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S.A.No.815 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.815 of 2023
and
C.M.P.No.25504 of 2023

Mrs.K.Nagammal

... Appellants

Vs.

1.Mrs.S.Lakshmi

2.Mrs.D.Dhanabagiyam

3.Mrs.R.Mannagi

. . . Respondents

Prayer:- Appeal is filed under Section 100 of C.P.C against the decree and judgement dated 03.06.2022 made in A.S.No.55 of 2012 on the file of the Sub Court, Tambaram, Chengalpattu District confirming the Judgement and Decree dated 16.03.2011 made in O.S.No.173 of 2007 on the file of the District Munsif Court, Tambaram, Chengalpattu District.

For Appellant : Mr.V.Rajesh

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JUDGEMENT

The unsuccessful defendant before the Courts below is the appellant before this Court. The facts which have led to the filing of this Second Appeal is herein below set out with the parties being referred to in the same ranking as before the Trial Court.

Plaintiffs' Case:-

2. The plaintiffs had filed the suit for recovery of vacant possession and for permanent injunction restraining the defendant from altering or changing the character of the B schedule property.

3. It is the case of the plaintiffs that the suit property originally belonged to one Ettiammal, the mother of the plaintiffs. She had purchased an extent of 1890 sq.ft. under a registered sale deed dated 28.08.1972. Since the mother of the plaintiffs was constrained to live



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away from the house/suit property, she had permitted the defendant to be in possession of the same. The house site had been described as A Schedule property and the house in the occupation of the defendant had been described as B schedule property.

4. The plaintiffs would submit that she had been requesting the defendant to vacate and deliver possession of the B schedule property. However, the defendant was putting it off under one pretext or the other. All of a sudden, the defendant had claimed title to the property by stating that the property in question is a poramboke land and not a patta land of the plaintiffs' mother. The plaintiffs' mother died in the year 1994. Since her death, the plaintiffs had been requesting the defendant to vacate the premises. However, since the defendant had refused to vacate, the plaintiffs had come forward with the suit in question.



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Defendant's Case:-

5. The defendant had filed a written statement inter alia denying the allegations contained in the plaint and submitted that she has been in possession of the property for over 20 years without interference from the plaintiffs. She had submitted that even assuming that the property belongs to the plaintiffs, she had perfected title by adverse possession on account of her being in possession of the property for over 20 years. Therefore, she sought for the dismissal of the suit.

Trial Court:-

6. The Trial Court had framed the following issues;-

- 1. Whether the plaintiff is entitled for the vacant possession of 'B' Schedule property?*
- 2. Whether the plaintiff is entitled for permanent injunction in respect of 'B' schedule property?*
- 3. What are the other reliefs the parties are entitled to?*



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7. The power agent of the plaintiffs had examined himself as P.W.1 and marked Ex.A.1 to A.6. The defendant examined herself as D.W.1 and marked Ex.B.1 to B.8.

8. The Trial Court on considering the evidence on record held that the defendant who was claiming title over the property had pleaded adverse possession which would imply that she had accepted the title of the plaintiffs. However, a reading of the written statement and the evidence would show that the defendant has not taken a categorical stand. In fact, the defendant had even contended that the property was a poramboke land and not a patta land. However, it is not her case that she had constructed the house. The defendant has not clarified the nature of her possession. The learned Trial Judge had ultimately held that the plaintiffs have established their title and they were entitled to recover possession from the defendant and had also granted the injunction as prayed for.



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9. Aggrieved by the judgement and decree of the Trial Court, the defendant had filed A.S.No.55 of 2012 on the file of the Sub Court, Tambaram. Before the Appellate Court, the defendant had also taken out 3 interlocutory applications, namely, I.A.No.82 of 2014, I.A.No.54 of 2021 and I.A.No.1 of 2022. The Lower Appellate Court, on considering the arguments on either side, dismissed all these applications.

10. The Lower Appellate Court had taken note of the evidence of the defendant as D.W.1 wherein she has clearly and categorically stated that she had not put up the construction of the building and that she has only been in possession of the building. The Lower Appellate Court had observed that D.W.1 had admitted that the plaintiffs had attempted to evict her from the premises in the year 1991 and therefore, the defendant cannot plead adverse possession and ultimately, the Lower



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Appellate Court had dismissed the appeal. It is aggrieved by the said judgment and decree that the defendant is before this Court.

Discussion:-

11. To prove their ownership over the suit property, the plaintiffs have marked Ex.A.3, sale deed in favour of Ettiammal followed by Ex.A2, Patta, A.4, Chitta in favour of Mrs.Ettiammal and A.5, Adangal in favour of Mrs.Ettiammal. The defendant had marked certified copy of house tax receipt, property tax receipt, water tax deposit receipt and Electricity bills to prove her possession over the suit property. However, the defendant had not let in any evidence whatsoever to show how she claims ownership over the B schedule property more particularly when the larger extent of the property had been purchased in the year 1972 by the plaintiffs' mother Ettiammal who had since put up construction over the property.



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12. The defendant as D.W.1 has clearly and categorically admitted that she had not put up the construction and that she had entered possession of the constructed premises. Therefore, the defendant had accepted that the suit property belongs to the plaintiffs. By pleading adverse possession, the defendant had admitted the title of the plaintiffs. However, there is no pleading to show as to the date from which the possession of the defendant had become adverse to that of the plaintiffs. The defendant has deliberately not stated as to how she has come into possession of the property and this assumes significance especially in the light of the admission of D.W.1 that the construction had not been put up by her and that she had entered the possession of the property only through the plaintiffs.



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13. The plaintiffs have proved their title to the property and the fact that the defendant who is in occupation of the same has now set up a plea of prescriptive title the plaintiffs are entitled to recover the same.

14. Therefore the Courts below have rightly decreed the suit and I see no reason to interfere with the same. Consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr



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To

1. The Sub Court, Tambaram, Chengalpattu District
2. The District Munsif Court, Tambaram, Chengalpattu District.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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