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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.NOS.204 & 206 OF 2022

AND

C.M.P.NOS.4083 & 4094 OF 2022

Manimaran

... Appellant/Appellant/
1st defendant in S.A.No.204
of 2022

... Appellant/Appellant/
Plaintiff in S.A.No.206 of 2022

.Vs.

1. Kalilur Rahman

... Respondent/1st Respondent/
Plaintiff in S.A.No.204 of 2022

2. The Assistant Electrician,
Town Division,
TNEB, Panruti.

3. The Executive Electrician,
TNEB, Panruti.

4. The Supervisor Electrician,
TNEB, Cuddalore.

5. Devi

6. Jothi

... Respondents/2nd to 6th Respondents/
2nd to 6th Defendants in
S.A.No.204 of 2022

1. Kalilur Rahman

... Respondents/Respondents/
Defendants in S.A.No.206 of 2022

2. The Assistant Electrician,
TNEB Panruti Town,
Panruti Town,
Panruti Taluk.



3. Devi
4. Jothi

... Respondents/Respondents/
Defendants in S.A.No.206 of 2022

COMMON PRAYER:-

Second Appeals filed under Section 100 of the Civil Procedure Code to set aside the common judgment and decree dated 23.12.2020 passed in A.S.No.6 of 2019 and A.S.No.5 of 2019, on the file of the Sub Court at Panruti, confirming the judgment and decree dated 03.12.2018 passed in O.S.No.311 of 2010 and O.S.No.241 of 2007, on the file of the District Munsif Court, Panruti.

For Appellants : Mr.D.Senthil Kumar
In Both S.A's

COMMON JUDGMENT

- (1) The plaintiff in the suit in O.S.No.241/2007 on the file of the Sub Court, Panruti who is also the 1st defendant in the suit in O.S.No.311/2010 is the appellant in the above second appeals.
- (2) These appeals arise as against the common judgment and decree in A.S.Nos.5&6/2019 dated 23.12.2020 on the file of the learned Sub ordinate Judge at Panruti, confirming the judgment and decree dated 03.12.2018 passed in O.S.No.311/2010 and O.S.No.241/2007, on the file of the District Munsif Court, Panruti.
- (3) Brief facts that are necessary for the disposal of these appeals are as follows:
- (4) The appellant filed the suit in O.S.No.241/2007 before the District Munsif Court, Panruti for declaration of his title and for consequential permanent injunction restraining the 1st defendant from interfering with the peaceful possession and enjoyment of the suit property by the appellant. The 1st defendant in the suit is the Assistant Engineer, Tamil Nadu Electricity Board. Defendants 3 and 4 are impleaded later and they are the sisters of plaintiff who have supported the case of plaintiff before the Court.
- (5) The case of the plaintiff/appellant in the plaint in O.S.No.241/2007 are as follows:
- (6) The plaintiff 's father by name Dhandapani occupied the suit property in the year, 1977 and started a Briyani Shop.



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After the death of his father the plaintiff continued the business along with his mother by name Vasantha. It is stated that the mother of plaintiff died in the year, 1996. The 1st defendant who has got his property on the north of the suit property has no right or title over the suit property. However, he had started giving trouble to the plaintiff and submitted an application before the Electricity Board for cancellation of service connection, which was given to the plaintiff 's father in respect of the suit property.

- (7) The plaintiff also claims that he is in possession of the suit property for many years and therefore he is entitled to title by adverse possession.
- (8) The suit was contested by the 1st defendant who is the 1st respondent herein by claiming title to the suit property on the basis of a registered Sale Deed dated 11.03.1992 obtained from one Makbul Kathu and others. It is the specific case of the 1st defendant in the suit that the plaintiff 's father had no title over the suit property and that patta was also issued to the 1st respondent and that the suit property is a vacant land adjoining his house.
- (9) It is the specific case of the 1st defendant, that the appellant's father was originally running a Briyani Shop in the property in Town Survey No.41 which is situated on the south of the plaintiff 's property. It is further contended that the said property occupied by the 1st defendant belonged to the railways and that the plaintiff was evicted when action was initiated by the railways for removal of encroachment due to conversion into broad gauge the plaintiff had moved to the suit property which was just lying adjacent to the property which was encroached by plaintiff 's father and belonged to railways.
- (10) It is the further case of the 1st defendant that the plaintiff is in unlawful possession since he had entered into the suit property without any permission when he was away. It is also stated by the 1st defendant that the plaintiff sought permission from the 1st defendant till he found an alternative place for conducting his business. However, when he failed to vacate from the suit property, the 1st defendant therefore, contended that he was constrained to give application to the Electricity Department to disconnect the service connection. However, the electric service connection was obtained by the plaintiff showing different survey number which is not in relation to the suit property and the Electricity Department could not take any necessary action.



