

indrani and Another Vs. A.P. Madhan and Another

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Court : Chennai

Decided On : Nov-30-2012

Reported in : 2012(3)MWN(Civil)885; 2013(2)MLJ380

Judge : The Honourable Mrs. Justice S. Vimala

Appeal No. : S.A.No.1918 of 2004

Appellant : indrani and Another

Respondent : A.P. Madhan and Another

Advocate for Pet/Ap. : For the Petitioners: T. Dhanasekaran, Advocate. For the Respondents: R1, R. Rajaramani for V.R. Anna Gandhi, Advocates.

Judgement :

(Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 20.1.2004 made in A.S.No.27 of 2003 on the file of the Court of the Subordinate Judge, Dharamapuri, confirming the judgment and decree dated 11.3.2003 made in O.S.No.162 of 2001 on the file of the Court of the District Munsif of Dharmapuri.)

The defendants are the appellants. The plaintiffs filed the suit in O.S.No.162 of 2001 seeking the relief of declaration, possession and damages. The plaintiffs claimed title by inheritance from his father. The suit was decreed, granting the relief of declaration and recovery of possession and the relief of damage was

declined. The defendants' appeal was also dismissed and thereby the judgement of the trial court came to be confirmed. During the first appeal, the defendants filed petition under Order 41 Rule 27, producing the sale agreement dated 25.7.1987. This petition was heard along with the appeal and the petition was dismissed.

2. Challenging the judgement and decree of the first appellate court, the second appeal has been filed . The second appeal has been admitted on the following substantial questions of law:

"(i) Whether the reasoning of the Appellate Judge for dismissing the application for reception of additional document is legal and sustainable?

(ii) Whether the Courts below is legally right in upholding the claim for title by the plaintiffs without any document is legal and sustainable?

(iii) Whether the courts below right is in decreeing the suit when once the defendants were able to prove the basis on which they are in possession?"

3. Brief facts:

The suit property originally belonged to the first plaintiff's father Perumal. After the death first plaintiff's father on 13.3.1997, the first plaintiff inherited the property and he was in possession and enjoyment of the same. With an idea to raise funds for the purpose of education of the second plaintiff, the first plaintiff decided to let out the property and towards that end, he shifted his residence. The defendants wanted to purchase the property and aggrieved over the refusal to sell the house to the defendants, they trespassed into the suit property and that is how, they are in possession. The first defendant preferred a false case in C.C.No.10 of 2000, which was dismissed. For having caused mental agony, the plaintiffs claimed a sum of Rs.5,000/- and for having cut and carried away the trees a sum of Rs.1,000/-, as against the defendants.

4. The claim of the plaintiffs was resisted by the defendants on the following contentions:-

(i) The defendants are not in illegal possession of the property, but in legal possession. The defendants got the suit property from one Narayanan and they are in possession for the past 20 years. Hence they have prescribed title by adverse possession.

(ii) The claim for compensation and damages are untenable.

5. The trial court decreed the suit on the following findings:-

(1) The title to the suit property with the plaintiffs itself is an admitted fact through the evidence of DW.1.

(2) Defendants have not established the basis on which they claim title and possession over the suit property.

(3) The plaintiffs did not file the copy of the complaint or any other document proving the ownership of the trees. On these findings, the claim for title and possession was decreed, while the relief of damages being declined.

6. The first appellate court gave a finding that there are no grounds to interfere with the findings and judgement of the trial court. While dismissing the appeal, the petition filed under Order 41 Rule 27 (C.M.P.No.1158 of 2003) was also dismissed. The reasoning given for dismissal of the petition under Order 41 Rule 27 is also under challenge.

7. The case of the plaintiffs is that the first plaintiff is the owner of the property having inherited the same from his father. The plaintiffs claim possession on the contention that the defendants are in illegal possession as trespassers. The contention of the defendants in the written statement is that they obtained possession from one Narayanan and that they have prescribed title by adverse possession. But the trial has proceeded on the basis of a case which was not put forth in the written statement. In the trial, the case of the defendants is that the first defendant's father executed an agreement to sell the suit property dated 25.7.87 in favour of one Narayanan and Narayanan delivered possession to the defendants and therefore, their possession is legal.

8. The alleged sale agreement, dated 25.7.87, had been sought to be received in additional evidence before the first appellate court. It was the contention of the defendants that the document was sought to be produced before the trial court and the trial court refused to receive it. The first appellate court declined to accept the petition giving the following reasons:-

(i) There is no evidence to show that the document was produced before the trial court and that the trial court refused to receive the same.

(ii) The document is only an agreement to sell the property, which itself cannot confer title.

(iii) A glance of the document would show that the papers are new, but, it is made to appear as if it is an old document by appearance.

(iv) The writings/endorsements with reference to payment of money, though written in different inks, ought to have been written only by the same person, thereby giving rise a suspicion that it should have been concocted for the purpose of the case.

(v) The thumb impressions in various pages of the papers are different.

8.1. The learned counsel for the defendants contended that the first appellate court ought not to have rejected the petition filed under Order 41 Rule 27 C.P.C., as it is essential for the just decision of the case. It is further contended that the first appellate court is not expected to go into the merits regarding genuineness/interpretation of the document and it should have accepted it.

