



WEB COPY



S.A.No.772 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.772 of 2017

K.Venkatesan

...Appellant

Vs.

- 1.M.Natesan(Died)
- 2.M.Chellamuthu (Died)
- 3.Amuthavalli
- 4.Shanmuganathan
- 5.Karpagam
- 6.Malarvizhi
- 7.Prema
- 8.Rajesh
- 9.Supriya

(R1-Died, RR3 to 7 are brought on record as Lrs of the deceased R1 and R2 died RR8 to R9 are brought on record as Lrs of the deceased R2 vide Court order dated 13/10/2023 made in CMP.Nos.3127, 3130, 3236, 3238, 3336 and 3339 of 2023 in S.A.No.772 of 2017)

10.Santhi

...Respondents

(R10 is brought on record as LR of the deceased R2 vide Court order dated 02.11.2023 made in CMP.No.24331/2023 in S.A.No.772/2017)



S.A.No.772 of 2017

WEB COPY

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree of the learned Additional District Judge, Chengalpattu, in A.S.No.4 of 2012 dated 09.12.2015 reversing the judgment and decree of the learned Subordinate Judge, Madhurandhagam in OS.No.94 of 2007 dated 09.12.2010.

For Appellant : Mr.M.Raja Sekhar

For Respondents : Mr.V.RamanaReddy for R3 to R7
Mr.A.Venkatesan for R8 to R10
R1 & R2- Died

JUDGMENT

The plaintiff in the suit is the appellant. He filed a suit for recovery of possession. The suit was decreed by the trial Court. In the appeal filed by the respondents, the findings of the trial Court were reversed and the suit was dismissed. Aggrieved by the same, the appellant/plaintiff is before this Court.



S.A.No.772 of 2017

2. According to the appellant/plaintiff, the suit property was originally belonged to his father Murugan and he executed a Will on 26.02.1999 in favour of the plaintiff. The plaintiff has been paying land tax regularly to the suit property. The first respondent's father Murugan was permitted by the appellant's grand father to put up a small house in the suit property and look after the same. The said permission was given to the said Murugan as he had worked in the agricultural field of the appellant's grand father. The above said Murugan died 18 years ago and after the death of Murugan the respondents continued the occupation of the suit property. It was also submitted by the appellant that the respondents' father Murugan used to pay a sum of Rs.150/- per month towards rent to the grand father of the appellant. After the death of Murugan, they also stopped attending the work in the agricultural field of the appellant. In these circumstances, the plaintiff issued a legal notice on 24.11.2006 to the respondents calling upon them to vacate and hand over the vacant possession of the suit property. Though the said notice was served on them, the respondents' father failed to vacate the suit property and hence, the appellant was constrained to file a suit for recovery of possession of vacant site of the suit property.



S.A.No.772 of 2017

3. The first defendant filed a written statement and resisted the suit and his brother, second respondent remained exparte. It was the case of the first respondent that he orally purchased the suit property from the father of the appellant namely Kulasekaran in the year 1975 for a sale consideration of Rs.450/- and from then onwards he had been in possession and enjoyment of the suit property. It was further averred that he constructed two thatched houses in the suit property in the year 1979 and he was occupying one of the said thatched house. The other thatched house claimed to be occupied by his brother Chellamuthu, the second respondent herein.

4. It was also claimed that in the year 1986 a group house was sanctioned by the Government and the same was constructed in the suit property and the respondents had been occupying the same. Thus, the respondents claimed absolute ownership over the suit property and he sought for dismissal of the suit. The respondents also claimed that after issuance of legal notice, the plaintiff informed to him that legal notice was issued to the respondents only to extract money and therefore, advised them not to issue reply notice. On these pleadings, the first respondent sought for dismissal of the suit.



S.A.No.772 of 2017

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the oral sale pleaded by the first respondent was not at all proved. Therefore, the trial Court came to the conclusion that the appellant was entitled to recovery of possession and decreed the suit. Aggrieved by the same, the respondents preferred an appeal in A.S.No.4 of 2012 on the file of the Additional District Court, Chengalpattu. The first Appellate Court came to the conclusion that the suit filed by the appellant for recovery of possession was not maintainable without the prayer for declaration and hence, allowed the appeal. Aggrieved by the same, the appellant is before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law:

“a) Whether the suit is maintainable or not in the absence of prayer seeking declaration of title?

b) Whether the respondent is entitled to raise the claim of adverse possession without specific pleading or not?”

