



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 533 of 2020

and

C.M.P.No. 11502 of 2020

1.Kala
2.Murugaiyan

...Appellants/Defendants

Vs.

Ramesh

...Respondent/Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No. 11 of 2013 dated 17.03.2020 passed by the learned Sub-Judge, Nagapattinam, confirming the judgment and decree made in O.S.No. 81 of 2008 dated 16.12.2009 passed by the learned District Munsif - cum-Judicial Magistrate, Vedaranyam.

For Appellants : Mr.S.Parthasarathy

J U D G M E N T

The defendants in O.S.No. 350 of 2015 (O.S.No. 81 of 2008) are the appellants.

2. The suit was laid by the plaintiff seeking declaration of his title and for recovery of possession after removal of the super structure. According to the plaintiff, the suit property was purchased by his mother, who had settled the property on him under a registered instrument dated 25.06.2001. Since the first defendant, who was married came back to the village along with her husband / second defendant and claimed that they were chased away by the family of the second defendant and requested a space for living. Out of sympathy, she was allowed to occupy the suit property.

3. After the settlement by the mother in his favour, the plaintiff requested the defendants to vacate. The defendants did not only to refuse to vacate but also involved in activities which was against the interest of the plaintiff. The activities of the defendants also demeaned the family of the plaintiff. Hence, the plaintiff came up with the suit for declaration and



recovery of possession after removal of super structure.

4. This suit was resisted by the defendants contending that the suit property actually belonged to her father. The plaintiff's mother had no right to execute the settlement in favour of the plaintiff. It was also claimed that the father of the plaintiff and the first defendant had in fact gifted the property to the first defendant even 14 years prior to the suit and therefore, the defendants have perfected title by adverse possession also.

5. At trial, the plaintiff was examined as P.W.1 and one another witness, Tmt. Panneer Ammal was examined as P.W.2. Exs.A1 to A6 were marked. The first defendant was examined as D.W.1 and one Veerapandian was examined as D.W.2 and Exs.B1 and B2 were marked. The Trial Court, upon a consideration of the evidence on record concluded that the claim of the defendants that the property was purchased by the father in the name of the mother was not established by acceptable evidence. The Trial Court also concluded that the mother of the plaintiff, who had purchased the property under Ex.A6, Sale deed dated 27.04.1986 was absolute owner and hence, Ex.A1 executed by her on 25.06.2001 is valid and binding on the parties.

6. The Learned Trial Judge also rejected the claim of adverse possession made by the defendants, since the same was inconsistent to their claim that the plaintiff's mother was not the owner of the property. Upon such conclusion, the learned Trial Judge decreed the suit. Aggrieved, the defendants preferred an appeal in A.S.No. 11 of 2013. The learned Sub-Ordinate Judge, Nagapattinam, who heard the appeal upon reconsideration of the evidence on record concurred with the findings of the Trial Court. Upon such concurrence, the learned Sub-Ordinate Judge dismissed the appeal. Hence, this second appeal. Heard, Mr.S.Parthasarathy, learned counsel for the appellants.

7. Mr.S.Parthasarathy, learned counsel for the appellants would vehemently contend that the plaintiff has not established that his mother had sufficient income to have purchased the property in her name in the year 1986. According to the learned counsel, in the absence of such evidence, the Courts below were not right in upholding the title of the mother and her right to execute the settlement deed, Ex.A1. I am unable to countenance the submission of the learned counsel for the appellant. The sale deed, Ex.A6 stands in the name of the mother and she is the ostensible owner of the property. If the defendants want to contend that the property was purchased out of the monies contributed by the father, she has to prove such funding. Except the evidence of D.W.1 there is no other evidence in



respect of the claim of the defendants that the purchase money for the sale deed under Ex.A6 came from the father of the plaintiff. The Courts below have considered the evidence and concluded that the defendants have miserably failed to establish their claim that the property was purchased by her father. If that claim goes the plea of adverse possession also goes.

8. Therefore, I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. This appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

kkn

To:

1.The Sub-Judge,
Nagapattinam.

2.The District Munsif-cum-Judicial Magistrate,
Vedaranyam.

+1cc to Mr.S.Partha sarathy, Advocate, S.R.No.39133

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NRJK(CO)
CB(17/08/2021)