



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)NO.668 OF 2008

Vellaichamy :Plaintiff/Appellant/Appellant

.VS.

1.Pitchai(died)

2.Muthammal

3.P.Murugesan

4.P.Govindareaj

5.P.Ramalakshmi

6.KuttyRaja

(Respondents 2 to 6 are brought on record as legal representatives of the deceased sole respondent as per order of this Court made in C.M.P(MD)No.3677 of 2016 in S.A(MD)No.668 of 2008, dated 12.07.2023) :Defendant/Respondent/Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.29 of 2007, dated 7.2.2008, on the file of Subordinate Judge, Srivilliputhur confirming the judgment and decree made in O.S.No.1147 of 2004, dated 14.3.2007, on the file of Principal District Munsif, Srivilliputhur.

For Appellant

:Ms.D.Thilagarani



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Respondent-1 :Died

For Respondents :Mr.T.Antony Arul Raj

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.29 of 2007, dated 7.2.2008, on the file of Subordinate Judge, Srivilliputhur confirming the judgment and decree made in O.S.No.1147 of 2004, dated 14.3.2007, on the file of Principal District Munsif, Srivilliputhur.

2.The unsuccessful plaintiff in the suit is the appellant. The suit is filed for declaration of title and injunction in respect of Item No.1 of suit A schedule property. The plaintiff also prayed for mandatory injunction to remove the construction and for recovery of possession in respect of Item No.2 of suit A schedule property. The plaintiff also prayed for partition of his half share in the suit B Schedule property. The suit was dismissed by the trial Court in respect of Item No.1 and 2 of the suit A schedule property and a decree for partition was granted as prayed for in respect of suit B schedule property. Aggrieved by the negatived portion, the plaintiff preferred an appeal.The defendant has not filed any appeal challenging the partition decree in respect of suit B schedule property. Therefore the decree for partition granted by the trial



Court in respect of suit B schedule property has attained finality.

The first appeal was confined to item No.1 and 2 of suit A schedule property and the First Appellate Court had confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent findings of the Courts below, the plaintiff has come by way of this Second Appeal. In view of the fact that the decree for partition regarding suit B Schedule property is not questioned by the defendant by filing First Appeal, the Second Appeal is confined to Item No.1 and 2 of suit A schedule property.

3. According to the appellant/Plaintiff, suit A schedule property originally belonged to one Annamuthu @ Anna Maria, wife of Vedanayagam. She executed a settlement deed on 29.4.1967 in favour of Koomapatti Christian Missionary. It was claimed that the said Christian missionary enjoyed the property from the date of settlement and they permitted the plaintiff to enjoy the suit A schedule property in the year 1984 by putting up a house and cattle shed. The plaintiff enjoyed the property under permission from the said Christian missionary and has been in possession and enjoyment of the same for more than the statutory period openly and continuously. Thus the plaintiff acquired prescriptive title to the suit A schedule property. It was also claimed that the patta for the suit property was also issued in



favour of the plaintiff recognizing his possession. The defendant who owns property on the eastern side of the suit A schedule property, taking advantage of the absence of the plaintiff in the locality, encroached the eastern portion of the suit A schedule property and had put up a construction. As the defendant also attempted to encroach the remaining portion in Suit A schedule property, the suit was filed seeking declaration and injunction in respect of item 1 of 'A' schedule property. The encroached portion is shown as item No.2 of suit A schedule property. The suit was laid for mandatory injunction and recovery of possession in respect of Item.2 of 'A' schedule.

4. The claim of the plaintiff was resisted by the defendant on the ground that they had been in possession and enjoyment of the suit A schedule property. The defendant specifically denied the claim of the plaintiff that he enjoyed the property from the year 1984 and enjoyed the same adversely for more than the statutory period. Thus denying the title as well as the possession of the plaintiff over the item 1 of suit A schedule property and denying his title over the second item of A schedule property, the defendants sought for dismissal of the suit.

5. Before the trial Court, the plaintiff was examined as P.W.1



and yet another witness was examined as P.W.2. On behalf of the plaintiff, 13 documents were marked as Ex.A1 to Ex.A13. The defendant was examined as D.W.1 and 13 documents were marked as Ex.B1 to Ex.B13. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

6.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff failed to prove his title as well as possession over the suit A schedule property and hence, dismissed the suit insofar as both the items of suit A schedule property. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.29 of 2007, on the file of Sub-Court, Srivilliputhur and the First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the plaintiff is before this Court by filing this Second Appeal.

7.The learned counsel for the appellant vehemently contended that the suit property was sold to the plaintiff by the competent person representing Christian Missionary to the plaintiff under Ex.A13 and the said document was not at all properly considered by the Courts below. The learned counsel further submitted that the plaintiff has been in possession and enjoyment



of the suit property from the year 1984 and hence, perfected title by adverse possession. The documents produced by the plaintiff to prove his open and continuous possession has not been taken into consideration by the Courts below.

8.A perusal of the plaint averments would suggest that the plaintiff is claiming adverse title over the suit property. It was his case that he has been in possession and enjoyment of the suit property from the year 1984 under permission from the Christian Missionary. In order to prove his hostile possession for more than the statutory period, the plaintiff has not produced any documentary evidence. The tax receipts and revenue documents produced by the plaintiff were of the year 2004 just prior to the suit. Therefore the plaintiff has not filed any document to prove his possession, much less adverse possession, from the year 1984. Therefore the case of the plaintiff that he perfected title by adverse possession is not at all proved.

9.Though the plaintiff pleaded adverse possession in his pleadings, during the course of trial, the plaintiff filed Ex.A13 sale deed, dated 23.09.2005 allegedly executed by one Christopher and Savari Rayan on behalf of the Christian Missionary in favour of the plaintiff, the Courts below by comparing the boundary description



found in Ex.A2 Settlement Deed executed by Annamuthu @ Anna Maria in favour of the Christian Missionary, came to the factual conclusion that the boundary description found in Ex.A2 does not tally with the boundary description found in the suit A schedule property. Therefore the very title of Christian Missionary to convey the suit property to the plaintiff has not been proved by producing any documents relating to the suit A schedule property. Further under Ex.A2, the settlee would get title after the death of the settlor. It is seen from Ex.B13 that one of the settlor died on 20.1.2005. Therefore, in the year 1984, the Christian Missionary had no right to permit the plaintiff to enjoy the property when the title of Christian Missionary under Ex.A2 is not at all proved. Ex.A13 sale deed executed by the Christian Missionary which came into existence subsequent to the filing of the suit and it will not confer any title to the plaintiff when title of Christian Missionary itself is not proved. Further having pleaded adverse possession, the plaintiff must establish the same by letting cogent evidence. It is not open to the plaintiff to turn around and try to claim title by producing any document. It would amount to leading evidence without plea. Therefore both the Courts below are justified in coming to the conclusion that the plaintiff failed to prove his title or precriptive title by leading any acceptable evidence. The said factual conclusion arrived at by the Courts below, is based on



proper appreciation of oral and documentary evidence. I do not find any substantial question of law for consideration in this Second Appeal and thus the Second Appeal fails.

10.Hence, the Second Appeal stands dismissed. No costs.

24.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

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To

- 1.The Subordinate Judge,
Srivilliputhur.
- 2.The Principal District Munsif,
Srivilliputhur.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.668 OF 2008

24.07.2024