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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2021

DELIVERED ON : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

S.A.No.336 of 2010

and

M.P.No.3 of 2010

1.Kamakshi
2.Panjanathan
3.Kolanjinathan

..Appellants/Respondents/Defendants 1,3,4

Vs.

Subramanian

..Respondent/Appellant/Plaintiff

Prayer: This Second Appeal is filed under Section 100 of C.P.C. against the Judgment and Decree made in A.S.No.148 of 2006 dated 27.10.2009 on the file of the Principal Subordinate Judge at Vriddhachalam thereby partly allowing the same insofar as the relief for permanent injunction is concerned and dismissed the relief of declaration of title modifying the judgment and decree made in O.S.No.1014 of 1992 dated 07.04.2005 on the file of the Principal District Munsif Court at Vriddhachalam.

For Appellants : Mr.V.Ayyadurai

For Respondent : Ms.Sripriya
for Mr.V.Raghavachari

J U D G M E N T

This Second Appeal has been filed against the Judgment and Decree made in A.S.No.148 of 2006 dated 27.10.2009 on the file of the Principal Subordinate Judge, Vriddhachalam thereby partly allowing the same insofar as the relief of permanent injunction is concerned and dismissed the relief of declaration of title modifying the judgment and decree made in O.S.No.1014 of 1992 dated 07.04.2005 on the file of the Principal District Munsif Court at Vriddhachalam.



2. The defendants 1, 3 and 4 in O.S.No.1014 of 1992 on the file of the Principal District Munsif, Vridhachalam is the appellants herein. Before the said Court, the respondent herein filed the above referred suit as against the appellants and one another Valarmathi (Died) seeking the relief of declaration declaring that the plaintiff is the absolute owner of the suit schedule property and for the relief of permanent injunction restraining the defendants/appellants or his agents in interfering with the peaceful possession and enjoyment of the suit schedule property. Alternatively, he prayed for the relief of possession in case of forcible possession and for compensation towards the rent from the date of plaint till the date of delivery of property and for costs. By Judgment and Decree dated 07.04.2005, the learned Principal District Munsif, Vridhachalam had dismissed the suit in its entirety.

3. Aggrieved over the said findings, the plaintiff/respondent preferred an appeal in A.S.No.148 of 2006 on the file of the Principal Subordinate Judge, Vridhachalam. By Judgment and Decree dated 29.10.2009, the learned Principal Subordinate Judge, Vridhachalam had partly allowed the appeal and granted the relief of permanent injunction in favour of the plaintiff. Feeling aggrieved over the Judgment and Decree dated 29.10.2009, the defendants 1, 3 and 4 have preferred this second appeal.

4. For the sake of convenience, hereinafter the parties are called as per the litigation status before the Trial Court.

5. The laconic averments made in the plaint are as follows:

(i) The suit property belongs to plaintiff's paternal uncle by name Ramanujam. The said Ramanujam enjoyed the suit property by keeping the cattle, manure and haystack. The said Ramanujam married the first defendant and lived together for two years and thereafter the first defendant deserted the said Ramanujam and for the past 20 years she is living with a third party. Thereafter the said Ramanujam was under the care and custody of the plaintiff's mother Meenakshi Ammal. Out of love and affection, the said Ramanujam executed an unregistered Will dated 01.10.1982 in favour of the plaintiff. Thereafter he died on 07.11.1982 without having issues. At that time, since the plaintiff was minor, the said Ramanujam appointed the plaintiff's mother as guardian. After attaining majority, the plaintiff is continuously enjoying the suit property. The plaintiff also prescribed the title over the suit property by way of adverse possession and the defendants are construed to be



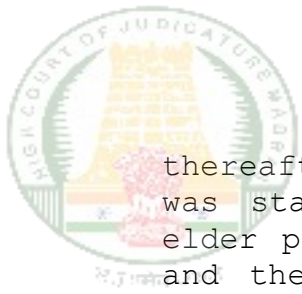
ousted from the suit property. The defendants are estopped from claiming any title, right or interest over the property. Except the plaintiff nobody is having any right in the suit schedule property. The second defendant is not born to the said Ramanujam and she is not a daughter of him. The third and fourth defendants have obtained mortgage in respect of the suit property from the first and second defendants through which they have no right at all and the mortgage is not valid in law. The defendants are trying to trespass in the suit property to take forcible possession from 23.08.1992. Therefore, the plaintiff is before the Court for the relief of declaration and injunction.

