



S.A(MD)No.1217 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 22.08.2023

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A(MD)No.1217 of 2008

C.Selvam @ Selvaraj (died)

2.S.Annakodi

3.M.Nithia

4.S.Sobiya

5.S.Ramya

(Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide Court order dated 24.07.2023 made in CMP(MD)No.8871, 8873 & 8874 of 2023)

... Appellants

-VS-

1.S.Chokkalingam

2.P.Santhi

3.A.Manickam

(R2 and R3 are impleaded as party respondents vide Court order dated 24.09.2019 made in CMP No.2050 of 2019)

(cause title amended vide order dated 23.04.2012 made in MP(MD)No.1 of 2012)

... Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree dated 07.12.2007 made in A.S.No.36 of 2007 on the file of the Sub Judge, Devakottai confirming the Judgment and Decree dated 27.03.2006 made in O.S.No.25 of 2005 on the file of the District Munsif Court, Devakottai.



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For Appellants ... Mr.V.Janakiramulu
For Respondents ... No appearance for R3

JUDGMENT

The first respondent, as the plaintiff, has filed the suit in O.S.No. 25 of 2005 on the file of the District Munsif, Devakottai, seeking the relief of recovery of possession of the suit property. After trial, the said suit was decreed. Challenging the said Judgment and Decree, the deceased appellant/defendant filed the appeal in A.S.No.36 of 2007 on the file of the Sub Court, Devakottai. After hearing, the first appellate Court dismissed the appeal suit and confirmed the Judgment and Decree passed by the trial Court. Aggrieved over the same, the deceased appellant/defendant filed the present second appeal before this Court raising the following substantial question of law:

“Whether the learned Subordinate Judge is correct for not relying on the fact agreed by both the plaintiff and defendant that the appellant/defendant is under continuous possession for more than the prescriptive period?”



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2. The case of the first respondent/plaintiff is that the suit property

is Plot No.14 in Block No.2 in Survey field No.180 situated at Theralapur village. The Government has assigned the suit property to the respondent/plaintiff on 03.01.1990 and he resided there. The first respondent/plaintiff has paid house taxes for the suit property. The deceased appellant/defendant is the son of the first respondent/plaintiff. The deceased appellant/defendant was residing separately along with his wife. Since the deceased appellant/defendant had no residential house in the year 1995, the first respondent/plaintiff permitted the deceased appellant/defendant to reside in the suit property on the condition that he should vacate the suit property whenever demand was made by the first respondent/plaintiff. The deceased appellant/defendant on the inducement of his wife and relatives, acted to grab the suit property and the deceased appellant/defendant gave a false complaint against the first respondent/plaintiff and his wife. The first respondent/plaintiff and his wife were acquitted in a case registered against them. Since the first respondent/plaintiff wanted to reside in the suit property with his wife and he has no other property, he cancelled the permission granted to the deceased appellant/defendant through a legal notice, dated 04.11.2004 and to hand over the possession. Though the deceased



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appellant/defendant received the notice, failed to hand over the possession. Hence, the first respondent/plaintiff has filed the suit.

3. The case of the appellant/defendant is that the deceased appellant/defendant is the son of the first respondent/plaintiff born through his first wife. The mother of the deceased appellant/defendant passed away when he was in child. The first respondent/plaintiff and the deceased appellant/defendant were jointly residing in the suit property. Apart from that, there were some ancestral properties. The deceased appellant/defendant was residing in the ancestral house situated at Theralapur Kuravapachari and the first respondent/plaintiff after his second marriage, was residing in Vellayan Oorani Melakarai at Devakottai. While so, a plot was allotted to the first respondent/plaintiff at Theralapur Village. The deceased appellant/defendant applied for grant of assignment patta, but, the suit property was assigned to the first respondent/plaintiff, since the first respondent/plaintiff is the elder member of the family. The first respondent/plaintiff stated that the ancestral house was required for him and hence, he requested the appellant/defendant to construct a house in the suit property and to reside there. The deceased appellant/defendant gave the ancestral property to



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the first respondent/plaintiff and the deceased appellant/defendant made further construction in the house already constructed in the suit property.

