



S.A.No.688 of 2000

BEFORE THE MADUARAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A.No.688 of 2000
and
C.M.P.No.7438 of 2000

1. Malai Thevar (Died)

2. Muthammal

3. Sudalaikannu

... Appellants

Vs.

1. Paul Mookiah Kanakasabapathy @ M.S.Paul

2. Vasanthakokilam Chellam @ Vasantha Samuel (Died)

3. S.J.Samuel Pandian

4. S. Steephen Sundararajan

5. S.James Thangaraj

6. S.Thomas Kanagaraj

7. S.Mary Lilly Rani

[R1 represented by his power agent
S.J.Samuel Pandian,



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S/o, Stephen Jothi, Doss,
Jal Naicken Street, Alanthur, Madras – 16]

[Respondents 3 to 7 are brought on record
as Lrs of he deceased second respondent
vide Court order dated 08.06.2023 made
in C.M.P.(MD)Nos.7480 and 7481 of 2017
in S.A.No.688 of 2000]

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.69/98 dated 11.10.1999 on the file of the Ist Additional District Court, Tirunelveli as confirmed the judgment and decree passed in O.S.No.589/96 dated 20.04.1998 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellants : Mr.D.Nallathambi

For Respondents :Mr.T.Selvam
for Mr.S.Suresh Manickam

J U D G E M E N T

This second appeal has been filed against the judgment and decree passed in A.S.No.69/98 dated 11.10.1999 on the file of the Ist Additional District Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.589/96 dated 20.04.1998 on the file of the Principal District Munsif Court, Tirunelveli.

2. The parties are referred to as per the rankings in the trial



3. The Suit was filed for declaration and mandatory injunction and to remove the superstructure and handover the vacant possession.

4. The respondents 1 and 2 herein are the plaintiffs in O.S.No. 589 of 1996 on the file of the Principal District Munsif Court, Tirunelveli and the said suit was decreed. As against the same, appellants herein/defendants preferred appeal suit in A.S.No.69/98 on the file of the First Additional District Court, Tirunelveli against the respondents/plaintiffs. The first appellate Court after hearing the case, re-appreciated the oral and documentary evidence and dismissed the appeal filed by the appellants/defendants, by confirming the judgment and decree passed by the trial Court. Challenging the same, the appellants/defendants have filed the present second appeal.

5. The case of the respondents/ plaintiffs in brief is that the suit property originally belonged to one Mookiah Thevar. He had two sons, namely M.S.Sundarapandian @ M.Shanmugasundaram and



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Arunachalathevar. After the death of Mookiah Thevar, his two sons, were enjoying the property. Thereafter on 25.09.1959, Arunachalathevar had executed a release deed by relinquishing his shares in favour of his brother N.Shanmugasundasram. Thereafter, he enjoyed the property till his life time and thereafter, plaintiffs/respondents herein who are the only legal heirs of him, were enjoying the property. The first plaintiff/first respondent herein is the brother and second plaintiff /second respondent herein is the sister. Both were residing in Chennai and frequently they have visited the property. Since the plaintiffs and their predecessors were enjoying the suit property for more than 50 years, they are entitled for adverse possession in the suit property. The second and third appellants/second and third defendants are the children of the first appellant/first defendant. During the last week of December 1994, the appellants/defendants tried to disturb the possession of the respondents/plaintiffs in the suit property. Hence, the respondents/plaintiffs issued notice to the appellants/defendants on 27.01.1995. Though the appellants/defendants received the notice, they did not send any reply to the same. Despite the notice, the appellants/defendants started construction in the suit property and they



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are not entitled to do the same. Hence, the respondents/plaintiffs filed the suit for declaration of their title to the suit property and mandatory injunction and to remove the superstructure and handover the vacant possession