8.2. The learned counsel for the appellants contended that the first appellate court is right in having considered the genuineness of the document, and the approach of the trial court is right, having regard to the nature of defence taken in the written statement. As the document was not produced at the earliest point of time before the trial court, which ought to have been produced especially when the defence taken is that no such document was executed. When the document is produced after the trial court's judgment, naturally, doubt would arise as to the genuineness of the document, especially when the reason for producing it at the later stage is

found to be false.

9. This court has an additional reason to support the findings of the first appellate court. The plea with regard to sale agreement, dated 25.7.87, has not been raised in the written statement. The evidence adduced without pleadings cannot be looked into. There is no evidence to show that based upon the alleged agreement to sell, the suit for specific performance has been filed. Therefore, mere agreement to sell, without fructifying it by getting a decree for specific performance, the agreement alone cannot confer title to the suit property. There is no possibility of getting the title in future, as no steps have been taken to enforce the sale agreement. Therefore, the finding of the trial court that the filing of the sale agreement is not going to improve the case of the defendants is correct. Therefore, the dismissal of the petition under Order 41 Rule 27 is justified.

10. It is the contention of the learned counsel for the appellant that the plaintiffs have not proved the title of the suit property and therefore, neither declaration nor recovery of possession can be granted. Relying upon the decision reported in 1999 (III) CTC 304 (Kammavar Sangam through its Secretary R.Krishnasamy v. Mani Janagarajan) and 2000 (IV) CTC 725 (Arulmigu Mariamman Koil, Pattudaiyaviruppu, Aikudi v. David Mariadoss), in support of their contention that patta will not prove title, the learned counsel pray for dismissal of the suit. No doubt, patta may not be a document of title, when the first plaintiff claims that he inherited the property from his father. By the method of title derived, one may have document of title or may not have document of title. The non-existence or non-possession of title deed (having regard to the nature of the property or mode of acquiring title), alone cannot be the criteria to non-suit the plaintiffs and to deprive the plaintiffs of their legitimate right to the property. In those cases, the comparative merits of title between the plaintiff and the defendant along with the holistic circumstances available to support the title of the plaintiff should be considered. The contention of the defendants to non-suit the plaintiffs cannot be accepted because of the following reasons:-

(i) The object of pleadings has impregnated itself with the concept of fairness. The defendants have taken the plaintiffs by surprise by letting in evidence with regard

to the alleged sale agreement without there being any pleadings. The case of the defendants in the trial is that one Narayanan got an agreement to purchase the property from the first plaintiff's father and from Narayanan, the defendants got possession. Moreover, the defence are mutually contradictory which is destructive of each other. When the defendants claim through Narayanan, who is said to have obtained sale agreement from the plaintiffs, it amounts to admission of title of the plaintiffs. In the evidence, D.W.1 has admitted that the suit property belongs to the plaintiff.

(ii) When the defendants claim that they have prescribed title by adverse possession, they claim hostile possession as against the plaintiffs and ultimately claim title which amounts to denial of title of the plaintiffs. The defendants cannot play hide-and-seek by not raising the plea in the written statement and raising contradictory plea during the course of evidence.

10.1. Therefore, it is clear that the defendants, having admitted the title of the first plaintiff, is estopped from contending that the plaintiffs have not proved the title. Admitted facts need not be proved. Admission is always the best piece of evidence. The admission made by D.W.1, which is adverse to him, cannot be false because no person will make any statement adverse to his interest. An admission, adverse to a party to the proceeding is admissible in evidence against that party for the purpose of proving any fact stated in the admission. The justification for the rule is that there is likelihood of truth in a statement adverse to the interest of the maker, which is not the case with statement made in his own favour. Therefore, it is not open to the defendants to contend that the plaintiffs have not proved the title.

10.2. The basis of their claim for possession by the defendants is not stated in the written statement. The mere statement is that they got possession from one Narayanan. How Narayanan got title is not stated. The basis on which the defendants got possession from Narayanan is also not stated. Only in the evidence, it is stated that Narayanan was in possession by virtue of an agreement to sell from the first plaintiff and from Narayanan the defendants got possession. Possession in pursuance of an agreement to sell is a protected possession, but,

person in possession must have shown that step was taken to perfect their possession by fulfilling the terms of the contract. In the decision reported in AIR 2002 SUPREME COURT 960 (Shrimant Shamrao Suryavanshi and another v. Pralhad Bhairoba Suryavanshi (dead) by Lrs. And others), it has been held that, when a defendant transferee obtained possession in pursuance of part performance of the contract, his possession over the property is protected even if the period of limitation for bringing suit for specific performance of an agreement to sell has expired, but the defendant transferee, however, is required to fulfill necessary conditions in order to defend or protect his possession. In this case, the defendants have neither proved that they are in possession by virtue of the sale agreement nor it is proved that otherwise their possession is legal. The case of the defendants remain in suspended animation for want of pleadings and proof. Therefore, the possession by the defendants is not legal. Therefore, they are liable to surrender possession to the plaintiffs. The grant of relief by the courts below in favour of the plaintiffs is perfectly justified and it does not require interference.

11. In the result, the second appeal is dismissed, confirming the concurrent decree and judgement of the Courts below, decreeing the relief of declaration, possession and declining the relief of damages. No costs.

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