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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1365 of 2005

Angamuthu

...Appellant /Plaintiffs

Vs.

1.Sellammal

2.K.Sammannan

3.K.Janaki

4.K.Mahalingam

5.Sellammal

... Respondents/Defendants

(5th respondent herein given up as an unnecessary party)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 31.10.2003 passed in A.S. No.32 of 1997, on the file of the Sub Court, Attur, upholding the decree and judgment dated 28.04.1997 passed in O.S. No.123 of 1992, on the file of the District Munsif, Attur.

For Appellant

: Ms.Sathya Satheesh

for M/s.Zeenath Begam

For R1 to R4

: Mr.P.Jagadeesan

For R5

: Given up

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.

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

3. The suit in O.S. No.123/92 was filed by the plaintiffs for a bare injunction.

4. The case of the plaintiff in nutshell is as follows:



The suit property originally belonged to one Mariammal, wife of Kumara Padaiyachi. One Veerasaamban, husband of the first plaintiff and father of the plaintiffs 2 to 4 purchased the suit property from Mariammal through a registered sale deed dated 19.08.1946 (Ex.A1) and ever since the date of purchase, Veerasaamban was in possession and enjoyment of the suit property. He died intestate during the year 1976. Veerasaamban, during his lifetime constructed a tiled house in the suit property in the year 1957. However, the said house collapsed due to heavy rain and thereafter, the suit property was lying vacant. The defendants, who do not have any title or possession over the suit property, are attempting to trespass into the suit property and one such attempt was made on 02.03.1992. However, the plaintiffs prevented the same with the help of some neighbours. Since the defendants are threatening the plaintiffs that they would trespass into the suit property, the plaintiffs filed the suit for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property.

5.The suit was resisted by the defendants on the following grounds :

- i. It is false to state that the plaintiffs purchased the suit property through a registered sale deed dated 19.08.1946 and that the plaintiffs are in possession and enjoyment of the suit property.
- ii.It is also false to state that the defendants are attempting to interfere with the peaceful possession and enjoyment of the suit property by the plaintiffs.
- iii.In fact both the defendants are residing in the suit property for more than fifty years and have also perfected their title by adverse possession and prescription.
- iv.The plaintiffs are not residing in the suit property and therefore there is no cause of action for filing the present suit.

They had therefore prayed for the dismissal of the suit.

6.The learned District Munsif, Attur, after framing necessary issues and after full contest, dismissed the suit filed by the plaintiffs vide his decree and judgment dated 28.04.1997, by observing that the plaintiffs have not established their possession over the suit property by adducing acceptable evidence.

7.Aggrieved over the same, the plaintiffs filed an appeal before the Sub Court, Attur, in A.S. No.32 of 1997. The learned Subordinate Judge, after analysing the evidence on record,



upheld the findings recorded by the trial Court and dismissed the suit filed by the plaintiffs. The first appellate Court also had come to the conclusion that the plaintiffs have not proved either their possession or title over the suit property.

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8. Now the present second appeal is filed by the second plaintiff on the following substantial questions of law:

- i. Whether the judgment of the Courts below are vitiated in that having held, that the plaintiff has proved title to the suit property, have not granted the relief of injunction?
- ii. In a suit for permanent injunction, when a finding has been rendered that the defendant's documents do not relate to the suit property, whether even then the plaintiff can be denied the relief of permanent injunction can be refused against such defendant?

9. Heard Ms. Sathya Satheesh for Ms. Zeenath Begam, learned counsel appearing for the appellant and Mr. P. Jagadeesan, learned counsel appearing for the respondents.

10. Ms. Sathya Satheesh, learned counsel for the appellants/second plaintiff contended that though the plaintiffs had filed a registered sale deed dated 19.08.1946 (Ex.A1) executed in favour of Veera Samban and a tax demand notice (Ex.A3) to prove title and possession over the suit property, both the Courts below failed to take the same into consideration. It is also her contention that the registration copy of the sale deed dated 01.05.1947 (Ex.A2) executed in favour of one Chellamuthu Saamban though shows that his property is situate on the eastern side of Veerasaamban's property, both the courts below did not advert their attention to this particular document. It was also argued by the learned counsel for the appellant that in the plaint it is clearly averred that all the tax receipts and other connected records were lost in the flood during the year 1972 and that the tax demand notice (Ex.A3) clearly shows that the plaintiffs are in possession and enjoyment of the suit property.

11. Per contra, Mr. P. Jagadeesan, learned counsel for the respondents would contend that the defendants have been in possession and enjoyment of the suit property for more than fifty years and that patta was also issued in their favour. It is also contended by him that both the Courts below had concurrently held that the plaintiffs did not prove their possession over the suit property.



12. In order to establish the possession over the suit property the plaintiffs relied on the sale deed dated 19.08.1946 (Ex.A1) executed in favour of Veerasaamban, husband of the first plaintiff (since deceased) as well as a tax demand notice (Ex.A3). In Ex.A1, Survey Number of the property conveyed is not indicated. However, in the plaint schedule, the description of the suit property is described as the property in S.No. 93/1 of Abinavam Village, Attur Taluk. Even as per the averments of the plaint, the property was lying vacant since 1972. Therefore the house tax demand notice (Ex.A3) dated 19.12.1996 cannot be relied upon for any purpose. Thus, judged from any angle the plaintiffs did not prove their possession over the suit property. Similarly in Ex.A2 also neither the survey number of the property conveyed nor the survey numbers of four boundaries are mentioned.

13. Both the Courts below had also analysed all the documentary evidence adduced on the side of the defendants and held that the defendants have not proved that they had perfected their title to the suit property by way of adverse possession and prescription. The findings rendered by both the courts below are based on facts and evidence. In any event, since the suit is filed by the plaintiffs for the relief of permanent injunction, burden lies on the plaintiffs to establish that they are in possession of the suit property. Since no acceptable oral / documentary evidence was adduced in the instant case by the plaintiffs to prove possession over the suit property, the second appeal deserves to be dismissed. In view of the same, the substantial questions of law are answered against the appellant. In fact, no substantial question of law arises as far as the present appeal is concerned. Section 100 CPC is a jurisdiction confined to substantial questions of law only. Therefore second appeal fails and is dismissed.

14. In the result,
- i. the second appeal is dismissed. No costs.
 - ii. the decree and judgment dated 31.10.2003 passed in A.S. No.32 of 1997, on the file of the Sub Court, Attur, and the decree and judgment dated 28.04.1997 passed in O.S. No.123 of 1992, on the file of the District Munsif, Attur, are upheld.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
Attur.

2. The District Munsif Court,
Attur.

3. The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.P.Jagadeesan, Advocate SR.No.8233

+1cc to Mr.Zeenath Begam, Advocate SR.No.7901

S.A.No .1365 of 2005

RR(CO)
GN(03/03/2022)