



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.(MD)No.163 of 2021

and

C.M.P.(MD)No.2320 of 2021

Rosiappa

... Appellant/Respondent/
Defendant

versus

Annapushbam

... Respondent/Appellant/
Plaintiff

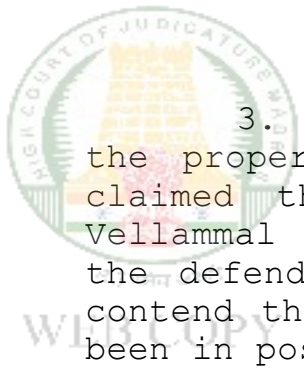
Prayer: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 17.08.2020 made in A.S.No.142 of 2017 on the file of the Sub Court, Tenkasi, reversing the Judgment and Decree dated 15.09.2017 made in O.S.No.377 of 2010 on the file of the Principal District Munsif Court, Tenkasi.

For Appellant : Mr.F.X.Eugene

JUDGMENT

The defendant in O.S.No.377 of 2010 on the file of the learned District Munsif, Tenkasi, is on appeal. The challenge is to the Judgment and Decree of the Appellate Court made in A.S.No.142 of 2017, in and by which, the lower Appellate Court reversed the Judgment and Decree of the trial Court, dismissing the suit filed by the plaintiff in seeking declaration of her title and recovery of possession and granted a decree for declaration and recovery of possession, while negating the claim for damages.

2. According to the plaintiff, the suit property belonged to her by virtue of a sale deed dated 21.05.1986. Having purchased the vacant land, she also constructed a house therein with the aid of the Scheme framed by the Government for construction of houses for Adi-Dravidars. Since the plaintiff had to stay at Kulasekaramangalam to look-after her ailing parents, the plaintiff had allowed her husband's sister Vellammal to reside in the suit property. The said Vellammal had unauthorisedly put the defendant in possession of the property and the same came to the knowledge of the plaintiff in the year 2006 and since the defendant did not vacate and deliver the vacant possession when demanded, the plaintiff had come up with the above suit.



3. The suit was resisted by the defendant, contending that the property does not belong to the plaintiff. The defendant claimed that the plaintiff had orally sold the property to Vellammal and the said Vellammal had, in turn, transferred it to the defendant by way of a oral sale. The defendant would also contend that the suit is barred by limitation inasmuch as he has been in possession of the property even from the year 1997.

4. At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A7 were marked. The defendant examined himself as D.W.1 and examined one Dharmaraj as D.W.2. Exs.B1 to B8 were marked.

5. The learned trial Judge, upon consideration of evidence on record, came to the conclusion that the suit is barred by limitation and dismissed the suit. Aggrieved, the plaintiff preferred an Appeal in A.S.No.142 of 2017. The learned Appellate Judge, upon re-consideration of the evidence on record, concluded that the suit is not barred by limitation. The learned Subordinate Judge found title in favour of the plaintiff and rejected the claim of the defendant regarding the oral sale. The appellate Court, however, held that the plaintiff is not entitled to damages for use and occupation, since she has pleaded permissive possession. On the above conclusion, the Appellate Judge decreed the suit, for declaration and recovery of possession alone and rejected the plea for damages for use and occupation. Aggrieved, the defendant has come up with this second appeal.

6. I have heard Mr.F.X.Eugene, learned counsel appearing for the appellant.

7. Mr.F.X.Eugene, learned counsel for the appellant would vehemently contend that since the plaintiff (P.W.1) has admitted the possession of the defendant from the year 1997, the appellate Court was wrong in concluding that the suit is not barred by limitation.

8. The fact that the plaintiff has purchased the land and she had put up construction with the help of the Government Scheme is not denied. The defendant would claim title by a oral sale. It is claimed that the plaintiff had orally sold the property to her sister-in-law Vellammal, who, in turn, had again orally sold the property to the defendant. Therefore, the defendant set up title herself. The plaintiff would plead that the possession was permissive. In order to conclude that the suit for recovery of possession is barred by limitation, it should be shown that the plaintiff was excluded from possession. Once the plaintiff comes to the Court with a specific case of permissive possession and the parties are very closely related, it is for the defendant to dispel the claim of the plaintiff with substantive evidence.



9. Looking at the documents filed by the defendant, the earliest document would show that his possession was in the year 2001. The suit filed in 2010. Therefore, it cannot be said that the defendant had proved that he is in absolute possession of the property for more than 12 years. In the absence of such evidence, the appellate Court was justified in coming to the conclusion that the suit is not barred by limitation. Once the title of the plaintiff is admitted and a plea of oral sale is taken, the lower appellate Court is justified in granting the relief of declaration of title and recovery of possession, since the oral sale is invalid. I do not, therefore, find any question of law much less substantial question of law in order to enable me to entertain the appeal. Therefore, the Second Appeal fails and it is accordingly dismissed without being admitted. No costs. Consequently, CMP(MD) No.2320 of 2021 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ogy

To

1. The Subordinate Judge,
Tenkasi.

2. The Principal District Munsif,
Tenkasi.

Copy to

The Section Officer, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-9958[F] dated
10/03/2021)

S.A. (MD)No.163 of 2021
09.03.2021

KM(01.06.2021) 3P 6C

<https://hcservices.ecourts.gov.in/hcservices/>