6. The case of the appellants/defendants in brief is that the respondents/plaintiffs have not stated as to how Mookiah Thevar got the suit property and the said Mookiah Thevar never enjoyed the suit property as stated by the respondents/plaintiffs. The respondents/plaintiffs have not proved that after the life time of Mookiah Thevar, how his sons had been enjoying the suit properties till 25.09.1959. The alleged release deed was executed by Arunachala Thevar in favour of Shanmugathevar. The legal heirs of Shanmugasundaram, the respondents/plaintiffs have been residing for very long time outside the place where the suit property is situated. The respondents/plaintiffs have not stated that prior to 1959, how they were entitled to the suit property. The appellants/defendants never disturbing the possession of the respondents/plaintiffs, since the appellants/defendants themselves were in possession of the suit property



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and hence, there is no need to disturb the respondents/plaintiffs and to construct the building. The respondents/plaintiffs are not entitled to the suit property.

7. Further, the suit property originally belonged to one Puravelantha Pillai who executed a registered “Othi” deed on 01.06.1915 in favour of Thadiveera Thevar who is great grand father of the first defendant Pandara Thevar, the Junior paternal grandfather of Sudalaimuthu Thevar @ Muthiah Thevar who was the son of Thadiveera Thevar. Till date “Othi” has not been redeemed. From the date of othi, Pandara Thevar was in possession and enjoyment of the same and in the partition, the property covered under the “Othi” deed was allotted to the share of the grandfather of the appellants/defendants ie., Sudalaimuthu Thevar @ Muthiah Thevar. After that, the othi property was enjoyed by Pandara Thevar and Sudalaimuthu Thevar and they were enjoying the same by executing mortgage deed and sale deed. Thereafter, the owner Puravelnatha Pillai, Sudalaimuthu @ Muthiah Thevar S/o, Thadiverathevar, had been enjoying the same till his life time and after him, his son, the first appellant/first defendant has been in possession and



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enjoyment of the same by paying Kists etc., The appellants/defendants have also paid the Tamil Nadu Urban Land Tax. On 14.08.1985 he executed a registered settlement deed in favour of the second and third appellants/second and third defendants. The second appellant/second defendant, even prior to the suit, has constructed a building. The appellants/defendants have given suitable reply to the notice by the respondents/plaintiffs. The respondents/plaintiffs are not entitled to the relief sought for in the suit.

8. Based on the pleadings, the trial Court framed the following issues:

- 1. Whether the plaintiffs are entitled to the relief of declaration on the basis of the alleged title claimed by them?*
- 2. Whether the plaintiffs are entitled to the relief of recovery of possession?*
- 3. Whether the suit property belonged to Mookkiah Thevar?*
- 4. Whether the schedule of properties are not correct?*
- 5. Whether the defendants have prescribed title and adverse*



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possession by enjoying the property by themselves and predecessors-in-title for a period of over 50 years?

6. Whether the release deed executed by Arunachala Thevar to his brother Shanmugasundaram dated 25.09.1959, will be binding upon the defendants?

7. To What relief the plaintiffs are entitled to?

9. In order to prove the case of the plaintiffs, on the side of the respondents/plaintiffs, three witnesses were examined as P.Ws.1 to 3 and nine documents were marked as Exs.A1 to A9. On the side of the appellants/defendants, one witness was examined as D.W.1 and 14 documents were marked as Exs.B1 to B14.

10. Based on the pleadings and oral and documentary evidence, the trial Court decreed the suit. Challenging the judgment and decree of the trial Court, the appellants/defendants filed an appeal suit in A.S.No. 69/98 on the file of the First Additional District Court, Tirunelveli. On hearing, the first appellate Court has taken the appeal on file and raised the following points for consideration:

1. Whether I.A.No.18 of 1999 has to be allowed?



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2. *Whether the respondents are entitled to the relief of declaration and recovery of possession?*
3. *Whether the mortgage deed dated 01.06.1915 executed by Puravelnatha Pillai in favour of Thadiveerathevar and others have been redeemed?*
4. *Whether the appellants have prescribed title by adverse possession also?*
5. *Whether the appeal has to be allowed?*

