



S.A.No.212 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.212 of 2022
and C.M.P.No.4162 of 2022

Nallamal

...Appellant

Vs

1.K.S.Duraisamy
2.K.S.Manickam
3.K.S.Selvam

... Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 19.08.2020 passed in A.S.No.29/2017 by the learned Principal Subordinate Judge, Erode partly allowed the Judgment and Decree dated 02/07/2016 passed in O.S.No.109/2012 by the learned District Munsif cum Judicial Magistrate, Kodumudi.

For Appellant : Mrs.C.Sriranjani

For Respondents : Mr.M.Guruprasad



S.A.No.212 of 2022

JUDGEMENT

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The defendant is the appellant before this Court. She seeks to challenge the concurrent judgment and decree of the Courts below in and by which, the suit O.S.No.109 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Kodumudi filed by the plaintiffs for declaration and recovery of possession had been decreed.

2. The parties are referred to the same litigative status as before the Trial Court.

3. The facts in brief, which are necessary for disposing of the above second appeal are as follows:-

The plaintiffs had filed the above suit for reliefs stated therein in respect of the suit schedule property. It is their case that the property was purchased by the plaintiffs under a registered Sale deed dated 03.09.1982 from one K.P.Neelambal and others for a valuable sale consideration of Rs.6,766/-. It is their case that the said property was being enjoyed jointly



S.A.No.212 of 2022

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by the plaintiffs without partition. The defendant had demanded the third plaintiff to sell the property in her favour which was refused. Angered by the same, the defendant had filed a suit in O.S.No.10 of 2006 before the very same Court against the third plaintiff for an injunction. In the said suit, she had contended that she had developed illicit intimacy with the third plaintiff and he had permitted her to reside in the suit property from the year 1983 and that she is in possession and enjoyment of the said property. The third plaintiff had denied the contentions made by the defendant and he had also taken a stand that he was residing with his family at West Agraharam, Kodumudi and running a grocery shop and that the suit property was purchased by the plaintiffs jointly. He had clearly and categorically stated that the defendant was not in possession and enjoyment of the suit property. After full fledged trial, the suit was dismissed by a judgment and decree dated 29.01.2010 and the appeal filed thereon in A.S.No.98 of 2010 before the learned I Additional Subordinate Judge at Erode was also dismissed. No further appeal has been filed by the defendant. Thereafter, in the first week of June 2011, the defendant had trespassed and unlawfully occupied



S.A.No.212 of 2022

WEB COPY

the suit property and on coming to know about the same, the plaintiffs had threatened civil and criminal action against the defendant. The defendant had submitted an unconditional apology and agreed to vacate the suit within a week, which assurance she had observed in the breach. Therefore, a legal notice was issued on 29.05.2012 by the plaintiffs calling upon the defendant to vacate and surrender the possession of the suit property on or before 30.06.2012. But, the defendant failed to vacate and issued a reply notice dated 12.06.2012 containing false statements. The defendant had once again reiterated the contents of her plaint in O.S.No.10 of 2006. Since the defendant was acting in an illegal manner, the plaintiffs have come forward with the suit.

4. The defendant had filed a written statement *inter-alia* reiterating the contents in the earlier suit O.S.No.10 of 2006 and contending that she has been in possession of the property since 1983. She would further submit that she had put up a thatched shed earlier and subsequently used hollow bricks and had put up a residential house



S.A.No.212 of 2022

spending a huge amount. The plaintiffs were in full knowledge of all these developments and they had not prevented the construction. She would submit that though the third plaintiff had lived with his family, he had often visited the house of the defendant. She would submit that she has been in continuous and uninterrupted possession and enjoyment of the suit property and therefore, the suit should be dismissed.

