
(2007) 09 MAD CK 0213

Madras High Court

Case No: Second Appeal No. 889 of 2007 and M.P. No. 1 of 2007

Kothandan

APPELLANT

Vs

Subramania Mudhaliar

RESPONDENT

Date of Decision: Sept. 3, 2007

Acts Referred:

- Limitation Act, 1963 - Article 58

Hon'ble Judges: K. Mohan Ram, J

Bench: Single Bench

Advocate: T. Karunakaran, for the Appellant;

Final Decision: Dismissed

Judgement

K. Mohan Ram, J.

The unsuccessful Defendant in O.S.No.110 of 1994 on the file of the District Munsif Court, Poonamalle, who lost the first appeal in A.S.No.16 of 2006 on the file of the Subordinate Court, Poonamalle has filed the above second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The suit was filed by the plaintiff seeking the following reliefs:

- a. declaration of title to the schedule "A" Property and for consequential injunction;
- b. declaring that the plaintiff is entitled to the right of access and frontage for "A" schedule property and for recovery of possession of the property after removing the construction put up thereon ;
- c. for mense profits from 1.3.1994 ; and
- d. for declaration that the plaintiff is having a right over the "B" Schedule property and for Mandatory Injunction to remove the constructions put up in the "B schedule property by

the defendant ; and

e. for Permanent injunction restraining the defendant from encroaching into the southern portion of B schedule property.

4. The case of the plaintiff is as follows :

The plaintiff purchased the "A" schedule property under a Sale Deed dated 29.10.1990 from one Mrs. Alamelu Ammal; On the east of the schedule "A" property is high road; the defendant in the year 1991, disregarding the objections of the plaintiff, encroached the "A" schedule property on the northern side of the suit property and put up construction measuring about 10 feet East West x 40 feet North South; the portion encroached by the defendant is separately shown as "B" schedule property; the defendant has no right to prevent the plaintiff from reaching the highway from his property; a week prior to the filing of the suit, the plaintiff made arrangements for putting up construction on the northern portion of the suit property which was objected by the defendant; the defendant is claiming the suit property as Pooramboke; during the pendency of the suit on 1.3.1994, the defendant trespassed the suit property and put up a hut and hence, the plaintiff has filed the suit for the above said reliefs.

5. The suit was contested by the defendant inter alia as follows:

The alleged purchase made under the Sale Deed executed by Alamelu Ammal is denied; the extent of 0.52 cents in Survey No. 240 is a Gramanatham Promboke Land; in 1950 with the consent of one Manali Ramakrishna Mudaliar, the defendant's father encroached into the suit property, during his life time without any hindrance; the defendant is the only son of his father; he is in possession of an extent of 0.12 cents by putting up 3 shops and 2 houses and the property tax has been levied; the defendant is in possession of one shop and has let out the two shops and the two houses; he is paying the electricity charges; Alamelu Ammal has no title and hence, the plaintiff is not entitled to claim under the sale deed executed by Alamelu Ammal; the suit has not been properly valued and proper court fees has not been paid; the plaintiff is not in possession of the entire extent of 0.5 cents and the entire extent has been sold by the plaintiff to various persons; one of the purchasers from the plaintiff has filed a suit against the defendant in O.S.No.180/2000 and the same is pending; the plaintiff has filed the suit suppressing the same and the suit is barred by limitation. On the above said pleadings, the defendant sought for dismissal of the suit.

6. After framing appropriate issues, the suit was taken up for trial and during trial on the side of the plaintiff, plaintiff was examined as P.W.1 and Exhibits A1 to A4 were marked. On the side of the defendant, defendant has been examined as D.W.1 and EX.B.1 to B.41 were marked. The Commissioner's Report and the Plan were marked as Ex.C.1 and Ex.C.2. The Trial Court on a careful consideration of the oral and documentary evidence adduced in the case, dismissed the suit. Being aggrieved by that the appellant

filed an appeal in A.S.No.16 of 2006 on the file of the Subordinate Court, Poonamallee. The lower Appellate Court on an independent consideration of the evidence on record and the reasoning of the trial court, reversed the judgment and decree of the Trial Court and partly allowed the appeal. Declaration of title to "A" schedule property and a decree for consequential injunction in respect of "A" schedule property is granted and has also granted a decree for recovery of possession in respect of the "A" schedule property and directed the defendant to hand over possession of "A" schedule property after removing the superstructure, but dismissed the suit in respect of the "B" schedule property. Being aggrieved by that the appellant is before this Court in the above second appeal.

