



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

S.A.Nos.141 of 2010 & 967 of 2011

Dravidamani alias Thamizhkumari

...Appellant in both S.As/Plaintiff

..Vs..

Ramanathan alias Ramu

...Respondent in both S.As/Defendant

PRAYER in S.A.No.141 of 2010 : Second Appeal filed under Section 100 of the C.P.C., 1908 against the decree and Judgment dated 17.06.2008 in A.S.No.55 of 2007, on the file of the Learned Subordinate Judge, Nagapattinam, upholding the decree and judgment dated 07.08.2006 in O.S.No.28 of 2003, on the file of the Learned District Munsif , Nagapattinam.

PRAYER in S.A.No.967 of 2011 : Second Appeal filed under Section 100 of the C.P.C., 1908 against the decree and Judgment dated 22.12.2006 in A.S.No.55 of 2006, on the file of the Learned Subordinate Judge, Nagapattinam, upholding the decree and judgment dated 07.08.2006 in O.S.No.370 of 2004, on the file of the Learned District Munsif, Nagapattinam.

In both S.As:

For Appellant : Mr.Mahamandra Rajalakshmi

For Respondent : Ms.S.R.Sumathy

COMMON JUDGMENT

The unsuccessful plaintiff before both the Courts below, has filed the present appeals.

2.For the sake of convenience, the parties are referred to as per their ranking before the trial Court and in appropriate places, their ranking in the present appeals would also be indicated.

3.The brief facts of the case of the plaintiff are as follows:



The suit property and other properties originally belonged to one Kothanda Ramasamy Naidu and he was in possession and enjoyment of the same. A suit was filed before the Subordinate Court, Nagapattinam, in respect of the present suit property and other properties and in the said suit, a compromise decree was passed wherein some properties including the present suit property was allotted to the share of the plaintiff's father late Kothanda Ramasamy Naidu. Late Kothanda Ramasamy Naidu leased out the suit property in favour of the defendant's father. Thereafter, in view of the release deed dated 22.11.1993 (Ex.A4) executed by the mother and other brothers of the plaintiff, the plaintiff became the absolute owner of the suit property. The plaintiff's father also built a thatched house in the suit property during the year 1982 and was also paying tax for the said house. However, the defendant, denying the title of the plaintiff, is attempting to trespass into the suit property. He, therefore, filed the following suits.

i. O.S.No.28 of 2003 seeking for a relief of permanent injunction restraining the defendant from constructing any house in the suit property from the defendant.

ii. O.S.No.370 of 2004 seeking for a relief of declaration of title to the suit property in favour of the plaintiff and also for recovery of possession of the same.

4. The suit was resisted by the defendant on the following grounds:

i. A house was actually built by the defendant's father 35 years back from the date of filing of the suit.

ii. The suit property was never leased out in favour of the defendant's father as alleged by the plaintiff.

iii. Since the defendant has been in possession and enjoyment of the suit property for more than 35 years he has prescribed title by adverse possession and prescription over the suit property.

5. The trial Court after framing necessary issues and after full contest, dismissed both the suits filed by the plaintiff on the following grounds :

i. The plaintiff has not established his title over the suit property.

ii. The plaintiff has also not established that the plaintiff's father leased out the suit property in favour of the defendant.



WEB COPY

iii.No documentary evidence was adduced by the plaintiff to establish any of his contentions.

iv.The defendant has prescribed title over the suit property by adverse possession and prescription as he is in possession of the suit property for more than 35 years.

6.Aggrieved over the decree and judgment dated 07.08.2006 passed by the learned District Munsif Judge, Nagapattinam, the plaintiff filed an appeal in A.S.No.55 of 2007 before the learned Subordinate Judge, Nagapattinam. The first appellate court, after analysing the evidence, upheld the findings of the trial court and dismissed the appeal. Aggrieved over the same, these present Second Appeals have been filed by the plaintiff.

7.Notice of motion was issued to the respondent and after several adjournments, the case was posted for hearing today. The appellant has raised the following substantial questions of law in the Memorandum of Second Appeal.

i. Whether the judgment and decree of the Courts below are not vitiated for its total non consideration of Ex.A1 and Ex.A2 in a proper perspective?

ii. Whether in law the plaintiff's title over the suit property has got extinguished when the defendant miserably failed to prove his claim of adverse possession?

8.At the outset, it may be observed that the plaintiff claims title over the suit property mainly based on a release deed (Ex.A4) dated 22.11.1993. The properties released in favour of the plaintiff are indicated in the said deed as

- (1) S.No.671 measuring vacant land to an extent of 6000 Sq.ft.
- (2) S.No.110 measuring to an extent of 3025 sq. ft.
- (3) the house built thereof.

9.The contention of the plaintiff is that the property in S.No.671 was allotted to his father late Kothanda Ramasamy Naidu in an earlier suit in O.S.No.28 of 1923 on the file of the learned Subordinate Judge, Nagapattinam. Ex.A1 is the copy of the decree passed in O.S.No.28 of 1923 dated 25.09.1925. The S.No.671 is not indicated in the decree. The plaintiff has not adduced any documentary evidence to correlate the survey numbers mentioned in the suit in O.S.No.28 of 1923 with the survey numbers indicated in Ex.A1.

10.Mr.Mahamandra Rajalakshmi, learned counsel appearing for the plaintiff contended that though the plaintiff has filed the tax receipts Ex.A10 & Ex.A11 in respect of the house built



on the suit property, both the Courts below failed to consider the same. In the instant case, the plaintiff has filed the suit in O.S.No.370 of 2004 for declaration of his title to the suit property and also for recovery of possession of the same from the defendant. It is settled law that the plaintiff should prove his case to the hilt and cannot pick holes in the defendant's title and on that score seek for a relief of declaration and injunction. As rightly observed by both the Courts below, the plaintiff has not adduced any documents to establish his title over the suit properties. Both the Courts below after appreciating the evidence on record, had come to a conclusion that the plaintiffs are not in possession of the suit property. They have also given cogent and acceptable reasons in their judgments and by no stretch of imagination, the findings recorded by both the Courts below can be said to be perverse. In such circumstances, there is no substantial question of law involved in the present appeals.

11. Accordingly, these second appeals are dismissed. No costs. The decree and judgment of both the Courts below are upheld.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

mtl

To

1. The Subordinate Judge, Nagapattinam,
2. The District Munsif, Nagapattinam.
3. The Section Officer, VR Section, High Court, Madras

+1 CC to Mr.J.Ramakrishnan, Advocate sr 41583.

S.A.Nos.141 of 2010 & 967 of 2011

PP(CO)
SP(08/12/2021)