7. It is the specific case of the appellant that his father was the original owner of the suit property and the same was bequeathed by the Will



S.A.No.772 of 2017

executed by his father. The appellant also pleaded that the respondents' father Murugan was permitted to occupy the suit site by the grand-father of the appellant. The respondents mainly resisted the suit by raising the plea of oral sale. It was averred by the first respondent in his written statement that he orally purchased the suit property from the appellant's father Kulasekaran in the year 1975 for a sale consideration of Rs.450/-.

8. It is settled law, when immovable property worth more than 100 Rupees is transferred, the same shall be by way of a registered document. The first respondent raised a plea that he purchase the suit property from the plaintiffs' father in the year 1975. Thus he admitted the title of the plaintiffs' father. Therefore, there is no dispute with regard to the title of the plaintiffs' father. The appellant herein claiming himself as a beneficiary under the Will executed by the said Kulasekaran. He also examined attesor to the Will as PW2. However, the Courts below did not consider the validity of the Will. The trial Court said the respondents were third parties and hence they could not question the Will. The first Appellate Court non suited the appellant on the ground that the suit for recovery of possession without the prayer for declaration was not maintainable.



S.A.No.772 of 2017

9. Even if the Will relied on by the appellant was not proved, in his capacity as son of the said Kulasekaran, the appellant is entitled to the suit property. Being a legal heir he is entitled to maintain a suit for recovery of possession. There is no evidence available on record to show that there are other legal heirs of Kulasekaran. In any event, a suit for recovery of possession filed by the appellant can be treated as one for the benefit of entire estate of Kulasekaran. In view of the matter the appellant is entitled to maintain the suit for recovery of possession.

10. A reading of averments in the plaint under the valuation column would suggest that the suit was filed by the appellant based on his title and therefore, there is no necessity for declaration of the title. Further, observation of the First Appellate Court as if there is a cloud over the title is not at all acceptable. The respondents admitted title of appellant's father Kulasekaran and claimed title under oral sale. The plea of oral sale raised by respondents was disbelieved by the Courts below.



S.A.No.772 of 2017

11. In view of the admission of the first respondent in his written statement that he purchased the property from the father of the plaintiff, the appellant's title over the suit property is admitted and there is no serious dispute with regard to appellant's title. In such circumstances, the observation made by by the First Appellate Court as if there was a cloud over the title of the plaintiff and hence, recovery of possession filed by him was not maintainable is not correct and the same is liable to be set aside.

12. The learned counsel for the respondents tried to support of his case by saying that PW1 in his evidence admitted that the respondents put up construction in the year 1986 itself and the same would amount to hostile possession on the part of the respondents. When the respondents claimed title to the suit property under an oral sale from the appellant's father, it is not open to them to turn around and set up adverse title. Hence, the respondents are not entitled to claim adverse possession.

13. In view of the discussions made earlier, the first question of law framed at the time of admission is answered in favour of the appellant and against the respondents and the suit is held to be maintainable without the



S.A.No.772 of 2017

prayer for declaration.

WEB COPY

14. As far as the second question of law framed at the time of admission is concerned, the first respondent specifically admitted the title of the appellant's father and pleaded oral sale, but he failed to lead any evidence in support of the oral sale. Further conveyance of the title and sale of the property worth about more than 100 rupees shall be by way of a registered document. In such circumstances, having claimed title over the suit property the respondents are not entitled to set up adverse title. The second questions of law is also answered in favour of the appellant and against the respondents.

15. In view of the discussions made earlier, both the substantial questions of law are answered in favour of the appellants and the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court. The judgment and decree passed by the trial Court is restored.



WEB COPY



S.A.No.772 of 2017

S.SOUNTHAR, J.

dna

16. a) In the result, the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court.

b) In the facts and circumstances of the case, there shall be no order as to costs.

13.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

- 1.The Additional District Court, Chengalpattu.
- 2.The Subordinate Court, Madhurandhagam.

S.A.No.772 of 2017