

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.551 of 2014

and

MP.No.1 of 2014

Arokiyasamy

... Appellant/Appellant/
Plaintiff

Versus

1.Periyanayagam

2.Kabiriyel

3.Rajarathinam

... Respondents/Respondents/
Respondents

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 31.08.2012 passed in A.S.No.11 of 2010 on the file of the Subordinate Court, Neyveli, in confirming the judgment and decree dated 05.08.2010 passed in O.S.No.54 of 2000 on the file of the District Munsif cum Judicial Magistrate, Neyveli.

For Appellant : Ms.M.Sugapriya

For Respondents: Mr.R.Balasubramanian

J U D G M E N T

The plaintiff in O.S.No.54 of 2000 on the file of the District Munsif cum Judicial Magistrate, Neyveli, whose suit for declaration of title and permanent injunction, was dismissed upon confirmation of the said judgment and decree on appeal in A.S.No.11 of 2010 by the Subordinate Court, Neyveli, has come up with the Second Appeal. सत्यमेव जयते

2.According to the plaintiff, the suit property belonged to the first defendant and the same was purchased by the plaintiff by way of an oral sale sometime in April 1986, for consideration of Rs.1,500/-. Realising the fact that the oral sale, itself is not valid, the plaintiff based his claim on adverse possession for more than the statutory period. Sum and substances of the plaintiffs claim is that he has been in possession of the property and being in possession for more than 12 years and as such he has perfected title by adverse possession.

3.The said claim of the plaintiff was denied by the defendants. In the written statement, it was claimed that the suit property belonged to the first defendant and the defendants 2 and 3 have purchased the suit property from the first defendant under the sale deed dated 06.01.2000. It is also the claim of the first defendant that he has permitted the plaintiff to occupy the suit property, since the plaintiff happened to be son-in-law of the brother of the first defendant. According to the defendants, the plaintiff misused the said permission and attempted to set up title, claiming adverse possession.

4.At trial, the plaintiff was examined himself as PW.1 and two witnesses viz., Mariadoss and Vanathayan were examined as PW.2 & PW.3 and Exs.A1 to A14 were marked. On the side of the defendants, the second and third defendants were examined as DW.1 & DW.2, one Chakariyas was examined as DW.3 and the first defendant/Periyanagayam was examined as DW.4 and Exs.B1 to B7 were marked. The Advocate Commissioner has inspected the suit property. His report and plan were marked as Court exhibits under Exs. C1 & C2.

5.Upon consideration of the evidence on record, the learned Trial Judge held that the plaintiff has to prove that he is in possession of the suit property for over the statutory period. The Trial Court, however found that the claim of the plaintiff that he is in possession from 1986 for more than the statutory period of 12 years, was not proved beyond the doubt. The Trial Court found that the documents filed by the plaintiff would show that he is in possession from the year 1994. The Trial Court rejected the claim of the plaintiff for declaration of title based on adverse possession. The Trial Court also came to the conclusion that the plaintiff is not entitled to injunction against the defendants who are the true owners. On the aforesaid conclusion the learned trial judge dismissed the suit. Aggrieved, the plaintiff has preferred an appeal.

6.The learned Additional Subordinate Judge, Neyveli, on re-appreciation of the evidence on record concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved, the plaintiff has come up with the Second Appeal.

7.Notice of motion ordered was ordered on 13.06.2014. Pursuant to the said notice, Mr.R.Balasubramanian, had entered appearance for R1 to R3. I have heard Ms.M.Sugapriya, learned counsel for the appellant.

8.Ms.M.Sugapriya, learned counsel for the appellant would vehemently contend that the Courts below were not right in

dismissing the suit in entirety, having found that the plaintiff is in possession on the date of the suit. She would also contended the fact that the defendants made attempts to interfere with the plaintiffs possession is admitted in the reply notice, Ex.A2, dated 22.10.1999. The Courts below, have negatived the claim of the plaintiff that he is in possession of the property from the year 1986.

9.The learned counsel would also rely upon the decision rendered by the Hon'ble Supreme Court in the case of Ravinder Kaur Grewal and others Vs. Manjit Kaur and others, reported in 2019 (8) SCC 729 in support of her submissions.

10.I have considered the submissions of the learned counsel for the appellant. The basis of the claim of the plaintiff is that he is in possession from the year 1986, while the defendants are not admitting the possession since 1986. It is for the plaintiff, who claims adverse possession, to prove as to when he came into the possession of the property and also prove that he is in possession of the property to the knowledge of the true owner for more than 12 years in order to defeat the right of the owner to recover the possession of the property. The earliest proof of the possession in the form of House tax receipt dated 30.03.1994 that is above 6 years, prior to the filing of the suit. There is no documentary evidence to prove that the plaintiff was in possession, since the year 1986, as claimed by the plaintiff. Being son-in-law of the brother of the first defendant, he was permitted to occupy the suit property on humanitarian ground and the said claim is misused, claiming adverse possession.

