

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved Date : 21.11.2019

Pronounced Date : 19.05.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.790 of 2005

and

CMP.Nos.11008 of 2005 & 926 of 2013

1.Mani ... Appellants/Defendants
2.Dhandapani
3.Chinnappa (deceased)
(3rd appellant died. Memo dated 25.07.2018
is recorded. Appellants 1,2 & 4 to 6
L.Rs of the deceased 3rd appellant viz. Chinnappan
vide order of court dated 25.07.2018)
4. Rani
5.Valli Ammal
6.Dhanam

Vs.

Venugopal Koundar ... Respondent/Plaintiff

PRAYER: Second Appeal has been filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree of the First Additional Sub-Judge, Villupuram in AS.No.84 of 1997 dated 30.11.2004, confirming the judgment and decree of the Principal District Munsif, Tirukoilur in OS.No.9 of 1988 dated 27.02.1997.

For Appellant : M/s. V.Srimathi

For Respondent : Mr.S.Srinath

JUDGMENT

This Second Appeal has been filed by the defendants against the judgment and decree passed by the First Additional Sub-Judge, Villupuram in AS.No.84 of 1997 dated 30.11.2004 confirming the judgment and decree passed by the Principal District Munsif, Tirukoyilur in OS.No.9 of 1988 dated 27.02.1997

2. The respondent herein had filed a suit in OS.No.9 of 1988 on the file of the Principal District Munsif Court, Tirukoilur for the relief of permanent injunction restraining the defendants therein from interfering with his peaceful possession and enjoyment of the suit 'A' schedule property and for declaration of his title over the B schedule property and for recovery of possession of 'B' schedule property. The learned Principal District Munsif, Tirukoilur, by the judgment dated 27.02.1997 had decreed the suit as prayed for with costs. He directed the defendants to deliver vacant possession of suit 'B' schedule property within three months from the date of decree. Aggrieved by the same, the defendants had filed an appeal in AS.No.84 of 1997 and also filed an application in IA.No.333 of 2004 under Order 41 Rule 27 of CPC seeking permission of the appellate court to receive additional documentary evidence. The learned Additional Sub-Judge by the judgment and order dated 30.11.2004 had dismissed the said IA.No.333 of 2004 and also the appeal and thereby confirmed the judgment and decree passed by the trial court. She further directed the parties to bear their respective costs. Feeling aggrieved, the defendants have filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:

The suit 'A' schedule property originally belonged to one Periyamayagiammal and she adopted her sister's daughter Sengazhaniammal and orally gifted the said property to her and thereafter, the said Sengazhaniammal and her husband Chinnarasu Gounder were in possession and enjoyment of the suit 'A' schedule property. After their life time, their sons viz., Palani, Subramani and Ramu succeeded to the said property and they have been in possession and enjoyment of the same by paying the house tax from the year 1960. The aforesaid three sons of Sengazhaniammal had sold the suit 'A' schedule property to the plaintiff under a registered sale deed dated 10.12.1977 for a sum of Rs.2230/- and handed over possession to the plaintiffs. Subsequently, with the permission of the plaintiff, the defendants put up a thatched shed for tethering cattles in a portion of the suit 'A' schedule property and the said portion has been shown as 'B' schedule property in the suit and plaint plan. When the plaintiff demanded for delivery of possession of the suit 'B' schedule property, the defendants not only refused to deliver the same, but also denied the title of the plaintiff and also tried to take possession of the other portions of the suit 'A' schedule property and hence, the plaintiff was constrained to file the suit for the relief of declaration, permanent injunction and delivery of possession.

5. The averments made in the written statement filed by the defendants 1 and 2 are in brief as follows:

It is false to state that the suit property originally belonged to one Periyamayagiammal and she orally gifted the suit property to Sengazhaniammal and the said Sengazhaniammal and her husband were living in the suit property and after their death, their 3 sons had sold the same to the plaintiff under a registered sale deed in the year 1977 for valuable consideration. The suit property belonged to the defendants' ancestrally and they have been in possession and enjoyment of the same for more than 50 years continuously without any interruption, with the knowledge of everyone including the plaintiff and his predecessors-in-title and hence they perfected title by adverse possession also. Even if any right is got by the plaintiff, he lost the same by efflux of time. It is false to say that the defendants had put up a thatched shed with the permission of the plaintiff and the same has been shown as suit 'B' schedule property in the suit and plaint plan when the plaintiff demanded to deliver possession of the same, the defendants denied the title of the plaintiff and refused to deliver possession of the suit 'B' schedule property and also attempted to trespass into the remaining portion of the 'A' schedule property. The alleged cause of action is false and therefore the defendants prayed to dismiss the suit. During pendency of the suit, the first defendant died and his L.Rs have been impleaded as defendants 3 to 7.

6. Based on the aforesaid pleadings, the learned Principal District Munsif, Tirukoilur had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and he also examined one more witness as PW2 and he had marked Exs.A1 to A6 as exhibits. On the side of the defendants, the third defendant was examined as DW1 and one more witness was examined as DW2. Exs.B1 to B3 were marked as exhibits on the side of the defendants.

