



S.A.No.59 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.59 of 2024

R.Karthikumar

... Appellant

Vs.

1.Boobalakrishnan

2.NEPC India Ltd,

Formerly Known as NEPC Micon Ltd,

Chennai, Rep. by it's power agent

N.Padmanaban

S/o. P.Narayanan, B-4, Aadithya Apartment,
Trichy Road,

Ramanathapuram, Coimbatore.

. . . Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to allow the Second Appeal with Costs by setting aside the Judgment and Decree in A.S.No.5 of 2015 on the file of Sub Court, Udumalaipettai dated 25.10.2017 and confirming the judgment and decree in O.S No.81 of 2011 dated 07.10.2014 on the file of District Munsif Court, Udumalaipettai.

For Appellants : M/s.A.Sivaji



S.A.No.59 of 2024

WEB COPY

JUDGEMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.81 of 2011 on the file of the District Munsif Court, Udumalaipettai to declare his prescriptive title over the B schedule properties by way of adverse possession and for a consequential permanent injunction.

3. The plaintiff would submit that the properties which had been described in the A schedule belonged to him absolutely by virtue of various sale deeds. The B schedule properties (herein after referred to as the "suit property") originally belonged to the 2nd defendant. The 2nd defendant had sold the said properties to the 1st defendant under a



S.A.No.59 of 2024

sale deed dated 23.11.2010. The suit property have been described as a vacant site within specified boundaries.

4. The plaintiff would submit that the suit property was situate to the north of the A schedule property and there was no demarcation between the two properties. Though the sale deed in favour of the 1st defendant would mention a mamool pathway, there is no cart track to reach the suit property. The 2nd defendant had not taken possession of the suit property and it was lying fallow.

5. It is the contention of the plaintiff that after he had purchased the A schedule properties he started enjoying the suit property and he has been in possession of the same since 1998. The plaintiff would submit that he has been in uninterrupted possession to the knowledge of the real owner and had put up an enclosure enclosing both A and B schedule properties (suit property). The plaintiff would submit that he had raised gooseberry trees in the A and B schedule properties (suit



S.A.No.59 of 2024

property) and the trees are aged over 9 years. The plaintiff had also laid an underground pipeline and drip irrigation for the entire A and B schedule properties (suit property).

6. The plaintiff would submit that he has been in possession of the suit property from 04.09.1998. The 2nd defendant had purchased the suit property in the year 1995 and from the date of their purchase, they have kept the lands fallow. Since he has been in the enjoyment of the property for over 12 years, the plaintiff wanted to establish his title to the suit property by way of adverse possession and therefore the suit had been filed.

7. The defendants had remained ex parte.

8. The Trial Court had on considering the evidence on record dismissed the suit stating that the plaintiff who claims to be in possession of the B schedule properties (suit property) since the year



S.A.No.59 of 2024

1998 has not proved the same. The 1st defendant appears to have purchased the suit property in the year 2010 under Ex.A.15 and since the plaintiff had not proved his continuous possession of the property for over 12 years, the suit had been dismissed.

9. Challenging the said judgment and decree, the plaintiff has filed A.S.No.5 of 2015 on the file of the Sub Court, Udumalaipettai. The learned Appellate Judge had also confirmed the judgment and decree of the Trial Court. The learned Trial Judge had observed that the plea of adverse possession can be used only as a shield and not as a sword. Aggrieved by the same, the appellant is before this Court.

10. Heard the learned counsel for the appellant.

11. The plaintiff had filed the suit for declaration of his prescriptive title. The plaintiff's case is that from 04.09.1998 he has been occupying the B schedule properties which is the suit property



S.A.No.59 of 2024

and has annexed the B schedule property with the A schedule property and enjoying the same as a single property. The plaintiff has raised gooseberry in the said property. Even going by the averments of the plaint, the plaintiff who states that he has been raising gooseberry in the suit property has himself admitted that the age of the tree is about 9 years. The plaintiff had not filed any revenue document to show his enjoyment of the suit property for over 12 years. The plaintiff had filed Ex.A.15 which is the sale deed in favour of the 1st defendant. Therefore, it is clear that the 2nd defendant had exercised their rights as a owner and sold the suit property in the year 2010 to the 1st defendant. The suit property is a vacant site. Therefore, title follows possession.

12. Considering the fact that the plaintiff had himself filed the sale deed in favour of the 1st defendant and taking note of the fact that he has not filed any documents to show the possession and enjoyment of the suit property for the period of over 12 years as stated by him, the



S.A.No.59 of 2024

Courts below have rightly rejected the claim of the plaintiff and dismissed the suit. Further, the appellant has not made out any substantial question of law that requires the re-consideration of this Court. Accordingly, the Second Appeal is dismissed. No costs.

24.01.2024

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

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



WEB COPY



S.A.No.59 of 2024

P.T.ASHA, J.,

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S.A.No.59 of 2024

24.01.2024