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S.A.No.591 of 2007



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2023

PRONOUNCED ON: .03.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.591 of 2007

1.M.Suganandham

2.Jayalakshmi

3.Seethalakshmi

4.Kumarasamy

5.Santhi

6.Venu

7.Venkatesan

8.Gnanamozhi

...Appellants

Vs.

M.Shanmugham

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 20.07.2006 made in A.S.No.6 of 2004 on the file of the Principal District Court, Pondicherry, confirming the Judgement and Decree dated 28.03.2003 made in O.S.No.345 of 1997 on the file of the Principal Sub Court, Pondicherry.



For Appellants : Mr.T.M.Naveen

For Respondent : Ms.B.S.Mitraneeshaa
for Ms.V.Srimathi

JUDGMENT

The defendants in the suit O.S.No.345 of 1997 on the file of the Principal Subordinate Court, Puducherry are the appellants before this Court challenging the concurrent Judgement and Decree suffered by them since the appeal filed by them in A.S.No.6 of 2004 on the file of the Principal District Court, Puducherry challenging the Judgement and Decree in O.S.No.345 of 1997 had also ended in a dismissal.

2.In order to appreciate the above Second Appeal, it is necessary to briefly set out the events that have led to the filing of the above Second Appeal and for ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

3.The plaintiff had filed the suit for declaration and recovery of possession with reference to the property herein below set out:

“பாண்டிச்சேரி ரி.டி வில்லியனார் சப்.ரி.டி.
வில்லியனார் கொம்பூன் பஞ்சாயத்துச் சேர்ந்த
உருவையார் வெளி, காலி மனை கதாஸ்தர் நெம்பர்
202 பிடி. ரி.சர்வே நெ.52/37 (உருவையார்) விஸ்தீரணம்
ஆர்



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01 சாந்தியார் 17க்கு குழி 2 வீசம் 4 இதில் தென்புரம் குழி 01 வீசம் 09. சக்குபந்தி முருகேச கவுண்டர் கல் வீட்டிற்கு (கி), ரா.மாணிக்கசாமி மனைக்கு (மே), திரௌபதை அம்மன் கோவில் வீதிக்கு (வ) கந்தசாமி மனைக்கு (தெ) இதற்குட்பட்டது.

4.It is the case of the plaintiff that he had purchased the suit property as a vacant site on 30.08.1978. The 1st defendant had purchased a small portion of the vacant site right in front of the plaintiff's property from the same vendor. From the date of the purchase, the defendants have been taking steps to encroach upon the plaintiff's property. Infact, on one occasion the defendants had forcibly entered the plaintiff's property and cut away the Broad Beans (Avarai) cultivation put up by him. Thereafter, once again on 25.08.1997 there was an attempt to enter and cut some trees which was suitably resisted. However, on 26.05.2000 after the filing of the suit, the defendants had trespassed into the portion of the suit property and put up their hay stack. Being the owner of the property, the plaintiff has come forward with the above suit.

5.The suit was originally filed for declaration and injunction which is later amended as a prayer for declaration and recovery of possession.



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6.The defendants had filed a written statement inter alia contending that they have been in possession of the property for over 30 years and the plaintiff's vendor themselves are not in possession of the property. The allegation of trespass made by the plaintiff was denied as false and mischievous. After the amendment of the plaint, an additional written statement came to be filed in which the defendants for the first time had pleaded adverse possession.

7. Meanwhile, the plaintiff's petition seeking an interim injunction came to be dismissed and the appeal filed against the said order was also dismissed.

8. The Trial Court had framed the following issues:

“1.Whether there is no cause of action for the plaintiff to file the suit?

2.Whether the plaintiff has valued the suit property and correct Court fee has been paid?

3.Whether the plaintiff is entitled for a declaration that he is the absolute owner of the suit property?

4.Whether the plaintiff is entitled for an order of injunction as claimed?

5.Whether the plaintiff is entitled for a decree as



prayed?

6.To what relief is the plaintiff entitled?

WEB COPY **Additional Issues:**

7.Whether it is true that the defendants have trespassed into the suit property during the pendency of the suit?

8.Whether the plaintiff is entitled for the decree for the eviction of the defendant and for vacant possession of the suit property? ”

9. To substantiate his case, the plaintiff had examined himself as P.W.1 and one Somasundaram as P.W.2 and marked Ex.A.1 to Ex.A.31. On the side of the defendants, the 1st defendant had examined himself as D.W.1 and Ex.B.1 to Ex.B.5 on the side of the defendants.

10. The learned Judge observed that the relationship between the parties were closely related as the 1st defendant is none else than the junior paternal Uncle of the plaintiff and the 2nd defendant is his son. The Trial Court observed that the defendants for the first time had introduced the case of their putting up a hut only during the arguments. The Trial Court has also observed that the plaintiff has filed the suit for recovery of possession without any delay and therefore the issue of adverse possession would not arise. The Trial Court decreed the suit with costs and had directed the defendants to handover the possession of the



property within a period of three months.

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11. Aggrieved by the said Judgement, the defendants have filed A.S.No.6 of 2004 on the file of the Principal District Court, Puducherry. The Lower Appellate Court by its Judgement dated 20.07.2006 was pleased to dismiss the Appeal Suit, against which the present Second Appeal has been filed and the same has been admitted on the following Substantial Questions of Law on 10.07.2007:

“1.Whether the Lower Appellate Court was right in completely ignoring the entire oral and documentary evidence adduced by the appellants / defendants, namely, Exs.B.1 to Ex.B.5 and D.W.1, and the Judgement is vitiated.

2.Whether the possession and enjoyment of the appellants by way of storing haystack and dumping garbage in the suit property, are fugitive acts and would not confer right on them to acquire title over the same by adverse possession.”