7. The learned District Munsif, after considering the materials placed before him, found that the plaintiff is the absolute owner of the suit properties and also found that the defendants failed to prove that they are having any right over the suit properties. Accordingly, he decreed the suit as prayed for and directed the defendants to deliver vacant possession of the suit 'B' schedule property within three months from the date of decree. Aggrieved by the same, the defendants had filed an appeal in A.S.No.84 of 1997 on the file of the First Additional Sub-Judge, Villupuram and also filed an application in IA.No.333 of 2004 under Order 41 Rule 27 of CPC seeking permission of the appellate court to receive additional documentary evidence. The learned Additional Sub-Judge, found that since the defendants pleaded adverse

possession, the burden is upon them to prove the same, but they failed to prove that they perfected title by adverse possession. She also found that the documents sought to be filed along with IA.No.333 of 2004 are not related to the suit properties. Accordingly, she dismissed the said Interlocutory Application and also the appeal by the judgment and order dated 30.11.2004 and thereby confirmed the judgment and decree of the trial court. Feeling aggrieved, the defendants have filed the present second appeal.

8. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

"i) Whether the said 'A' schedule property was originally belonged to the Periyarayagiammal as pleaded by the respondent/plaintiff or it is the ancestral property as pleaded by the appellants/defendants.

ii) Whether the decree and judgment passed by both the courts below are perverse as pleaded by the appellants/defendants?

iii) Whether the findings of the first appellate court in IA.No.334 of 2004 filed by the appellant is correct?"

9. Heard Mrs.V.Srimathi, the learned counsel for the appellants/defendants. Mr.S.Srinath, the learned counsel for the respondent/plaintiff.

10. The substantial questions of law Nos.1 to 3:-

The learned counsel for the appellants/defendants has submitted that the courts below failed to consider that since suit property is a Grama natham, the title to the property vests with the occupant. She further submitted that the courts below failed to see that the plaintiff has not produced any documentary evidence to show his possession or possession of his predecessors-in-title. She further submitted that since the plaintiff has taken a plea that the defendants are in permissive possession of the suit 'B' schedule property, the burden is upon him to prove that the defendants are in permissive possession. She further submitted that since the plaintiff failed to prove either title or the plea of permissive possession, he is not entitled to any of the reliefs asked in the plaint. She further submitted that the first appellate court failed to consider that the documents which were sought to be produced along with IA.No.333 of 2004 are material documents to substantiate the case of the defendants and therefore, she prayed to allow the second appeal and set aside the judgments and decrees passed by the courts below and dismiss the suit.

11. Per contra, the learned counsel for the respondent/plaintiff has submitted that since the suit property is a vacant site, the principle of possession follows title will apply. He further submitted that in this case, the plaintiff has produced Ex.A1 sale deed which shows that he purchased the suit properties from 3 sons of Sengazhaniammal. He further submitted that though the defendants claimed that they are in possession of the entire suit properties, they have not produced any scrap of paper to show that they are in possession of the suit properties. He further submitted that the documents sought to be produced in IA.No.333 of 2004 are house tax receipts and relating to their house and taking into consideration of the same, the first appellate court had rightly dismissed the said interlocutory application. He further submitted that the defendants claimed that the suit properties are their ancestral properties, but at the same time, they claimed adverse possession also. He further submitted that the defendants cannot take inconsistent pleas viz., claiming right as owner and also by adverse possession. He further submitted that since the defendants have pleaded that they have perfected title by adverse possession, they have to plead and prove the same by adducing proper evidence, but in this case, they have not pleaded from which date they have been in possession of the suit properties denying the title of the true owner and also not produced any documentary evidence to show their possession. He further submitted that taking into consideration of the aforesaid facts, the courts below concurrently found that the plaintiff is the absolute owner of the suit properties and decreed the suit as prayed for and in the said concurrent factual findings, this court cannot interfere and therefore he prayed to dismiss the second appeal.

12. In Muthammal (died) and Others Vs. State of Tamilnadu (2006) 3 MLJ 216, this court has held that in respect of Grama Natham lands, the First occupier is the owner of the particular portion of the land. In this case, admittedly, the suit property is situated in Grama natham. So, in view of the aforesaid decision, it has to be presumed that the first occupier is the owner of the said property Ex.A1 (Registered sale deed dated 10.12.1977) shows that the plaintiff had purchased the suit properties as vacant site from one Palani and two others who are the sons of one Sengazhaniammal and Chinnarasu. So, the principle of possession follows title will apply. It is also to be pointed out that in para-4 of the written statement, the defendants have averred as follows:-

“இந்த எதிர் வாதிகளுக்கு வாதியின் பூர்வீக மனைக்கும் கிழக்கே வீதிக்கும் வடக்கே மலைக்கும் தெற்கு, பொது சந்துக்கும் மேற்கு இதன் நடுவில் உள்ள காலி மனையம் உள்ள வீடும் பூர்வீக பாத்தியமானது, ”

13. From the aforesaid averments, it is clear that the

defendants have admitted that on the east of plaintiff's house site, their house and vacant site are situated. The case of the plaintiff is also that on the east of the suit property, the defendants' house is situated. There is no evidence that apart from the suit property, the plaintiff is having any other property on the west of the defendants' house. Therefore, the aforesaid admission made by the defendants would lead to an inference that they impliedly admitted that the suit property belongs to the plaintiff.