6. The averments in the written statement filed by the first and second defendants which were adopted by the third and fourth defendants, are as follows:

(i) The first defendant is still residing at Sathyavadi Village and not in the village where the suit schedule property situates. The second defendant is living with her husband Abdullah Khan. It is incorrect to state that the suit property was enjoyed by Ramanujam. The said Ramanujam lived with the first defendant and his daughter second defendant and he built one hut in the suit property. It is incorrect to state that the first defendant deserted Ramanujam and living with a third person for the past 20 years. It is equally false to allege that the suit property was maintained by plaintiff's mother Meenakshi Ammal. It is also incorrect to state that the said Ramanujam executed an unregistered Will in favour of the plaintiff. The Will is a forged one. The Plaintiff's father instigated the plaintiff to file the suit with the help of the forged Will. It is incorrect to state that the Will was acted upon. For the loan availed by Ramanujam, the first defendant's father executed a mortgage deed and thereby the loan availed by Ramanujam was discharged. After discharging the loan, the original mortgage deed is with the first defendant. At the time of giving the complaint before the police against the first defendant, the plaintiff cleverly obtained the original mortgage deed from this defendant. It is incorrect to state that the plaintiff is in possession and he has ousted this defendant. The plaintiff is not entitled to claim adverse possession. In order to grab the suit property the present suit has been filed.

7. The averments found in the additional written statement filed by the fourth respondent are as follows:

(i) At the time of filing the suit, the plaintiff described the said Ramanujam as his younger paternal uncle and



thereafter as per the order passed in I.A.No.1376 of 2004, it was stated by the plaintiff that the said Ramanujam was his elder paternal uncle. Therefore, the plaint is not maintainable and thereby the suit is to be dismissed. Based on the above pleadings, the learned Principal District Munsif framed necessary issues and tried the suit.

8. On the side of the plaintiff, four witnesses were examined as P.Ws.1 to 4 and nine documents were exhibited as Exs.A1 to A9. On the side of the defendants, first defendant herself was examined as D.W.1 and the fourth defendant was examined as D.W.2. Apart from those witnesses, one Sevanesan was examined as D.W.3. Further, in order to prove their case, the defendants exhibited ten documents as Exs.B1 to B10.

9. Having considered the materials placed before him, the learned Principal District Munsif, Vridhachalam, vide judgment dated 07.04.2005, dismissed the suit in its entirety. In the appeal preferred by the plaintiff, the learned Principal Subordinate Judge, Vridhachalam partly allowed the appeal and granted an order of injunction in favour of the plaintiff.

10. Aggrieved over the said findings of the appellate Court, the defendants 1, 3 and 4 are before this Court with the present second appeal.

11. When the second appeal came up for admission, the Court had formulated the following substantial questions of law:

(i) Whether the finding of the Lower Appellate Court that the suit property is in possession of the plaintiff/respondent is perverse in the light of the evidence adduced on both sides, especially in the light of the alternative prayer made by the plaintiff for recovery of possession?

(ii) Whether the Lower Appellate Court has committed an error in law in granting the relief of injunction while negating the title of the plaintiff?

12. Originally, the respondent in this second appeal filed the above referred suit for the relief of declaration declaring that the plaintiff is the absolute owner of the suit schedule property and for the relief of injunction restraining the defendants in interfering with his possession. The further case of the plaintiff before the Courts below is that he acquired title through Ex.A1 - Will dated 01.10.1982 executed by



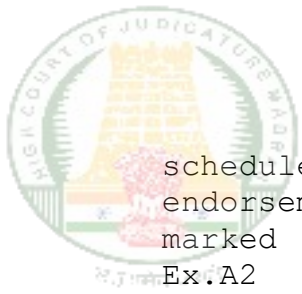
one Ramanuja Padayachi. Though the alleged Will dated 01.10.1982 was marked as Ex.A1 before the trial court, the plaintiff failed to prove the said Will by way of examining the attestors. In view of the above, both the Courts below, have held that the Will -Ex.A1 is not proved and thereby the plaintiff is not entitled to avail the relief of declaration. In respect of the said finding, the plaintiff has not chosen to file any appeal.

13. In otherwise, while at the time of disposing of the First Appeal, the learned Principal Subordinate Judge has held that though the plaintiff has not proved his title, he proved the possession and therefore, he is entitled to the relief of injunction as against the defendants.

14. In this regard, the learned counsel appearing for the appellants would contend that for availing the relief of injunction, the party, who asked the said relief, has to prove his possession, that the suit schedule property is in his possession. He would further submit that the duty to prove the possession is cast upon the plaintiff. It is the further submission that the First Appellate Court, in the absence of any direct evidence to prove the possession accepted the case of the plaintiff and granted decree of injunction, which is erroneous in law.

15. Per contra, the learned counsel appearing for the respondent/plaintiff would contend that the documents exhibited on the side of the plaintiff would show that a mortgage loan availed by the Ramanujam, who is the grantee, was discharged by plaintiff's mother. Further, the Government also after recognizing the possession, issued the patta in favour of the plaintiff. Therefore, it is obvious to hold that the plaintiff alone is in the possession of the suit schedule property and thereby, it cannot be held that the findings arrived at by the First Appellate Court is erroneous one.

