



S.A(MD)No.117 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No. 117 of 2017

and

C.M.P(MD)No. 2010 of 2017

1. M.Maniyammal (Died)
2. M. Sekar
3. Kannan
4. Athimoorthi ... Appellants

[Appellants 2 to 4 are brought on record as Legal representatives of the deceased sole appellant, vide Order of this Court, dated 17.04.2023]

Vs.

1. A.L.Pattammal
2. A.L.Muthukaruppan
3. Rajammal
4. Subramanian
5. Arumugam
6. Veerasekar
7. Ganapathi ... Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Decree and Judgment, dated 07.11.2014 made in A.S.No.36 of 2012 on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated 31.10.2011 made in O.S.No.72 of 1999 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur.

For Appellants : Mr.H.Lakshmi Shankar, for
G.Mohankumar

For Respondents : Mr.S.Madhavan

JUDGMENT

This Second Appeal is filed against the Decree and Judgment, dated 07.11.2014 passed in A.S.No.36 of 2012 on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated 31.10.2011 passed in O.S.No.72 of 1999 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur.

2. The sole Defendant is the Appellant herein and the Plaintiffs are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiffs and Defendants. Since the sole defendant died her



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Legal representatives were added as 2 to 4 Appellants and the plaintiffs 2 to 8 are the Respondents herein.

3. The plaintiffs have filed suit in O.S.No.72 of 1999 for Declaration and Injunction. The 1st plaintiff is the Trust and according to the plaintiffs the Trust has purchased in the year 28.03.1961 in favour of the 1st plaintiff's Trust. Thereafter, the Trust was paying House Tax to the Local Body and has produced House Tax receipts and the same were marked as Ex.A.2 to A.29, A.31 to A.35.

4. The contention of the plaintiffs is that the sole defendant was allowed to occupy the said property and granted permissive possession in order to maintain the suit property. But during Village Natham Survey, the defendant has claimed Patta based on the occupation of the said building and the Patta was granted to the defendant on 07.04.1994. After getting Patta, the defendant was paying Land Tax, House Tax in the name of the defendant. The defendant also claims possession based on the Electricity connection which was granted in the name of the defendant. The trial Court after considering the evidence submitted by both the parties had come to the conclusion that the defendant was granted



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only permissive possession by the plaintiffs and all the documents submitted by the defendant are subsequent to grant of Patta and the defendant has not produced any documents prior to the grant of Patta, so as to prove the defendant is the owner of the property. On the other hand, the plaintiff has submitted a sale deed which the 1st plaintiff Trust has purchased in their name. Aggrieved over the Judgement and Decree granted by the trial Court the defendant has preferred an appeal before the Appellate Court. The Appellate Court has confirmed the Judgment and Decree. Aggrieved over the same, the defendant has preferred this Second Appeal.

5. Heard Mr.H.Lakshmi Shankar, for G.Mohankumar, the Learned Counsel appearing for the Appellants, Mr.S.Madhavan, the Learned Counsel appearing for the Respondents and perused the material documents available on record.

6. The first substantial question of law raised by the sole defendants / Appellants is that the plaintiffs have not obtained Leave of the Court under Section 92 of Civil Procedure Code and hence the suit is not maintainable. Under



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Section 92 of Civil Procedure Code the leave of the court is necessary if the suit is filed for the reliefs stated thereunder. The provision is extracted hereunder:

“92. Public charities.—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the 4[leave of the Court,] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree :—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- 5[(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property];
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;



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- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

The Section 92 states if there are issues like removing of trustees or appointing of new trustees or other subject matters listed from (a) to (h) in the provisions are raised, then leave of the Court is necessary. In the present suit, the suit is filed for is declaration and recovery of possession from the person who are illegally occupying the property belonging to the Trust. The said issue will not fall under any of the subject matters listed under (a) to (h). Simply, because the defendant is questioning the formation of the Trust itself, without substantiating through any evidence, it cannot be stated that the defendant had raised any plea attracting the provisions of section 92. Further the defendant had just like thrown allegation regarding the constitution of the Trust and the Trustees, it cannot be stated that the issue of administration was raised in the suit. Therefore, this Court is of the considered opinion that the Leave of the Court is not necessary since section 92 of Civil Procedure Code is not attracted and hence the suit is maintainable. The 1st substantial question of law is held against the defendant.



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7. The next substantial question of law is that the Lower Court has decreed the suit for recovery of possession, but has rendered the finding that the defendant is in possession over a statutory period. The Court below has rendered a finding that the defendant is in occupation of the property over the statutory period, but the Court further held the defendant was granted permissive possession by the Trust to occupy the property from the date of purchase of the suit property. The defendant was in occupation of the suit property under permissive possession from the year 1967 to 1994. When the defendant submitted application and was taking steps to obtain Patta in her name in the year 1994, the plaintiffs had resisted the same before the Tahsildar as well as in the Revenue Divisional Officer Court. When the sale deed is in the name of the plaintiffs Trust and when the defendant was permitted to occupy the said suit property, the defendant cannot usurp the property by obtaining Patta. Therefore, mere possession over statutory period will not give a right to the defendant to claim right over the property.

8. Further when the defendant had denied the title of the plaintiffs Trust, then the defendant cannot claim adverse possession as well. The statutory



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period will come into effect when the defendant with the knowledge of the plaintiffs Trust had occupied the property, but there should not be any denial of the title of the plaintiffs Trust. When the defendant has denied the title of the plaintiffs, the adverse possession cannot be entertained. Hence, the substantial question of law No.2 is held against the plaintiffs.

9. The next substantial question of law raised by the defendant is whether the Court below is right in shifting the burden on the defendant when the plaintiffs have not established their title over the suit property. In the present case, the plaintiffs Trust are claiming title through a sale deed executed in the year 1961 marked as Ex.A.1. Therefore, the plaintiff had proved they have title over the suit property. The defendant is claiming right over the suit property as owner of the property through patta granted to her and in such circumstances the burden is on the defendant to prove that the defendant is having better title over the suit property than the plaintiffs. When the plaintiffs had proved their title, then the burden is shifted to the defendant to prove the right over the property. Further when the plaintiffs submitted that they have given permission to occupy the said place, then the burden is more on the defendant to prove the title. When the



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defendant has failed to prove then the claim of the defendant fails. When the plaintiffs have proved their title through Ex.A1 sale deed, the defendant terribly failed to prove the title through legally sustainable documentary evidence, then the defendant case fails. Moreover, when the defendant has specifically stated that the defendant is not denying the title of the plaintiffs in the cross examination, then the Trust is having title over the property. Therefore, the Trial Court as well as the Appellate Court right has comes to the correct conclusion that the plaintiff's Trust is the owner of the property i.e., the defendant is only a permissive occupant then the defendant is not having any title over the property and he is liable to vacate from the said place. Hence the next substantial question of law is also answered against the defendant / appellant.

10. In view of the foregoing reasons, this Second Appeal fails and the same is liable to be dismissed.

11. Accordingly the Second Appeal stands dismissed. This Court is confirming the Decree and Judgment, dated 07.11.2014 in A.S.No.36 of 2012 on the file of the Sub Court, Sivagangai, confirming the Judgment and Decree, dated



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31.10.2011 in O.S.No.72 of 1999 on the file of the District Munsif cum Judicial Magistrate Court, Tiruppathur. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Sub Court,
Sivagangai.
2. The District Munsif cum Judicial Magistrate Court,
Tiruppathur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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KSA

**Judgment made in
S.A(MD)No. 117 of 2017**

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