IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 13..04..2023

Judgement Pronounced on : 27..04..2023

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THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.1313 of 2007

1. Kamalam
2. Tamilarasi
3. Vasuki

..... Appellants

-Versus-

Rajamani

..... Respondents

Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 26.09.2006 made in A.S.No.11 of 2005 by the learned Additional Subordinate Judge at Vridhachalam, reversing the judgement and decree dated 27.04.2004 made in O.S.No.284 of 1996 by the learned II Additional District Munsif at Vridhachalam.

For Appellants : Mr.N.Krishnakkumar for M/s.Sarvabhauman Associates

For Respondent : Mrs.R.Meenal

JUDGEMENT

This is a dispute between the wife of the elder brother on one hand and the wife of the younger brother on the other. The elder brother was one Subramanian and the younger brother was one Kasilingam. The family had properties which had been acquired for the purpose of expansion of Neyveli Lignite Corporation Limited. In lieu of the acquisition, a compensation was paid and in addition, 10 cents of land was given to the two brothers. The younger brother Kasilingam sold his share of 5 cents of the land, leaving Subramanian to enjoy his 5 cents.

2. The aforesaid Subramanian died in the year 1975. He left behind as his legal heirs viz., Tmt.Kamalam (1st plaintiff) and 2 daughters viz., Tamilarasi (2nd plaintiff) and Vasuki (3rd plaintiff). The defendant – Rajamani is the wife of Kasilingam. According to the plaintiffs, on the death of Subramanian, they moved away from the village, where Subramanian and Kasilingam were residing. As the 1st plaintiff was an young widow, with two young girl children, they moved to a different location. The plaintiffs stated that they had permitted Kasilingam's family to reside in the property as licensees. After a few years, since the defendant was making an untenable claim over the property, they came forward with a suit for declaration of title and for recovery of possession.

3. The defendant admitted to the title of Subramanian but, pleaded that she had purchased the property from the plaintiffs by way of an oral sale. The consideration paid for this oral sale was Rs.100/- and according to her, this amount was utilized to educate Tamilarasi (2nd plaintiff). In the alternative, the defendant has also pleaded adverse possession.

4. The learned II Additional District Munsif at Vridhachalam, decreed the suit in O.S.No.284 of 1996 by judgement dated 27.04.2004. Aggrieved by this decree and judgement, an appeal was preferred by the defendant before the Additional Subordinate Judge at Vridhachalam, who had accepted the case of the defendant and held that the defendant had perfected title by adverse possession and hence, allowed the appeal and dismissed the original suit. Against this reversal finding, the present second appeal has been preferred before this court by the plaintiffs.

5. At the time of admission of this second appeal, the following substantial questions of law were framed for consideration:-

> (1) Whether the Lower Appellate Court is right in accepting the oral sale, bye-passing the provisions of Section 54 of the Transfer of Property Act which

compels registration of a sale of immovable property when the value is Rupees one Hundred and upwards? and

(2) Whether the Lower Appellate Court is right in holding that the respondent has perfected her title by adverse possession particularly when neither the pleading nor the evidence of the **respondent** contains the ingredients necessary for proving adverse possession?

6. I have heard Mr.N.Krishnakumar, learned counsel for the appellants and Mrs.R.Meenal, learned counsel for the respondent.

7. I have gone through the pleadings, judgements of the trial court as well as the first appellate court and the evidence on record.

8. Keeping in mind the substantial questions of law already framed, I am venturing into the following findings.

9. On the 1st substantial question of law, whether the court could have accepted the plea of oral sale that was made in favour of the respondent/defendant is concerned, I hold in favour of the appellants. As per section 54 of the Transfer of Property Act, there cannot be any sale of immovable property of a value equal to or more than rupees hundred, otherwise than by way of a registered written instrument.

10. In the instant case, a specific plea of the defendant is that the property was transferred by way of oral sale and a sum of Rs.100/- was paid for the same. As the statute has imposed an embargo on transferring of any property of a value equal to or more than Rs.100.00, except by way of a registered instrument, I am unable to accept the plea of oral sale. It is a simple application of section 54 of the Transfer of Property Act. I apply the same and hold that the plea of oral sale is untennable in law and does not deserve acceptance. Accordingly, the 1st substantial question of law is answered in favour of the appellants/plaintiffs and against the respondent/defendant.

11. Coming to the next substantial question of law, the appeal suit has been allowed on the ground that the respondent had perfected title by adverse possession.

12. Tmt.R.Meenal, the learned counsel for the respondent/defendant would point out that the house tax receipts stand in the name of the respondent from the year 1983 and this is clear from Ex.B.1 to B4. Since they were in possession of the property for more than the statutory period of 12 years before the presentation of the plaint, according to her, the respondent/defendant had perfected title by adverse possession

13. The principle of adverse possession is too well settled to be restated. A party claiming adverse possession must be in open, hostile and continuous possession of the property in dispute and should have to the knowledge of the title-holder of the property, acted in adverse manner to the interest of the latter. The payment of house taxes only denote that the respondent was in possession of the house property for a long period. However, how long the possession may be, unless and until, all the three ingredients of adverse possession are satisfied, the party is not entitled to succeed.

14. A perusal of the case records would show that, for the period from 1983-84 onwards till the II Half Year of 1986-87, the taxes were paid in one go on 26.05.1987. This is under Ex.B.2. The certificate issued by the taxing authorities show from the financial year 1985-86, tax receipts have been issued

in the name of the respondent. This implies from 01.04.1985 the respondent has been paying house taxes.

15. As per Article 65 of the Limitation Act, a suit for recovery of possession is time barred on the completion of 12 years from the time the possession becomes adverse. In this particular case, assuming that house tax receipts could confer a right and assuming that the construction of the house on the land belonging to the respondent's husband's brother's wife and children, is an act of hostility, adverse possession has commenced from 01.04.1985. Unfortunately for the respondent, the suit came to be presented on 09.04.1996 which was within the statutory period of 12 years. Consequently, the plea of adverse possession fails.

16. I am also of the opinion that mere filing of house tax receipts or revenue records, does not mean that the possession has become adverse. Some further act is required on the part of the defendant to show that possession had been continuous but it had also been hostile. I am not able to see any evidence with respect of “hostility”. Therefore, I answer the 2nd substantial question also in favour of the appellants and against the respondent.

17. For the aforesaid reasons, this second appeal is accepted and the decree and judgement of the first appellant court is liable to be set aside.

In the result, this Second Appeal is allowed with costs throughout. The judgement and decree of the first appellate court dated 26.09.2006 made in A.S.No.11 of 2005 is set aside and the judgement and decree of the II Additional District Munsif, Vridhachalam, dated 27.04.2004 made in O.S.No.284 of 1996 is restored.

27..04..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The Additional Subordinate Judge, Vridhachalam, Cuddalore District.

2. II Additional District Munsif, Vridhachalam, Cuddalore District.

V.LAKSHMINARAYANAN, J.

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Pre Delivery Judgement
in
S.A.No.1313 of 2007

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