

**JUDGMENT**

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For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

2. The defeated defendants are the appellants herein. The respondents herein initially filed suit against Periyannayagam, Gabriel and Rajarathinam in O.S.No.54 of 2000 before the District Munsif Cum Judicial Magistrate, Neyveli for declaration of title and permanent injunction. After trial, the said suit was dismissed. On appeal in A.S.No.11 of 2010, the learned Subordinate Judge, Neyveli dismissed the same and hence the 1st defendant Arokiasamy filed S.A.No.551 of 2014 and the same was dismissed wherein it is observed in Para 14 as follows -

14. It is claim of the defendants that the plaintiff is in permissive possession and, therefore, the plaintiff has no title or possession. Once it is found that the defendants are the owners of the property and the plaintiff has not perfected title by adverse possession no relief of injunction can be granted to the plaintiff.

3. Thereafter the present two suits in O.S.Nos.104 of 2013 & 27 of 2014 have been filed before the Sub Court, Neyveli seeking the relief of



declaration of title under the registered sale deed dated 17.04.1984 and also stated that they preferred the title by adverse possession and obtained patta in their name and hence sought for declaration of title and permanent injunction. Another suit was filed in O.S.No.27 of 2014 stating that as per the decree in O.S.No.54 of 2000, they are in possession and they are seeking title as well as decree for possession.

4. Written Statement has been filed by the defendants, inter alia, contended that they are in adverse possession and also stated that the second suit is barred under Order II Rule 2 CPC.

5. Pending suit, the prayer for permanent injunction in O.S.No.104 of 2013 was deleted, so also prayer for declaration of title in O.S.No.27 of 2014 was also amended. During the trial, the 2nd plaintiff examined himself as PW1 and marked Exs.A1 to A19. On the side of defendants, DW1 to DW3 were examined and Exs.B1 to B5 were marked.

6. The Trial Court, on consideration of both oral and documentary evidence, decreed the suit and rendered a specific finding that the first suit and second suit are not hit by Order II Rule 2 CPC since there



is a prayer for recovery pursuant to the order passed in S.A.No.551 of 2014.

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7. Aggrieved against the above said orders, A.S.Nos.13 & 14 of 2013 were filed and the same was dismissed confirming the judgment of the Trial Court dated 18.11.2022 and hence the present Second Appeals.

8. Heard the learned counsel appearing for the appellants as well as respondents and perused the materials available on record.

9. From the materials on record, it is seen that **the Trial Court has not framed necessary issue for determination** in connection with Order II Rule 2 CPC and except relying upon the judgment of this Court in S.A.No.551 of 2014, no other finding is issued in other cases. Hence, the learned counsel appearing fore the appellants sought for admission of the Second Appeals.

10. After perusing the pleadings and evidence adduced before the Trial Court, it is seen that the Trial Court has formulated necessary issues viz. whether the suit is barred under Order II Rule 2 CPC and also rendered a specific finding whether the respondents are entitled to recovery of



possession of the suit property in O.S.No.27 of 2014 from the defendant.

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11. After taking into consideration the evidence adduced before the Court, the Trial Court has rightly come to the conclusion that as per Exs.A1, A3 & A4, sale deeds in favour of the first and second plaintiffs are true, valid and genuine and also taken note of the judgment of this Court in S.A.No.551 of 2014 extracted supra which is marked as Ex.A19. The Trial Court has also held that the defendants have not filed any document to prove their title. The Lower Court has formulated necessary points for determination and at Para 18, has categorically rendered a finding that, based upon Exs.A3 & A4, the plaintiffs have proved that they the owners of the suit property and as per Ex.A19, their title has been confirmed by this Court in S.A.No.551 of 2014 in the suit filed by the defendants herein in the first round of litigation. There is a specific finding in the above said S.A.No.551 of 2014 (Ex.A19) that the plaintiffs herein have to seek the relief of possession by separate suit proceedings and accordingly, dismissed the suits. Consequently, the present suit is filed by the plaintiff and both the Courts have decreed the suit for title and for recovery of possession. Hence, I do not find any error in the current finding rendered by both the courts below which does not suffer any perversity. There is no material



mistake to interfere in the said judgment at this Appellate stage.

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12. Furthermore, the Lower Appellate Court has rightly discussed about Exs.A3 & A4 and the extent of land in the Survey No.318-16 to the extent of 5 cents belonging to the parties and the decision of this Court in the above S.A.No.551 of 2014 and also rendered a specific finding on Order II Rule 2 CPC wherein it has been categorically stated that the relief sought for in the suit in O.S.No.27 of 2014 is pursuant to the order passed by this Court in S.A.No.551 of 2014 and declaration relief was specifically amended. Therefore, the plea raised by the learned counsel for the appellants that Order II Rule 2 CPC does not arise on factual stand as discussed supra, since a specific finding has been rendered by both the Courts below. Hence, the contention of the appellants stands negative.

13. With regard to the relief of possession, the first round of litigation institutes at the instance of the same parties has been decided conclusively in S.A.No.551 of 2014 on 09.03.2020 and both the Courts below have rightly relied upon the finding of this Court. Hence, I do not find any merits in this case and no substantial question of law arises in these appeals.



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14. In view of the above, both the Second Appeals are dismissed at the admission stage itself confirming the judgment and decree in A.S.Nos.13 & 14 of 2023 on the file of the III Additional District and Sessions Judge, Virudhachallam at Cuddalore dated 18.07.2023 in confirming the judgment and decree in O.S.Nos.104 of 2013 & 27 of 2014 on the file of the Sub Court, Neyveli dated 18.11.2022. No costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2024

Index : Yes/No
Speaking/Non-speaking order
rgr

To
1.The III Additional District and Sessions Judge,
Virudhachallam at Cuddalore

2.The Subordinate Judge,
Neyveli.

3.The Section Officer,
V.R.Section, High Court,
Madras.



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RMT.TEEKAA RAMAN, J.
rgr

Common Judgment in
S.A.Nos.238 & 239 of 2024

17.04.2024