11.No doubt, the defendants replied to the notice on 22.10.1999 and have admitted the possession of the plaintiff, but the said admission by itself cannot cloth the plaintiff with the right to claim of adverse possession.

12.The learned counsel for the appellant would however contend that the defendants pleaded permissive possession and have failed to prove the permission, hence, the Court should have presumed adverse possession on the part of the plaintiff. I am afraid such a plea cannot be countenanced for the reason that the very claim of the plaintiff i.e., adverse possession is based in an illegality. An illegality cannot be presumed, the plaintiff has to prove the necessary ingredients of his claim of adverse possession. The judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant cited supra the Hon'ble Supreme Court, while holding that a person can maintain a suit for declaration on perfecting title by adverse

possession had emphasized the requirements of adverse possession which have to be proved by the plaintiff through positive evidence.

13.The Hon'ble Supreme Court has clearly held that the person, who claims relief of declaration by the adverse possession, which is based on illegality has to prove the necessary ingredients by laying positive and substantial evidence to prove his possession. In the absence of such evidence, declaration of title or possessory title based on the adverse possession cannot be granted. In the case on hand, if we look for evidence of possession, the earliest document is Ex.A9, house tax receipt dated 30.03.1994. There is no scrap of paper to show that the plaintiff is in possession from the year 1994. Once it is found that the plaintiff has not perfected title or possession for more than 12 years, the declaration of title cannot be granted. The Courts below have invoked the principle that persons who are in illegal possession cannot seek injunction against the true one.

14.It is claim of the defendants is that the plaintiff is in permissive possession and, therefore, the plaintiff has no title or possession. Once it is found that the defendants are the owners of the property and the plaintiff has not perfected title by adverse possession no relief of injunction can be granted to the plaintiff.

15.Therefore, I do not find any substantial question of law arising for consideration in this appeal and the Second Appeal therefore stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

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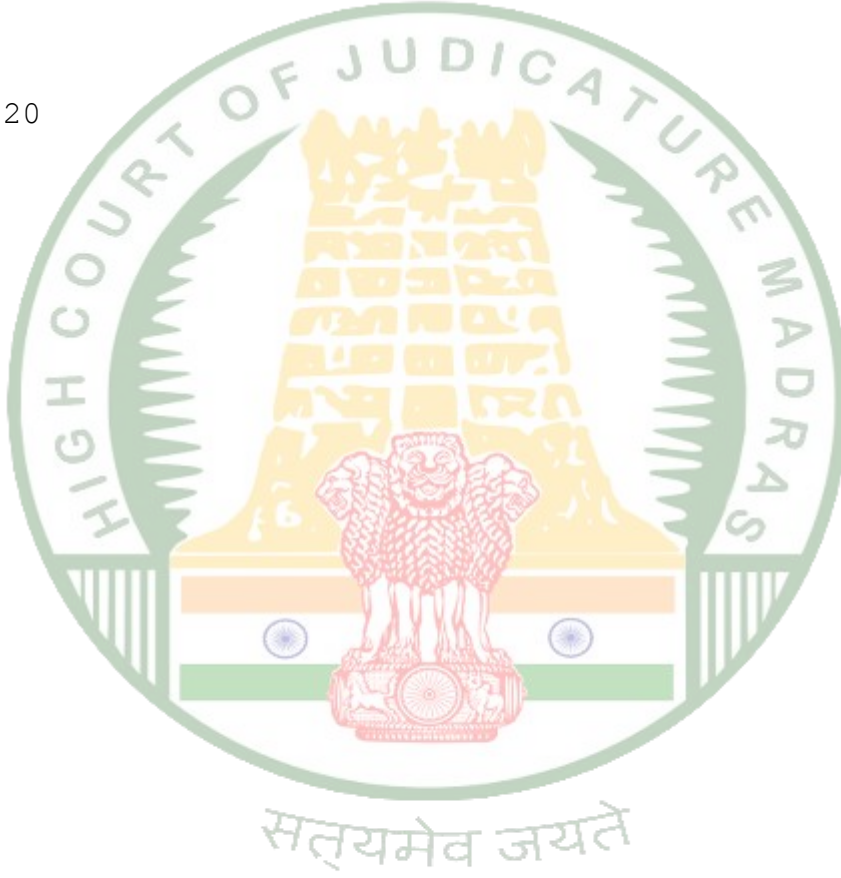
1.The Subordinate Court, Neyveli.

2.The District Munsif cum Judicial Magistrate, Neyveli.

+1 cc to Mr.V.Raghavachari Advocate sr20800
+1 cc to Mr.R.Balasubramanian Advocate sr20891

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