



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.638 of 2008

1. Dhanapal Gounder
2. Lakshmiammal
3. Krishnan
4. Devaraj
5. Kantha
6. Kasthuri
7. Bavnambal
8. Selvam
9. Maniammal
10. Appasami

.. Appellants

vs

1. Govindasami (died)
2. Kannan
3. Kanniyammal
4. Nagammal

.. Respondents

Prayer: Appeal under Section 100, CPC, against the judgment and decree made in A.S.No.75 of 2004, dated 27.02.2006 on the file of the Principal Sub Judge, Tindivanam, reversing the well acquainted of judgment in O.S.No.76 of 1977 dated 18.03.2004 on the file of the Principal District Munsif Court, Tindivanam.

For Appellants : Mr.D.Ravichander
For Respondents : No Appearance



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JUDGMENT

The defendants are the appellants before this Court.

2. The suit was originally presented for declaration of title for permanent injunction or in the alternative, for recovery of possession. It is the case of the plaintiffs that their father had purchased a property by way of registered sale deed on 27.04.1942. This document was marked as Exhibit A.1. It is their case that they have been in continuous possession and enjoyment of the suit schedule mentioned property. The suit property was purchased by the father of the plaintiff from one Thoppai and others.

3. Disputing the claim of the plaintiffs, the defendants filed a written statement pleading that the father of the first defendant Krishna Gounder was in possession and enjoyment of the property from the year 1910 and therefore, on the date of the purchase by the plaintiff, they have been in possession and enjoyment for more than ten years. They claim they have prescribed title by adverse possession.



3. According to them, the property was mortgaged by their ancestors on 05.08.1926, showing that they are enjoying the property in their own right. They also claim that two thatched houses have been put up in the suit property and had been let out to tenants by them.

4. Originally, the Trial Court as well as the Lower Appellate Court found that the plaintiffs are not in possession of the property and dismissed the suit. Aggrieved on the same, a second appeal was preferred before this Court in S.A.No.441 of 1984. This Court had set aside the judgment and decree of the Courts below and had remanded the matter for fresh disposal. The purpose of remand is as follows:

“7. Even though from the above, we can come to the conclusion that the plaintiffs have established their title the matter will not stop there because of their failing to prove their possession. On the other hand, the possession has been found in favour of the defendants. The Courts below found that the plaintiffs have no title and hence their claim for possession of the suit property was not considered. Since the title is found in favour of the plaintiffs by this Court, the question as to whether they would be entitled to possession or not has to be



decided. As the said issue to recover possession has not been considered by the Courts below, we are not in a position to find out whether the plaintiffs will be entitled to the possession of the suit property. Hence, the matter is remanded to the trial Court, for that purpose.

8. The Trial Court shall direct the parties to adduce additional evidence, if necessary, to establish their respective rights for possession. It is also open to the defendants to prove that they have been in possession for more than the statutory period and thereby prescribed title by adverse possession to the suit property. All these have to be considered by the Trial Court after making further evidence both oral and documentary.

(Emphasis supplied)”

5. After remand, the parties went before the Trial Court and adduced evidences and marked Exhibits A.1 to A.7 on the side of the plaintiffs and Exhibits A.8 to A.10 as additional evidences after remand. The defendants did not mark any documents before or after the remand. They only examined oral evidences and an Advocate Commissioner was appointed in



order to submit his report, which he did so under Exhibits C.1 and C.2. The Trial Judge dismissed the suit on 18.03.2004, against which, an appeal was preferred in A.S.No.75 of 2004, which also came to be allowed and the suit came to be decreed on 27.02.2006. The following questions of law are suggested by the counsel:

a. When it is settled in law that the plaintiff who was a cause of action for filing a suit and establish the said existence of cause of action, as he is bound to establish to get the relief and in the absence of the alleged cause of action, whether the learned Sub Judge right in reversing the decree of the trial Court and granting a decree for possession?

b. When it is settled in law, the plaintiff should succeed or fail on the strength of his own case and when there is no case of action pleaded in the plaintiff still is the learned Sub Judge right in granting a decree as the defendant failed in proving adverse possession?

c. The fact that the possession with the defendant being established and the learned Sub Judge having not found any trespass seeking of declaration itself shows denial title by defendants, still is the learned Sub Judge right in holding that the defendants have not prescribed title by adverse possession?



6. The learned counsel for the appellant Mr.D.Ravichander would vehemently argue that the plaintiffs have not proved their possession over a period of twelve years prior to the presentation of the plaint and that the Revenue Authority have upheld the possession and enjoyment of the plaintiffs in and over the suit property. According to him, there is no cause of action to the presentation of the plaint. He adds the lack of documentary evidences by the defendants would not make a difference as they have given cogent oral evidences in order to prove their prescribed title by adverse possession.

7. I have carefully considered the judgments of the Trial Court and the Appellate Court and then in particular, the order by which the matter was remitted to the Trial Court.

8. In the first round of litigation i.e., in S.A.No.441 of 1984, the Court came to the categorical conclusion that the plaintiffs have established their title over the property. However, in order to give opportunity to the parties to pursue the plea of adverse possession, the matter have remanded. The plaintiffs have filed suit for declaration and injunction or in the alternative



for recovery of possession. In this case, the defendants pleaded that they are in possession of the property for over the statutory period. However, they have not filed any document before the remand or thereafter.

9. The plea that by a proceeding under Section 145 of the Cr.P.C, their possession has been upheld is no avail because it has not been filled before this Court, for this Court for perusing it and to give a finding. The fact that the said proceedings under Section 145 has been admitted is of no use because, it has to be still placed before this Court for the purpose of appreciation.

10. Mere oral evidence is not sufficient to prove adverse possession, especially when the purpose of remand is to let in oral evidence for substantiating their cases that has not been done. I am not inclined to admit the second appeal. No question of law arises, much less any substantive question of law. The appeal stands dismissed. There will be no order as to costs.

03.04.2023

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V. LAKSHMINARAYANAN,J.

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