5. The learned District Munsif cum Judicial Magistrate, Kodumudi had framed the following issues:

1. வாதிகள் செலுத்தியுள்ள நீதிமன்ற கட்டணம் சரியா?
2. வாதிகளுக்கு விளம்புகை பரிகாரம் அளிக்கத்தக்கதா?
3. வாதிகளுக்கு சுவாதீனம் மீட்பு பரிகாரம் அளிக்கத்தக்கதா?
4. வாதிகளுக்கு கடந்த கால இழப்பீட்டுதொகை அளிக்கத்தக்கதா?
5. வாதிகளுக்கு எதிர்கால இழப்பீட்டுதொகை அளிக்கத்தக்கதா?
6. வேறு என்ன பரிகாரம் வாதிகளுக்கு அளிக்கத்தக்கது?

6. The second plaintiff had examined himself as P.W1 and two other witnesses were examined as P.Ws2 and 3. Exs.A1 to A10 were



S.A.No.212 of 2022

WEB COPY

marked on the side of the plaintiffs. The defendant had examined herself as D.W1 besides examining two other witnesses. She had marked Exs.B1 to B16 in support of her contentions.

7. The learned District Munsif cum Judicial Magistrate, Kodumudi had held that by taking a plea of the adverse possession, the defendant has admitted the title of the plaintiffs and since the suit O.S.No.10 of 2006, which was filed by her for bare injunction had been ultimately dismissed by the judgment in A.S.No.98 of 2010, the defendant cannot plead that she has been in uninterrupted possession for over 12 years. The learned Judge had also observed that against the dismissal of A.S.No.98 of 2010, the defendant has not filed any further appeal and the judgment had attained finality. The learned Judge has also taken into consideration the admission of the defendant as D.W1 that she has entered possession of the property for the second time on 21.04.2015, ultimately the suit was dismissed.



S.A.No.212 of 2022

WEB COPY

8. Challenging the same, the defendant had filed an appeal in A.S.No.29 of 2017 on the file of the Principal Subordinate Court, Erode. The learned Principal Subordinate Judge had also confirmed the findings of the trial Court and dismissed the appeal on 19.08.2020.

9. Challenging the above judgment and decree dated 19.08.2020, the defendant has moved this Court. When the matter had come up on 16.03.2022, notice was issued to the respondent and respondent had also entered appearance.

10 Heard both counsels and perused the materials available on record.

11. Admittedly, the defendant had filed a suit for injunction earlier in O.S.No.10 of 2006 stating that she is in possession of the property since 1983 and it is her case that there was no disturbance to her possession till 2006 and since the disputes have arisen between two of them, it had



S.A.No.212 of 2022

WEB COPY

resulted in the third plaintiff and the defendant entering into an unregistered agreement, in which the third plaintiff has permitted the defendant to live in the property all along her life time. The defendant had also set up a plea of adverse possession. Ex.B4, which is the Xerox copy of the agreement, was not considered by the Courts below as the same is inadmissible in evidence.

12. As regards the plea of adverse possession, the suit O.S.No.10 of 2006 had been dismissed, against which, A.S.No.98 of 2010 was filed by the plaintiffs. which had also ended against her. Therefore, the plea of adverse possession is not available to the plaintiffs, as it contemplates an open, continuous and hostile possession for 12 years. Even going by the allegation of the defendant, her possession was disturbed in the year 2006 and the suit was dismissed holding that she was not in possession of the property. Therefore, the instant suit has been filed in the year 2012, immediately after the defendant had trespassed into the property in the year 2011. Therefore, the plea of adverse possession is not available to the



S.A.No.212 of 2022

plaintiffs. Considering the fact that the defendant has admitted the title of the plaintiffs and as she is in unlawful occupation of the suit property, the plaintiffs as rightful owners, are entitled to recovery of possession, which has been granted by the Courts below.

13. The lower appellate Court had modified the judgment and decree of the trial Court by dismissing the suit with reference to the claim of damages. The Courts below have considered the evidence on record in detail and passed judgment. No substantial question of law arise for consideration in the instant appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.07.2022

Index : Yes/No

Speaking order/non-speaking order

srn

To

1. The Principal Subordinate Judge, Erode
2. The District Munsif cum Judicial Magistrate, Kodumudi.
3. The Section Officer, V.R.Section, High Court, Madras.

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S.A.No.212 of 2022

P.T.ASHA, J.,

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S.A.No.212 of 2022
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