The deceased appellant/defendant has been residing in the suit property from 1992. Further, he gave Rs.50,000/-, which is self-acquired money, to the first respondent/plaintiff to improve his timber business. The first respondent/plaintiff improved his business by the money given by the deceased appellant/defendant. Out of such income, the first respondent/plaintiff has constructed a pucca terraced house. Besides, he let so many houses for rent in the name of his wife. While so, the first respondent/plaintiff alienated the properties in the back side of the deceased appellant/defendant on the inducement of his second wife and relatives. When the deceased appellant/defendant enquired into this matter, the first respondent/plaintiff and his second wife and her relatives demolished the deceased appellant/defendant's construction. Hence, a criminal case has been registered against the first respondent/plaintiff and his second wife. The deceased appellant/defendant prepared to file a suit for partition against the first respondent/defendant and the deceased appellant/defendant has been residing in the suit property over the statutory period.



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4. The trial Court, considering the pleadings, framed the issues.

During trial, on the side of the first respondent/plaintiff, he examined himself as P.W.1 and 10 documents were marked as Exs.A1 to A10. On the side of the deceased appellant/defendant, two witnesses were examined including himself as D.W.1 and D.W.2 and 10 documents were marked as Exs.B1 to B10.

5. Considering the above pleadings, oral and documentary evidence, the trial Court decreed the suit. Therefore, the deceased appellant/defendant filed the appeal before the first appellate Court. However, the first appellate Court dismissed appeal. Hence, the deceased appellant/defendant has come before this Court.

6. This second appeal is pending from the year 2008 under the caption for ' Notice of Motion'. For the past 15 years, this second appeal has not been admitted and no substantial question of law has been framed. During the life time of the first respondent/plaintiff, he sold the suit property to the respondents 2 and 3 separately. Hence, they were impleaded as respondents 2 and 3.



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7. The learned counsel for the deceased appellant/defendant would submit that the deceased appellant/defendant is in continuous possession of the suit property more than 12 years and hence, the first respondent/plaintiff is not entitled for the relief of recovery of possession. He would further submit that the since the deceased appellant/defendant has been enjoying the suit schedule property for more than 12 years, he has perfected title by adverse possession. The trial Court without considering the pleadings of the deceased appellant/defendant with regard to the adverse possession, decreed the suit. Hence, he prays for allowing this second appeal by setting aside the Judgment and Decree of the trial Court as well as the first appellate Court.

8. Heard the learned counsel for the deceased appellant/defendant. There is no representation on behalf of the third respondent.

9. On a careful reading of the Judgment of the trial Court, it is seen that the trial Court has rightly observed that the assignment patta (Ex.A1) has been issued in favour of the first respondent/plaintiff. The deceased appellant/defendant has also admitted that the suit property was assigned



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only in the name of the first respondent/plaintiff. Further, the house tax receipts (Exs.A2 to A8) produced by the first respondent/plaintiff revealed that assignment for the house located in the suit property stands in the name of the first respondent/plaintiff and he paid house tax for the suit property. Though the deceased appellant/defendant has produced three house tax receipts, the same also stands in the name of the first respondent/plaintiff for the suit property. Further, the trial Court has rightly observed that in pursuance of Ex.A1 assessment order, the assessment has stood in the name of the first respondent/plaintiff for the suit property. When the suit property is really assigned to the first respondent/plaintiff only on application of the deceased appellant/defendant, the deceased appellant/defendant should have obtained an assignment patta in his favour and he ought to have taken steps to transfer the assessment in his favour. However, the deceased appellant/defendant has not taken any steps to change the assignment in his favour. Further, the service connection bearing No.33 for the suit property also stands in the name of the first respondent/plaintiff. The trial Court has rightly found that deceased appellant/defendant has been residing in the suit property only with the permission of the first respondent/plaintiff. The deceased appellant/defendant has not produced



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any documentary evidence for enjoyment for a continuous period of 12 years to claim adverse possession over the suit property. The trial Court had rightly found that the suit schedule property is the self-acquired property of the first respondent/plaintiff. In order to prove the same, the first respondent/plaintiff has produced Ex.A1 assignment order and assessment, service connection stands in the name of the first respondent/plaintiff. Hence, considering the entire materials, the trial Court has rightly decreed the suit. The first appellate Court also has rightly dismissed the appeal. Therefore, under these circumstances, this Court finds that the deceased appellant/defendant has not established his case in this second appeal. Therefore, this Court does not find any perversity in appreciating and re-appreciating the evidence by both the Courts below and no question of law much less a substantial question of law is involved in this second appeal.

10. In the result, this Second Appeal fails and the same is **dismissed**. No costs.

22.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To:

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- 1.The Sub Judge, Devakottai.
- 2.The District Munsif, Devakottai.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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KRISHNAN RAMASAMY, J.

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