiffs. Therefore, looking at it from any angle, this Court is not able to understand as to

how the trial Court could conclude that the defendant was in continuous possession. Such faulty and erroneous approach by the trial Court requires to be strongly criticised. When the property in question was sold, assuming that the said Rajagopal is a 3rd party, as early as in 1968, under Court auction, in the normal circumstances, the issues should have rested at that point of time. The defendant mischievously and cleverly, in order to unsettle the settled position, had deliberately approached the Courts and filed two suits and an appeal in order to cling on to the property, denying the legitimate right of title of the plaintiffs to the suit property. Having failed in her three attempts to get any relief from the Courts, the defendant was conferred with an opportunity by the plaintiffs themselves and she once again repeated her claim in order to hold on to the property, unlawfully and illegally. Unfortunately, wittingly or unwittingly the trial Court has fallen prey to the designs of the defendant. But fortunately, the lower appellate Court has overturned the findings of the trial Court by going into various aspects of the case and also given a finding in clear terms that the plaintiffs have been in possession of the suit property and therefore, the limitation aspect would not hold water.

19. This Court is of the considered view that the finding, coupled with the judgement of the trial Court, is perverse and legally unsustainable and the lower appellate Court has rightly reversed the judgement and decree of the trial Court and therefore, the judgement and decree of the lower appellate Court has to be upheld in all fours.

20. In the above circumstances, the Second Appeal is to be held as completely devoid of merits and therefore, the Substantial Questions of Law framed in the Second Appeal are answered against the appellant/defendant and the Second Appeal stands dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

Msk

To

1.The Subordinate Judge,
Kancheepuram.

2.The Additional District Munsif,
Kancheepuram.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+2cc to Mr.N.Ramanujam, Advocate SR.No.9264

+1cc to Mr.S.Sai Sathya Jith, Advocate SR.No.8801

S.A.No.1015 of 2007

KJ(CO)
GMY(23/04/2021)



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