14. It is also to be pointed out that the third defendant while examining himself as DW1 has admitted that he is not having any documentary evidence to show that the suit property belongs to them. Further in para-4 of the written statement, the defendants have pleaded that they have been in possession and enjoyment of the suit property for more than 50 years and hence they perfected title by adverse possession also. Since they pleaded adverse possession, they have to admit that the plaintiff is the real owner. It is well settled that a person who claims adverse possession has to plead and prove from which date he is in possession of the property and from which date, the said possession has become adverse to the original owner. In this case, the defendants have not pleaded from which date they are in possession of the suit properties and from which date, the said possession has become adverse to the knowledge of the plaintiff. Taking into consideration of the aforesaid facts, the first appellate court has rightly held that the defendants failed to prove and establish that they perfected title by adverse possession and in the said factual findings, this court cannot interfere.

15. The appellants/defendants had filed IA.No.333 of 2004 under Order 41 Rule 27 of CPC before the first appellate court to receive certain house tax receipts as additional documentary evidence. Admittedly, the suit property is the vacant site. Further, the defendants are having house adjacent to the suit property. So, the said house tax receipts might have been related to the house of the defendants and hence they are not relevant for deciding the issue between the parties. Taking into consideration of the said facts, the first appellate court had rightly dismissed the said application.

16. The trial court as well as the first appellate court, taking into consideration of the materials placed before the court, they had concurrently found that the plaintiff is the owner of the suit properties and as such, he is entitled for the reliefs as prayed for. In the said concurrent factual findings, this court does not find any infirmity. Hence, this second appeal is liable to be dismissed. Accordingly, substantial questions of law are answered against the appellants/defendants.

17. In the result, the second appeal is dismissed. Consequently, the connected miscellaneous petitions are closed. The judgments and decrees passed by the courts below are confirmed. The defendants are directed to deliver vacant possession of the said 'B' schedule property within 3 months from the date of receipt of copy of this judgment. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

gv

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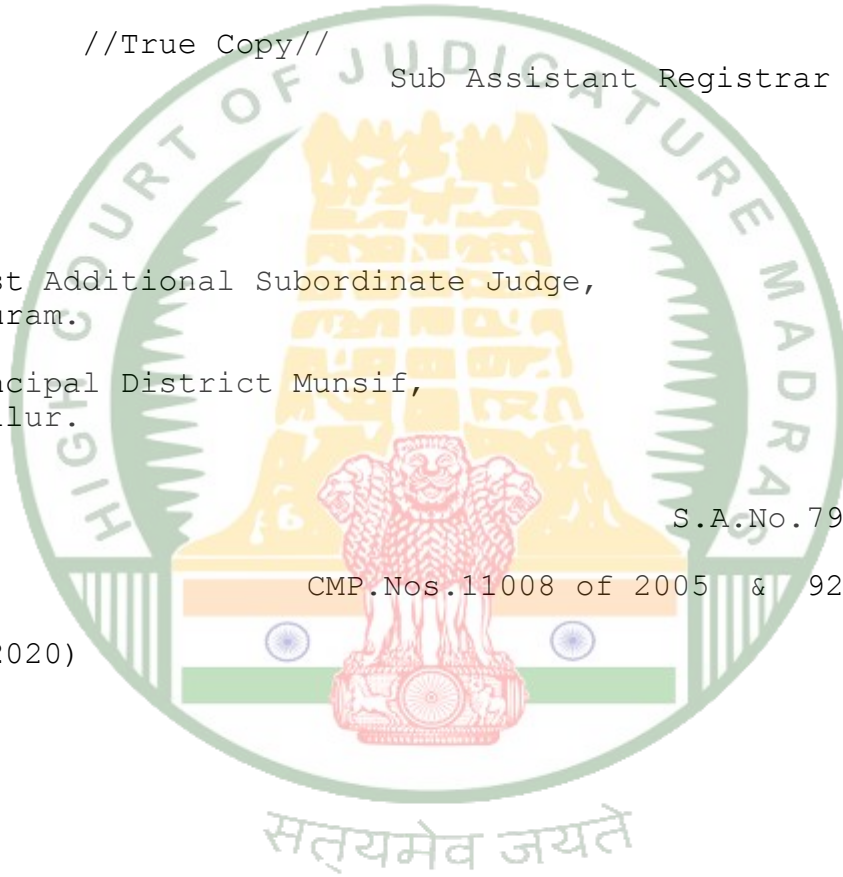
1.The First Additional Subordinate Judge,
Villupuram.

2.The Principal District Munsif,
Tirukoilur.

S.A.No.790 of 2005
and

CMP.Nos.11008 of 2005 & 926 of 2013

SJ(CO)
CB(08/09/2020)



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