12. Mr.T.M.Naveen, learned counsel appearing on behalf of the defendants / appellants would submit that the plaintiff has not proved that he has been in possession and enjoyment of the property. Ex.A.30, patta which has been put forward by the plaintiff to show possession has been obtained only after the filing of the suit. That apart, the plaintiff's



petition seeking an interim injunction had been dismissed and the appeal filed against the said order in C.M.A.No.2 of 1999 before the Principal District Court, Puducherry was also dismissed. Therefore, the plaintiff has not proved his possession of the suit property.

13. The learned counsel would contend that all along it was only the defendants who have been in possession of the suit property. He would further submit that the vendors of the plaintiff themselves did not have any right to the suit property and therefore conveying the same to the plaintiff will not cloth the plaintiff with any right to the property.

14. The learned counsel would rely upon the Judgement of the Hon'ble Supreme Court reported in **2009 (14) SCC 224 – T.K.Mohammed Abubucker (Dead) through LRs and others Vs. P.S.M.Ahamed Abdul Khader and others**, in support of his argument that the plaintiff who comes to the Court seeking declaration and possession has to prove his case on the strength of his evidence and not on a weakness of the defense.

15. The learned counsel would also rely upon the another



Judgement of the Hon'ble Supreme Court reported in **2014 (2) SCC 269**

– ***Union of India and others Vs. Vasavi Cooperative Housing Society***

Limited and others, to once again reiterate the preposition that the plaintiff in a suit for declaration and possession had to succeed on the strength of the evidence which has been adduced by him. The learned counsel would submit that this onus of proof has not been discharged by the plaintiff.

16. The learned counsel would therefore pray that the Courts below have wrongly decreed the suit totally overlooking the fact that the plaintiff has not proved his continuous possession of the suit property for the statutory period.

17. Per contra, Ms.B.S.Mitraneshaa, learned counsel appearing on behalf of the plaintiff / respondent would submit that even in the Ex.A.1 which is the sale deed dated 30.08.1978 but registered on 05.02.2001, under which the plaintiff had purchased the property, the defendants' property is shown as the eastern boundary. Ex.A.2 is a sale deed executed in favour of the 1st defendant on 20.01.1978 but registered on 05.02.2001. Even in this document, the western boundary is described



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as the plaintiff's vendor's property. The learned counsel would further submit that both the plaintiff as well as the defendants have purchased the property from the same person and there is no detail given in the written statement as to when the defendants had entered into possession of the suit property.

18. The learned counsel would further submit that D.W.1 in his cross examination had admitted that the eastern boundary of the suit property as described in Ex.A.1 is the property of Manikasamy, i.e., the 1st defendant. The said witness had stated that he did not know if the suit property was in the joint name of the plaintiff's vendor. He would also admit in his cross examination that a Police Complaint has been given by the plaintiff on 25.08.1987 relating to the suit property. Thereafter, the parties were advised to approach the Civil Court. D.W.1 in his cross examination was unable to state the date from which he has been enjoying the suit property and that too adversely. Though the defendants would claim that they are in enjoyment of the property for over 30 years no supporting documents have been filed on the side of the defendants.

19. The learned counsel would therefore submit that the plaintiff having proved his title through documents and the property being a



vacant land, title should follow possession and the defendants have not made out any case for allowing the Second Appeal and the Second Appeal ought to be dismissed.

20. Heard the learned counsels on the either side.

21. The defendants have defended the suit stating that the plaintiff is not an absolute owner of the suit property and that the plaintiff has never been in possession and enjoyment of the same. The defendants would contend that they are in possession of the property for over 30 years. The defendants have also stated that they have been using the suit property for over 30 years for stacking their hay. However, no independent evidence has been let in to prove any of the above facts.

22. The plaintiff has purchased the property in the year 1978 and within two years; ie., in the year 1980 he has sought to have the property demarcated and subdivided. The same could not be proceeded with only on account of the non-cooperation of the defendants which is seen from the documents filed on the side of the plaintiff.

23. It is also seen that Ex.B.1 which is the patta which has been produced on the side of the defendant relates to S.No.52/37A, whereas



the patta in favour of the plaintiff is in respect of S.No.52/37B. That apart, the notice for the survey of the land appears to have been given on 31.02.1980 as evidenced by Ex.A.5. Therefore, the plaintiff has shown his possession and enjoyment of the property for well over the statutory period upto the filing of the suit.

24. The plaintiff who had come forward with the case that he has purchased the property in the year 1978 under Ex.A.1 has proved his title to the property and therefore he is entitled to have his title declared. There appears to be no dispute till the year 1997. The fact that the defendant's sale deed Ex.A.2 which is prior in point of time to the plaintiff's sale deed, Ex.A.1, describes the plaintiff's vendor's property as the eastern property would clinch the fact that from the year 1978 when the defendants had purchased the property, the plaintiff's vendor was in possession of the property on the past 7 months and later, the plaintiff has purchased the property from the very same vendor being a Natham Land.

25. Therefore, both the Courts below have rightly held that the plaintiff has proved his title to the property and the documents produced by the defendants is just prior to the filing of the suit and does not prove



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their case. The defendants would rely upon Ex.B.1 to Ex.B.5 to show that they are in possession of the property. However, Ex.B.4 and Ex.B.5 do not prove that the defendants are in possession of the same.

26. Therefore, the substantial questions of law are answered against the defendants and the Second Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
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.03.2023

To

1.The Principal District Court,
Pondicherry.

2.The Principal Sub Court,
Pondicherry.



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P.T. ASHA, J.

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Pre-Delivery Judgment in
S.A.No.591 of 2007

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