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- (11) The 1st defendant in O.S.No.241/2007 thereafter filed a separate suit in O.S.No.311/2010 before the same Court for declaration of his title and for recovery of possession. The suit filed by the 1st defendant also contains the prayer for mandatory injunction, to direct the defendants 2 to 4 to remove or cancel the service connection from the suit property. The appellant filed a written statement reiterating the averments in the plaint. Both the suits were tried together and a common judgment was rendered.
- (12) The Trial Court after framing necessary issues found that the plaintiff in O.S.No.241/2007 has no right over the suit property and that the 1st defendant/plaintiff in O.S.No.311/2010 is the rightful owner of the suit property. Since, the plaintiff in O.S.No.241/2007 did not file any document or revenue records to prove that he was in lawful possession, the suit filed by him was dismissed. In the suit filed by the 1st respondent/plaintiff in O.S.No.311/2010, the appellant raised a plea of adverse possession.
- (13) After considering the entire evidence, the Trial Court specifically found that the appellant herein/plaintiff in O.S.No.241/2007 miserably failed to prove his case of adverse possession. Therefore, the suit filed by the 1st respondent herein/plaintiff in O.S.No.311/2010 was decreed. Aggrieved by the judgment of the Trial Court in O.S.No.241/2007, the appellant herein preferred an appeal in A.S.No.5/2009 and as against the judgment and decree in O.S.No.311/2010 dated 03.12.2018, the appellant preferred an independent appeal in A.S.No.6/2019.
- (14) The Lower Appellate Court, concurring with the common judgment and decree of the Trial Court, dismissed both the appeals. As against the concurrent findings of the Courts below, the appellant who is the 1st defendant in O.S.No.311/2010 and plaintiff in the suit in O.S.No.241/2007 has preferred the above second appeals.
- (15) In the Memorandum of Grounds of appeals, the appellant has raised following substantial questions of law:

S.A.No.206/2022:

a. Whether the judgment and decree of the Courts below were correct, as it is the well-known fact to the 1st respondent that the appellant's father Mr.Dhandapani and the appellant are in possession and enjoyment of the suit property and owns the property more than 30 years without any



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interruption and further the appellant also proved his possession and enjoyment from the year 1977 and has perfected his title by adverse possession as against the 1st respondent?

b. Whether the dismissal of the suit filed by the above appellant as plaintiff in O.S.No.241/2007 for declaration to declare him as the owner and permanent injunction and mandatory injunction to set aside the Electricity disconnection notice issued by the second defendant is correct, since the plaintiff 's father carried on and plaintiff carrying on his business of Briyani Shop in the suit property and the 1st defendant having noticed that and have not raised any objection for more than 30 years and sudden threat and denial of possession in the year 2007, the plaintiff constrained to file a suit for declaration to save his possession and enjoyment is protected under eye of law?

c. Whether the Courts below were right in dismissing the suit even though the plaintiff pleads, proves that he is in open, continuous and uninterrupted possession and enjoyment of the suit property by title perfected by adverse possession?

d. Whether the judgment and decree of the Courts below were correct, even though the appellant's father Mr.Dhandapani got electricity connection to the suit property as early on 27.05.1981, the letter is marked as Exhibits - A6 would vitiate the judgment and decree of the Courts below?

e. Whether the Courts below considered the documents filed by the above appellant in the suit and marked as Exhibits B3 - Letter sent by the Zonal Director, Examinations of Government, Trichy, B4-Revenue Department Notice, B5-Revenue Department Notice, B7-Death certificate of the mother of the above appellant in deciding the suit and First appeal?

S.A.No.204/2022:

a. Whether the judgment and decree of the Courts below were right, even though the appellant's father was in possession and enjoyment of the suit property from the year 1977 onwards with the



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knowledge of the 1st respondent and the 1st respondent filed a suit in the year 2010, after 33 years is barred by law of limitation, despite of the pleadings, the Court below failed to consider it, that barred by limitation vitiates the judgment and decree of the Courts below?

b. Whether the plaintiff filed the suit in O.S.No.311/2010 for declaration and recovery of possession and mandatory injunction to disconnect the Electricity Connection obtained by the defendant's father to the suit property as against the defendant is barred under Art 58 of Limitation Act, since the plaintiff carried on his business adjacent to the suit property and having noticed that the defendant's and his father was carrying their business in the suit property?

c. Whether the courts below were right in allowing the suit even though the 1st respondent as plaintiff had not proved the case on his own strength by examining independent witness and producing cogent documents?

