



WEB COPY



SA.No.1091 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1091 of 2008

1.P.Muthusamy (Died)
2.M.Ramasamy
3.M.Selvaraj
4.M.Ganapathy
5.M.Malarkodi
6.T.Akash
7.T.Athish

(A1 died, A2 to A7 are B/R as LR's of the
deceased vide Court order dt.22.12.2023
made in CMP.No.29189, 29191&29193/
2023 in SA.No.1091/2008 - CKJ)

... Appellants

Vs.

V.Chellamuthu
S/o.Venkatachala Padayachi
rep. by its Power Agent
Mrs.Dhanalakshmi

... Respondent

Prayer: The Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.48 of 2004 on the file of Additional Sub-Court, Virudhachalam, dated 29.08.2005, confirming the judgment and decree passed in O.S.No.697 of 1996 on the file of District Munsif Cum Judicial Magistrate Court, Tittagudi, dated 13.11.2003.



SA.No.1091 of 2008

For Appellant : Mr.T.N.Rajagopalan
for A.Rajaperumal

For Respondent : Mrs.R.Abirami
for Mrs.V.Srimathi

JUDGMENT

The defendant is the appellant herein and the plaintiff is the respondent herein.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. **The brief facts that gives rise to the instant second appeal is as follows:-**

The suit property was originally belonged to one Venkatachala Padayachi by virtue of a sale deed dated 08.04.1943. The plaintiff Chellamuthu is the son of the Venkatachala Padayachi. The instant suit was laid by the said Chellamuthu through his wife Dhanalakshmi as his Power Agent. According to the plaintiff, the defendant by claiming rights over the property interfering with the possession and enjoyment of the suit property.



SA.No.1091 of 2008

Hence, the plaintiff preferred a Suit in O.S.No.697 of 1996 for declaration and for injunction.

4. The Written statement in brief:-

The said suit was resisted by the defendant on the ground that, though the suit property was originally belonged to the Venkatachala Padayachi, by oral sale he has purchased the suit property in the year 1979, and that even otherwise, since his possession from 1979, he has also perfected his title by way of adverse possession. Hence prays to dismiss the suit.

5. Evidence and Documents:-

Before the trial Court, the plaintiff has marked 9 documents as Ex.A1 to Ex.A9. On behalf of the defendant 22 documents were marked as Ex.B1 to Ex.B22. On behalf of the plaintiff four witnesses were examined, similarly on behalf of the defendant, 3 witnesses were examined.

6. Findings of the Courts below:-

Having considered the oral and documentary evidence, the trial Court has decreed the suit by granting a decree of declaration and permanent



SA.No.1091 of 2008

WEB COPY

injunction. Aggrieved by the same, the defendant preferred the First Appeal. However, the First Appellate Court confirmed the decree granted by the trial Court. Having not satisfied with the order of the First Appellate Court, the defendant is before this Court by way of the Second Appeal.

7. The learned counsel appearing on behalf of the appellant would vehemently submit that the suit has not been laid through a valid Power of Attorney as the same having been executed in a foreign country, not adjudicated in India as mandated under the Stamp Act. The learned counsel further submits that, since the oral sale of the year 1979, even otherwise their possession in the suit property has become adverse to the interest of the plaintiff,. Hence, it was contended that the defendant also perfected title by way of adverse possession. It is also contended by the learned counsel for the appellant that the prayer is so vague and therefore the decree granted by the trial Court is liable to be interfered with.

8. However, the learned counsel for the respondent vehemently opposed the contention of the appellant, and that there is a finding of fact by the trial Court as well as the First Appellate Court that the plaintiff is the



SA.No.1091 of 2008

WEB COPY

owner of the suit property and that the defendant has not proved the title by way of an adverse possession, hence there are no grounds to interfere with the concurrent findings of the Courts below. Accordingly, prays for dismissal of the Second Appeal.

9.I have given my anxious consideration to either side submissions.

10.The argument of the learned counsel for the appellant revolves on two grounds, one is based on the oral sale and another one is based on the adverse possession. In respect of the oral sale, the learned counsel appearing on behalf of the appellant would fairly submit that since they pleaded oral sale of the property in the year 1979, such sale cannot be enforced in view of non registration. However, contended that the very year of oral sale that is 1979 has to be taken as a starting point of their adverse possession and that since then, they have been in the suit property for more than a statutory period and therefore their title has to be upheld.

11.In this connection, when this Court perused the order of the both the Courts below, this Court could not find any document to establish the



SA.No.1091 of 2008

WEB COPY

continuous possession of the plaintiff for more than twelve years. According to the appellant even Ex.B2 is the patta issued to the suit property, whereas such patta has been issued only in the year 1984. Therefore, even from 1984, twelve years has not been completed to consider the ground urged by the appellant / defendant for the defence of adverse possession.

12. It is also pertinent to mention here that the long possession is not the sufficient ground to establish the adverse possession. In order to perfect title over the property, such possession should be adverse to the interest of the plaintiff and also it should be continuous and within the knowledge of the plaintiff. Here, to establish such adversity of their possession against the plaintiff, the documents which have been filed by the defendant is not sufficient and adequate. Therefore, this Court is of the firm view that the finding of fact recorded by the Courts below is well merited and this Court could not find any ground to interfere with the said findings. In view of the above discussion, there is no substantial question of law arises in this matter.



SA.No.1091 of 2008

WEB COPY

13. In the result, this Second Appeal is dismissed. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.

03.04.2024

kas

To

1.The Additional Sub-Court
Virudhachalam

2.The District Munsif Cum Judicial Magistrate Court
Tittagudi,



WEB COPY



SA.No.1091 of 2008

C.KUMARAPPAN, J

kas

S.A.No.1091 of 2008

03.04.2024