

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11/02/2020
Delivered on	25/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.125 of 2020 &

C.M.P.No.2643 of 2020

1.Sivasankaran

2.Thavamani @ Mani

.. Appellants/

Appellants/Defendants1&2

Versus

1.Anjanakshi @ Anjalakshmi ..1st Respondent/1st
respondent/Plaintiff

2.The Tahsildar,
Taluk Office,
Arakkonam. ..2nd respondent/2nd Respondent/
3rd Defendant

Prayer:Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree of the learned II Additional District Judge, Vellore @ Ranipet, dated 02.11.2019 made in A.S.No.32 of 2016, confirming the Judgment and Decree of the Subordinate Judge, Arakkonam, dated 03.06.2016 made in O.S.No.53 of 2014.

For Appellants : Mr.Jeremiah

For Respondents: Mr.M.Jaisingh for R-1
Mr.Y.T.Aravind Gosh
Government Advocate for R-2

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JUDGMENT

Aggrieved over the concurrent findings of the Courts below, the present appeal has been filed by the defendants in O.S.No.53 of 2014, on the file of Sub Court, Arakkonam. The first respondent herein, as plaintiff instituted the suit for declaration of title, recovery of possession and to set-aside the Judgment and Decree passed in O.S.No.221 of 1999 and to declare the settlement deed, dated 19.07.2010 executed by the first defendant in favour of the second defendant as null and void and for permanent injunction.

2. The case of the plaintiff is that she was the absolute owner of the suit schedule property, by virtue of a registered sale deed, dated 07.10.1990. Ever since, she has been in possession and enjoyment of the property. The plaintiff had engaged the service of Govindarajan for cultivating the land, till 3rd week of December 1999 and in the last week of December 1999, the first defendant trespassed into the suit property, claiming himself as a cultivating tenant and also filed a suit in O.S.No.221 of 1999, seeking for permanent injunction before the District Munsif Court, Arakkonam and he obtained Decree fraudulently and thereafter, the first defendant illegally created a registered settlement deed in favour of his wife, the second defendant. Hence, the suit.

3. In the written statement filed by the first defendant adopted by the second defendant, it is contended that the first defendant was in peaceful possession and enjoyment of the suit property as cultivating tenants, since 1990, and a sum of Rs.30,000/- was paid by him to the plaintiff to purchase the property and also spent Rs.50,000/- for improvement of the land and he dug a bore well in the suit property. During the pendency of the suit filed by the first defendant in O.S.No.221 of 1999, an agreement of sale dated 21.10.1999 was entered into to sell the property for a sum of Rs.2,58,000/- and she received Rs.50,000/- as advance. That apart, the defendants agreed to discharge the mortgage loan with the Land Development Bank, Nemili.

4. It is alleged that the plaintiff did not respond to the notices dated 19.01.2000 and 10.08.2000 to comply with the conditions stipulated in the agreement, dated 21.10.1999. Thereafter, the plaintiff at the intervention of mediators orally sold the property to the first defendant after receiving Rs.15,000/-. Wherefrom, the first defendant was in possession and enjoyment of the property as an absolute owner and he settled the property on 19.07.2010 in favour of his wife, the second defendant and also delivered possession. As such, the second defendant is in exclusive possession and enjoyment of the property.

5. On the basis of the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A13 were marked. On the side of the defendants, D.W.1 and D.W.2 gave evidence and Exs.B1 to B15 were produced. Upon consideration of the evidence, the trial Court dismissed the suit and the finding of the trial Court was confirmed by the II Additional District Judge, Vellore in A.S.No.32 of 2016. Challenging the same, the present appeal has been filed.

6. Mr.Jeremiah, learned counsel appearing for the appellants submitted that the Courts below completely misconstrued the entire evidence of defendants and had miserably failed to appreciate the defense in its proper

perspective. According to the learned counsel, the defendants have proved possession of the suit property from the year 1990 and hence, the case of the plaintiff that the appellants trespassed on the suit property in December 1999 is patently false and the Decree of permanent injunction granted in O.S.No.221 of 1999 is binding on the plaintiff. It is also contended that the defendants acquired right by adverse possession, as the appellants are in possession of the property from 1990.

7. Heard the learned counsel for the appellants and perused the materials available on record.

8. In the matter on hand, it is not in dispute that the plaintiff and the first defendant are brother and sister. The second defendant is the wife of the first defendant. It is equally not disputed that the suit property was originally purchased by the plaintiff through a registered sale deed, dated 07.10.1990 under Ex.A1. It is the case of the plaintiff that she had been cultivating the land through a farm servant till November 1999 and in December 1999, the first defendant trespassed into the suit property. The plaintiff further contended that she never agreed to sell the property to the first defendant and no sale had taken place as alleged. The first defendant had no right or authority to settle the property in favour of the second defendant.

9. The first defendant resisted the suit by contending that he had been in possession of the property since 1990 as a cultivating tenant and thereupon, under two registered sale agreements, dated 21.10.1999 and dated 19.05.2000 marked as Exs.B3 and B8, the plaintiff agreed to sell the property and eventually she sold the property through oral sale. It is relevant to note that the suit O.S.No.221 of 1999 was filed on the footing that he was a cultivating tenant and he was in possession of the property and also obtained ex-parte Decree, dated 21.10.2003.

10. The evidence of D.W.1 and the settlement deed Ex.B15 disclose that the first defendant had settled the property in favour of the second defendant, as if it was his ancestral property. The Courts below rightly held that the oral sale above the value of Rs.100/- is not admissible in law and is not valid. Since the oral sale pleaded by the first defendant was found to be invalid and he failed to establish that he was a cultivating tenant under the plaintiff, the Courts below held that the plaintiff is entitled for declaratory reliefs and recovery of possession, however, the prayer of permanent injunction was rejected holding that the Decree in O.S.No.221 of 1999 is binding on the plaintiff.

11. This Court find no merit in the contention of the learned counsel for the appellants that they have acquired the title by adverse possession. It is seen that there is

absolutely no pleading nor evidence for acquisition of title by adverse possession. It is true that the defendants are entitled to take inconsistent plea, but if there is no specific pleading with regard to the adverse possession, the defendants are not entitled to substantiate their case on the ground of adverse possession. Both the Courts below on proper appreciation of evidence adduced by the parties, in my view, rightly came to the conclusion that the plaintiffs are entitled for the decree sought for in the suit. I find no illegality or perversity in the concurrent finding of fact reached by the Courts, warranting interference in this appeal.

12. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

r n s

To

1. The II Additional District Judge,
Vellore.

2.The Subordinate Judge,
Arakkonam.

+1cc to Mr.G.Jermiah , Advocate SR.No. 16648

+1cc to Mr.M.Jaisingh , Advocate SR.No. 16046

+1 cc to Spl Government Pleader Sr.No. 16414

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A.SK(04/09/2020)

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