7. Heard Mr. T. Karunakaran, learned Counsel for the appellant.

8. In the memorandum of grounds of second appeal, the following questions of law have been framed as substantial questions of law:

1. Whether the suit for declaration filed after 3 years from the date of complaining of unlawful possession is valid?

2. Is not the suit for declaration hit by Article 58 of the Limitation Act?

3. Is not the suit is bad in law when the respondent/plaintiff has not given the true cause of action? And

4. Is not the decree and judgment of the learned appellate court is liable to be set aside as the respondent/plaintiff is not able to establish proper and specific cause of action, as the suit is in respect of immovable property?

9. The learned Counsel appearing for the appellant submitted that the Trial Court after considering the admission of P.W.1 and holding that the plaintiff has not approached the Court with clean hands has dismissed the suit. The Trial Court on a consideration of an oral evidence and Ex.B.1 to Ex.B.41 has held that the defendant's father was in possession of the suit property right from 1950 and after his death, the defendant is in possession of the suit property and hence, the defendant has perfected his title by adverse possession. But the Lower Court has not properly considered Ex.B.1 to Ex.B.41 and the oral evidence on record. The learned Counsel appearing for the appellant submitted that though the plaintiff purchased the suit property under Ex.A.1 Sale Deed dated 29.10.1990, the suit has not been filed three years thereafter. But, has been filed only in the year 1994 and the suit is barred by limitation. Except this submission, no other submission has been put forth by him.

10. I have carefully considered the submissions made by the learned Counsel for the appellant, the materials referred to above and the grounds of appeal.

11. The Trial Court has pointed out that a perusal of Ex.A.1 shows that the plaintiff has purchased 0.52 cents. But, in the plaint, the total extent is shown as 0.57 cents and the

plaintiff has not established as to how the plaintiff is entitled to the excess extent of 0.5 cents. The Trial Court without fully considering the evidence of P.W.1 and by relying upon the part of the evidence has observed that the plaintiff has sold the property even before filing of the suit and as such has not approached the Court with clean hands.

12. A perusal of the evidence of P.W.1 shows that out of 52 cents, she has sold 6 cents to one person, 16 cents to another person and 11 cents to another person and an extent of 16 cents to third party and thus, it is clear that out of the total extent of 52 cents, 49 cents have been sold by the plaintiff. But, P.W.1 has not admitted that the entire extent of 52 cents has been disposed of. Therefore, the Trial Court is not correct in observing that the plaintiff has not approached the Court with clean hands. The Trial Court by simply observing that the oral evidence adduced by the plaintiff and the defendant and Ex.B.1 to Ex.B.41 proved that the defendant's father was in possession of the suit property right from 1950 and he was in possession of an extent of 0.12 cents in Survey No. 240 in 1950 and thereafter, the defendant is in possession of the same and as such, he has prescribed his title by adverse possession. By holding so, the Trial Court has dismissed the suit.

13. It is highly unfortunate that the Trial Court has failed to see that Ex.B.1 to Ex.B.41 have come into existence only after 1986 and not a single document prior to 1986 has been produced by the defendant to show that prior to 1986, either the defendant's father or the defendant was in possession of the suit property. Admittedly, the suit has been filed in the year 1984. So, the suit has been filed within 12 years from 1986. Without keeping in mind the legal principles applicable to the question of adverse possession, the Trial Court in one sentence has held that the defendant has prescribed his title by adverse possession. The lower Appellate Court has independently considered the evidence on record and has pointed out that the plaintiff has purchased the suit property under Ex.A.1 from one Alamelu Ammal, who got the property under Ex.A.4 Settlement Deed dated 9.3.1960 which was executed by one Ramakrishna Mudaliar. Pursuant to the purchase, the plaintiff has obtained Ex.P.2 Patta on 8.1.1991. Ex.A.3 shows that the plaintiff has patta for the suit property. The Lower Appellate Court has rightly held that the defendant's claim that after the death of his father, the defendant is in possession of the suit property is not proved and no document has been produced to show possession of the defendant. The Lower Appellate Court has found that since the defendant is claiming title by adverse possession, basing reliance on the documents which have come into existence after 1986, it cannot be accepted. The said reasoning cannot be said to be erroneous or opposed to the well settled principles of law. Since the suit has been filed even in the year 1984, the suit is not barred by limitation as contended by the defendant. Hence, I find no infirmity in the findings of the Lower Appellate Court. It has to be pointed out that the questions of law framed by the Appellant in the grounds of appeal as Substantial questions of law cannot be considered to be substantial question of law. The above submissions made by the learned Counsel appearing for the appellant are not based upon any substantial question of law. Hence, this Court finds no reason to interfere

with the judgment passed by the Lower Appellate Court.

14. In such view of the matter, this Court is of the considered view that no question of law much less any substantial question of law arises for consideration in the above second appeal. Hence, the above second appeal fails and the same is dismissed. Consequently, the connected M.P. is closed. No costs.