16. By considering the said submissions with relevant records it would appear that, before the Trial Court, the plaintiff exhibited the mortgage deed dated 24.09.1981 executed by Ramanujam as Ex.A2. Through which the said Ramanujam created a simple mortgage in favour of Poorasamy. Now, on going through the contents of the said document, the property in S.F.No.185 alone was mortgaged. On the other hand, now on going through the description of the suit schedule property, the Survey Number of the suit schedule property was stated as 184/12. In this regard, to clarify the various parts in the survey number, no evidence was adduced on the side of the plaintiff, as only the suit



schedule property was put under mortgage. Secondly, the endorsement dated 02.12.1985 for redeeming the said mortgage was marked as Ex.A3. Since the said endorsement is with respect to Ex.A2 mortgage deed, the same is also not having any significance to believe that the possession of the suit property is having been with the plaintiff, as alleged in the suit.

17. Now, on going through the further documents exhibited on the side of the plaintiff, the House Tax Receipt pertains to Door No.182 was marked as Ex.A4 series, the proceedings issued by the surveyor dated 20.10.1992 was marked as Ex.A5, wherein, the surveyor rejected the claim made by the defendants, as they are not entitled to obtain a patta in S.F.No.185. Ex.A6 is a copy of the Advocate notice dated 04.12.1996 through which the plaintiff issued a legal notice to a Village President, Velmurugan Pillai, Sathiyavadi, wherein, the plaintiff has stated that the house situated in the alleged suit schedule property is in the possession of the plaintiff and thereby it is necessary to send a demand notice for House Tax only to the plaintiff. Acknowledgment pertains to the said notice was marked as Ex.A7.

18. Apart from those documents, the plaintiff exhibited two original pattas as Exs.A8 and A9. Among the same, in Ex.A8, the name of the beneficiary has not been mentioned by the revenue authorities. So without any particulars with respect to the beneficiary under the said patta, we cannot hold that the patta was issued in favour of the plaintiff. On going through another patta (Ex.A9), it shows that the same was issued in favour of Meenakshi, Subramaniam and one Palanivel. In fact, the said patta was issued by the Government directly in favour of the plaintiff and others. Therefore, if the validity of the said patta is taken into account, the same would change the character of the suit and create a doubt whether the deceased Ramanujam is the owner of the property, as alleged by the plaintiff.

19. It is true that by way of Exs.B1 and B2, the defendants failed to prove that she is not in the possession of the suit schedule property. However, being a reason that the present suit has been filed by the plaintiff, he is having the duty to prove his case in otherwise picking a holes from the defendants case cannot be accepted.

20. If at all, the appellants is having the possession under Ex.B9, the same can be decided only by way of filing a fresh suit and not in the present suit.



21. The another stand taken by the plaintiff is that they are claiming the suit schedule property by way of adverse possession. In general, the concept of the adverse possession contemplates a hostile possession. For example, a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person, who does not acknowledge other's rights but deny the same. The principle of law is firmly establish that a person, whose case is title on final possession, must show by a clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of title to the property claimed. Here it is a case, the plaintiff claims a suit property saying that through a Will dated 01.10.1982, he is entitled to suit schedule property. In otherwise, it is not their case that the alleged possession is hostile to the real owner, therefore, on that score alone the claim made by the plaintiff cannot be entertained.

22. Accordingly, in the light of the above discussion, the plaintiff had not proved his possession by producing the substantial evidence as he alone in the possession of the suit schedule property. Accordingly, in the absence of any definite lawful possession, the relief of injunction cannot be granted. The First Appellate Court, without considering the same in a proper manner, granted the relief of permanent injunction in favour of the plaintiff, is erroneous in law.

23. In the result, this Second Appeal is allowed and the Judgment and Decree dated 27.10.2009 passed in A.S.No.148 of 2006 on the file of Principal Subordinate Court, Vridhachalam, is hereby set aside and consequently, the Judgment and Decree dated 07.04.2005 made in O.S.No.1014 of 1992 on the file of Principal District Munsif Court, Vridhachalam is restored. However, liberty is granted to the respondent/plaintiff for filing a fresh suit based upon the patta stands in his favour (Ex.A9). No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



rsi

To:

WEB COPY

1.The Principal Subordinate Judge,
Vriddhachalam.

2.The Principal District Munsif,
Vriddhachalam.

+2 Ccs to Mr.G.Gokul, sr 61753.

+1 CC to Mr.V.Raghavachari, Advocate sr 61791.

S.A.No.336 of 2010

KJ(CO)
SP(20/01/2022)