d. Whether the judgment and decree of the Courts below were correct, as it is the well-known fact to the 1st respondent that the appellant's father Mr.Dhandapani and the appellant are in possession and enjoyment of the suit property and owns the property more than 30 years without any interruption? and further the appellant also proved his possession and enjoyment from the year, 1977 by the Exhibits marked by him?

e. Whether the Courts below considered the documents filed by the above appellant in the suit and marked as Exhibits B3-Letter sent by the Zonal Director, Examinations of Government, Trichy, B4-Revenue Department Notice, B5-Revenue Department Notice, B7-Death Certificate of the mother of the above appellant and the document marked as Exhibit A-6 (application by the above appellant's father for electricity connection to the suit property in the year 1981) by the 1st respondent that the appellant got electricity connection to the suit property would vitiates the judgment and decree of the Courts below?



(16) The learned counsel appearing for the appellant submitted that the appellant's father was in possession of the suit property from the year, 1977 and that the suit filed after a period of 33 years, is barred by limitation.

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(17) Learned counsel submitted that the Courts below have not appreciated the evidence properly. Pointing out the evidence of PW3 - Surveyor, learned counsel submitted that PW3 has given evidence contrary to the document which was produced by the appellant before the Courts below. It is to be seen that the appellant produced a certificate from the surveyor to the effect that the property in Survey No.11 was in the enjoyment of the appellant's father and service connection was given to the property in S.No.11. However, PW3 in the course of evidence has denied the existence of the said Survey Number and the evidence of this official witness was believed by the Courts below for reasons. Hence the certificate of unknown surveyor who was not even examined by appellant was rightly discarded.

(18) Pointing out that the nature of evidence is contrary to the document produced by the appellant, learned counsel submitted that the Courts below have committed an error in relying upon the evidence of PW3. Learned counsel then submitted that the appellant was carrying on business by running a Briyani Shop. Therefore, the possession of the appellant's father and appellant should be taken as adverse to the real owner. When the appellant has examined himself as DW1 and his mother as DW2, the appellant has not filed a single document issued by the Revenue Department to corroborate his case.

(19) Both the Courts below have concurrently held that the notices issued by the Revenue Department are not in respect of the suit property, when Ex.B3 to B5 are discarded, there is no document that would show the enjoyment of the suit property by the appellant before the year, 2007. The plaintiff had produced not only the Sale Deed but also the FMB sketch relating to the suit property. The evidence of PW1 to PW3 was accepted by the Courts below to hold the plaintiff 's title and enjoyment of the suit property till it was encroached by the appellant in the year, 2007. The evidence of mother of the appellant as DW2 was considered. Ultimately, it was found that the evidence of DW2 is not helpful to the appellant to establish his long enjoyment. It is established that service connection has been obtained by plaintiff in respect of a property which is not the suit property.



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(20) Since, the Courts below have concurrently found that the plaintiff/appellant in O.S.No.241/2007 has no title over the suit property and the 1st respondent/plaintiff in O.S.No.311/2010 is the absolute owner of the suit property, this Court is unable to interfere with the findings on facts which are based on appreciation of evidence and pleadings on both sides. The substantial questions of law raised by the appellant are on the basis of pleadings. However, from the facts admitted and found against the appellant by the Courts below, this Court is unable to appreciate any of the substantial questions of law, since, there is no substance in any of the substantial questions of law.

(21) From the factual findings rendered by the Courts below, this Court is also of the opinion that the appellant/1st defendant occupied a small property of the 1st respondent/plaintiff in O.S.No.311/2010 when he was evicted by the railways, taking advantage of the situation, that the suit property is just lying on the north of the property which was encroached by him for his business. The appellant nor claim title by way of adverse possession. This Court finds no evidence to prove continuous, uninterrupted possession for more than the statutory period. The encroachment in the suit property is proved to be after the eviction of appellant from the property of railways. The evidence of appellant as DW1 corroborates the case of 1st respondent in these appeals. From the evidence, the appellant had shifted the service connection to the suit property. The service connection was in respect of the property which is not the suit property. This itself proves that the case of the appellant before the Courts below is false. The application given by the appellant for electricity service connection is not produced. In such circumstances, the case of the 1st respondent/plaintiff in O.S.No.311/2010 before the Courts below has been rightly accepted by the Courts below.

(22) In the result, the Second Appeals are dismissed. Consequently connected Civil Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cda



To

1. The Sub Court,
Panruti.
2. The District Munsif Court,
Panruti.
3. The Section Officer,
V.R. Records,
High Court, Chennai.

+2ccs to Mr.D.Senthil Kumaar, Advocate, S.R.No.17733

S.A.NO.204 & 206 OF 2022 AND
C.M.P.NO.4083 & 4094 OF 2022

JP-II (CO)
PBS/14/06/2022