



S.A.No.1553 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.No.1553 of 2004

1. A.Angatharasan

2. A. Anbarasan

...Appellants

Vs

Dhandayuthapani

... Respondent

Prayer: This Second Appeal is filed under Section 100 of C.P.C to set aside the Judgment dated 27.02.2003 passed in A.S.No.23 of 1998 on the file of the Subordinate Court, Dharmapuri confirming the order passed in O.S.No.415 of 1985 dated 19.02.1998 on the file of the District Munsif, Harur and pass orders

For Appellants : Mr.P.Jagadeesan
For Respondent : M/s.S.Sudarshan



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JUDGMENT

The Appellants 1 and 2 herein are defendants 1 and 2 in O.S.No.415 of 1985. It is the submission of the learned counsel for the first Appellant that the first appellant A.Angatharasan died and inspite of his best efforts, he was not able to get the details of the legal heirs of the first appellant to implead them. Therefore, recording the submissions made by the learned counsel for the first appellant, the appeal filed by the first appellant is dismissed as abated as against first appellant. Therefore, this Court is taking up the appeal as against the second appellant.

2. For the sake of convenience, the parties are referred to herein according to their litigative status as mentioned before the Court below in O.S.No.415 of 1985.

3. The brief avernment of the plaint:-

The plaintiff would submit that the property morefully described in the schedule originally belonged to one Radhakrishna Chettiyar who was



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the grand-father of the plaintiff, by virtue of a sale deed dated 12.12.1928.

After his demise, his only son Iyengar Chettiyar qua the father of the plaintiff was in possession and enjoyment of the same in his own right.

After the demise of the Iyengar Chettiyar, the plaintiff and other family members inherited the suit property and they are in actual physical possession and enjoyment of the same. This plaintiff submits that the property adjacent to the northern side of the suit property belongs to the 3rd defendant. The defendants 1 and 2 are actually residing in same street, however away from the suit property. According to the plaintiff, taking advantage of the absence of the 3rd defendant, the defendants 1 and 2 frequently came to the suit property and attempted to trespass into the suit property. According to the plaintiff the defendants 1 and 2 have no right in the suit property. Therefore, the plaintiff has come forward with the suit for the relief of the permanent injunction and delivery of vacant possession.

4. Brief averments in the written statement:

The defendants disputed the contentions raised by the plaintiffs and



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sought for a prayer that they have perfected title by way of adverse possession to the red marked portion. It is also the submission of the defendants 1 and 2 that the plaintiffs or their men have no right or title to interfere with their possession in the suit schedule property. Hence, the defendants prayed to dismiss the suit.

5.Documents and Evidence

The plaintiff have marked 8 documents as Ex.A1 to A8 and has examined one witness and he himself was examined as P.W.1. On behalf of the defendants, no documents was marked. However, the second defendant was examined as D.W.1.

6. Findings of the Trial Court and the First Appellate Court

After hearing the oral and documentary evidences, the Trial Court decreed the suit with a finding that the defendants have no right over the suit property.



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7. Aggrieved by the same, the Defendants 1 and 2 have filed the first appeal in A.S.No.23 of 1998. However, the First Appellate Court has also confirmed the findings of the Trial Court and dismissed the first Appeal vide Judgment dated 27.02.2003.

8. Aggrieved by the same, the Defendants 1 and 2 have approached this Court by way of second appeal. This Court, after hearing the appellant on 18.08.2004 has formulated the following substantial questions of law.

a) *Whether the lower Appellate Court right in dismissing the petition I.A.No. 92 of 2002 to receive additional evidence in the appeal ignoring that the said documents are absolutely necessary to decide the real dispute between the parties ?*

b) *Whether the lower Courts right in holding that the defendants have not perfected their title to the suit property by way of adverse possession, especially when they are in possession of the suit property for several decades ?*

c) *Whether the lower Courts right in granting the decree for declaration and recovery of possession without even the plaintiff process his title to the suit property ?*



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d) Whether the lower Courts right in granting the decree for declaration and recovery of possession without even the plaintiff proves his title to the suit property?

9.Submissions of the counsels

a. The learned counsel for the second appellant would strenuously submit that the plaintiffs did not submit any documents before the Trial Court and they have filed an application in I.A.No.92 of 2002 under Order 41 Rule 27 and Section 51 of C.P.C seeking a leave of the Court to file additional documents. However, the Court below has erroneously dismissed the same. In this regard, in the application filed under Order 41 Rule 27, the appellant has filed an affidavit before the Court Below with the ground that they were advised, not to produce certain documents before the Trial Court.

10.Discussion

It is settled principle of law that receipt of additional documents at the appellate stage is an exceptional remedy and could be provided only



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when the petitioner fulfills the condition laid down under Order 41 Rule 27 of C.P.C. The same cannot be granted for mere asking. Apart from that, it is well settled principles of law that to fill up the lacunae, the additional documents cannot be received. Therefore, this Court could not find any infirmity in the order passed by the First Appellate Court in dismissing the application filed in I.A.No.92 of 2002.

11. In respect of the second substantial question of law, with regard to the adverse possession, it is mandatory on the part of the defendants to plead as to how the possession become adverse and when from the possession become adverse. As rightly observed by the Court below, there is no specific avernments with regard to adverse possession.

12. Apart from that, before the Court below the defendant have not thought fit to submit any documents to show at least their physical possession in the suit property. Therefore, this Court is of the view that the findings recorded by the Trial Court as well as the First Appellate Court



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repelling the grounds of Adverse Possession is well considered one. From the submissions of the learned counsel for the appellant, this Court could not find any ground to interfere with the findings of the both the Court below. Hence, the substantial questions of law are answered in favour of the respondent. In the result this second appeal stands dismissed. No order as to Costs.

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Index : Yes/No

Speaking order/non-speaking order

To,

1. The Subordinate Court, Dharmapuri
2. The District Munsif, Harur



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C.KUMARAPPAN, J.,

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