



S.A.No.20 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.20 of 2021

and

C.M.P.No.2581 of 2021

T.V.Rajabooshnam (Deceased)

1. P.Ranganathan

... Appellant

Vs.

Prabha

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 20.12.2019 in A.S.No.28 of 2019 passed by the learned Subordinate Judge, Vaniyambadi, confirming the judgment and decree dated 14.03.2012 in O.S.No.73 of 2005, passed by the learned District Munsif, Vaniyambadi.

For appellant

: Mr.A.R.Suresh

for Mr.J.Muthukumaran

For respondent

: Mr.P.A.Sudesh Kumar

JUDGMENT

The above suit is a glaring example of how procedure has taken a back seat. The reason for the above lament is on account of the fact



that after the death of the original plaintiff, the present appellant has taken out an application under Order XXII Rule 3 of C.P.C. in I.A.No.683 of 2009 in O.S.No.73 of 2005. The prayer in the said application is not to bring the appellant herein as a party to the proceedings, but, to represent the deceased T.V.Rajabooshnam as his legal heir. The prayer in application would read as follows:

“For the reasons morefully stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to permit the petitioner – legal heir to continue with the suit as contemplated in law and to thus render justice.”

2. The said application has been allowed and the cause title has been amended as follows:

*“T.V.Rajabooshanam (died)
represented by legal heir R.Ranganathan”*

Therefore, the appellant has not been brought on record as a party to the proceedings. This glaring omission has been overlooked by the District Munsif Court, Vaniyambadi. Thereafter, in the appeal, the appellant has been arrayed as the appellant/plaintiff.



3. Coming to the merits of the case, the facts which have given rise to the above second appeal are set out hereinbelow.

FACTS OF THE CASE:

3.1. The deceased T.V.Rajaboosnam had filed a suit in O.S.No.73 of 2005 on the file of the Principal District Munsif Court, Vaniyambadi originally for a declaration and for a permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property and thereafter, the same had been amended to include the relief of recovery of possession and mandatory injunction to remove the thatched hut put up on the encroached portion and to deliver vacant possession.

3.2. The plaintiff would submit that the property in question originally belonged to one Rajamannar under a partition deed dated 05.02.1930. The said Rajamannar is the father of the original plaintiff,



T.V.Rajabooshnam. On 19.08.1954, the said T.V.Rajabooshnam had executed a settlement deed and delivered possession of the suit property and other properties in favour of the plaintiff and his mother. The plaintiff's mother died in or about 1980 leaving behind the plaintiff as her only legal heir, as a result of which, the plaintiff had been in possession and enjoyment of the suit property.

3.3. The plaintiff would further submit that the defendant, who is residing adjacent to the suit property, was causing trouble to the plaintiff's peaceful possession and enjoyment of the suit property. The defendant attempted to dump materials in the suit property on 26.01.2005 and the same was objected by the plaintiff. The plaintiff caused to issue a legal notice dated 31.01.2005 to the defendant, but, despite receiving the same, the defendant had not issued a reply. Therefore, the plaintiff has come forward with the suit originally seeking permanent injunction.



WEB COPY

3.4. Thereafter, post the filing of the written statement by the defendant, the plaintiff had amended the plaint seeking declaration of the title as the defendant had challenged the same and had further, encroached into an extent of 13 to 15 x 20 to 25 feet in the suit schedule property and put up a thatched hut. The relief of declaration and mandatory injunction and recovery of possession was therefore, included in the suit.

3.5. The defendant had filed a written statement denying the contention of the plaintiff. The defendant would also submit that the plaintiff was not the only child of the said Rajamannar and his wife Jagadammal, but, he had sister who has not been impleaded and who is a necessary party to the proceedings.

3.6. The defendant would submit that over 35 years, the defendant and her husband were being in continuous possession of the suit schedule property and residing in the same. It is the case of the



defendant that they have been in possession which is uninterrupted continuous, open and hostile to the knowledge of the plaintiff and his ancestors. Therefore, the defendant had put across a case of adverse possession. The defendant sought for the dismissal of the suit.

3.5. Pending the suit, the original plaintiff had died and as stated *supra*, the appellant herein had got his name included as representing the deceased original plaintiff as his heir.

TRIAL COURT:

4. The Trial Court, had observed that the appellant herein, who had claimed that the deceased had executed a will bequeathing the property on him, has not produced or proved the will. The learned Judge also held that the plaintiff had failed to prove the title to the suit property, particularly, when the description of the property differs in each of the documents filed on the side of the plaintiff i.e., Exs.A1 to A5.



5. Ultimately, the learned Judge, after analysing the records, had dismissed the suit.

LOWER APPELLATE COURT:

6. Aggrieved by the same, this appellant had filed an appeal in A.S.No.28 of 2019 on the file of the Subordinate Court, Vaniyambadi. The learned Subordinate Judge, had observed that the appellant had not produced any paper to show how he claimed a right over the property through deceased plaintiff, highlighting the fact that the appellant had not produced the alleged will said to have been executed on 16.02.2009 by the deceased T.V.Rajabooshnam in his favour. Therefore, the Lower Appellate Court held that the appellant has no *locus standi* to file the appeal.

7. The Lower Appellate Court has observed that the deceased T.V.Rajabooshnam has the right, title and interest over the suit



schedule property and not the appellant. T.V.Rajabooshnam having died intestate, the property would devolve on his legal heir who is his sister viz., Suseela. Ultimately, on the ground that the appellant had no *locus standi* to challenge the judgment and decree of the Trial Court, the appeal has been dismissed. It is against this judgment and decree, this second appeal has been filed.

8. Heard the learned counsel appearing on both sides and perused the materials available on record.

DISCUSSION:

9. As observed earlier, the appellant has not produced any shred of evidence to show how he has the right, title or interest in the suit schedule property belonging to the deceased T.V.Rajabooshnam. The appellant has not been properly impleaded in the suit. Further, the appellant has not chosen to implead the sister of the deceased T.V.Rajabooshnam viz., Suseela who is the only legal heir of the said



T.V.Rajabooshnam.

WEB COPY

S.A.No.20 of 2021



10. The appellant has taken out an petition in C.M.P.No.2581 of 2021 for receiving the additional document which is the will dated 16.02.2009. The affidavit filed in support of this petition is silent as to why such petition has not been taken before the Trial Court or before the Lower Appellate Court, particularly, when the Trial Court had dismissed the suit stating that the appellant has failed to prove his interest in the suit property. Therefore, when the documents that are now sought to be filed were available with the appellant even when the suit was pending, no valid reason has been given by the plaintiff for its non-production before the Courts below. This petition is only an attempt to fill up the lacuna. Therefore, this petition has to necessarily fail and accordingly, this petition in C.M.P.No.2581 of 2021 is dismissed.

11. Considering the fact that the appellant claims a right to the



S.A.No.20 of 2021

property only under the will and the same not having been produced and proved in the manner known to law, the findings and judgment of the Courts below require no reconsideration.

In the result, this second appeal stands dismissed since the appellant has not made out any substantial questions of law and has not stated as to how the judgment and decree of the Courts below are wrong. No costs. Connected C.M.P. stands closed.

04.01.2024

Index: Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Vaniyambadi.
2. The District Munsif, Vaniyambadi.
3. The Section Officer, V.R. Section, High Court, Madras.

10/12



WEB COPY



S.A.No.20 of 2021

P.T.ASHA, J.,

SSa

S.A.No.20 of 2021
and
C.M.P.No.2581 of 2021



WEB COPY



S.A.No.20 of 2024

04.01.2024