11. Based on the oral and documentary evidence and considering the judgment and decree of the trial Court, the first appellate Court re-appreciated the evidence and dismissed the appeal filed by the appellants/defendants and confirmed the judgment and decree passed by the trial Court. Challenging the same, the appellants/defendants have filed the present Second Appeal. While admitting the Second Appeal on 28.04.2000, this Court formulated the following substantial questions of law:

- i. Whether the plaintiffs are entitled to recovery of possession*



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on the basis of Ex.A1 when the Oothi under Ex.B1 had not been redeemed?

ii. Whether the suit is barred by limitation?

iii. Whether the suit is barred by estoppel by conduct on the part of the plaintiffs?

iv. Whether the lower appellate Court is justified in rejecting IA 18/99?

12. Learned counsel for the appellants/defendants submitted that the suit property originally belonged to Puravelntha Pillai and he executed “Othi” deed on 01.06.1915 in favour of Thadiveerathevar being the great grandfather of the first defendant Pandara Thevar, the junior paternal grandfather of Sudalaimuthu Thevar @ Muthiah Thevar, who was the son of Thadiveerathevar. Till date, the said othi has not been redeemed. From the date of said “Othi”, the first appellant's predecessors and thereafter grandfather and father of the first appellant, were continuously enjoying the property. Thereafter, the first appellant/first defendant executed a settlement deed in favour of the second and third



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appellants. The property covered under the “Othi” deed was allotted to the share of the grandfather of the defendants. The first defendant executed a registered settlement deed in favour of the second and third defendants and they are in possession and enjoyment of the suit property and even in the year 1990, they constructed a building in the suit property. Hence they have prescribed title by adverse possession. Ex.A2 dated 26.07.1917 is the release deed executed by Arunachalam in favour of father of the respondents/plaintiffs. It will not bind the appellants/defendants, because the appellants/defendants' predecessors got the property under the registered “Othi” lease deed and the same was not redeemed and it was barred by limitation. After the period of limitation, the appellants/defendants' family was in continuous possession and enjoyment of the property by paying tax and the second appellant/second defendant constructed the building. Hence, they have prescribed title by adverse possession also. The respondents/plaintiffs have not whispered anything about Ex.A1.

13. Learned counsel for the respondents/plaintiffs submitted that the property originally belonged to one Mookiah Thevar of Kurichi.



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In the year 1917, grandfather of the respondents/plaintiffs, one Shanmugadevar purchased the property under Ex.A1 from one Puravelinatha Pillai vagaiyara. The said Mookiah Thevar enjoyed the property till his death. Thereafter, Shanmugasundaram and Arunachalathevar who are the legal heirs of Mookiah Thevar, enjoyed the property. During 1959, the said Arunachalathevar executed a release deed in favour of Shanmugasundaram who is the father of the respondents/plaintiffs. Since the appellants/defendants were trying to interfere with the possession, the respondents/plaintiffs sent notice and thereafter filed the suit

14. Though the respondents/plaintiffs have filed the document Ex.A1, in which, in 1917, one Puravelinatha Pillai Vagaiyara sold the property to Shanmuga Thevar who is the ancestor of the respondents/plaintiffs and even prior to that, Puravelantha Pillai executed the registered lease deed in favour of the appellants/defendants' ancestors. So far no evidence has been let in by the respondents/plaintiffs to show that the said lease deed was redeemed. The respondents/plaintiffs filed the suit for declaration, recovery of



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possession and to handover the vacant possession, which clearly shows that the appellants/defendants are in possession and constructed the building and paying tax and they have also enjoyed the property. Oral and documentary evidence clearly proved that the suit property, even from 1915 to till date, is in possession of the appellants/defendants. The first appellant/first defendant executed a settlement deed in favour of the second and third appellants in the year 1985 and the second appellant/second defendant constructed the building and enjoying the suit property and they claimed title by adverse possession. It is the duty of the respondents/plaintiffs to prove their case. Ex.A1 shows that the respondents/plaintiffs' great grandfather purchased the property, but they admitted the title of Puravelatha Pillai who executed a registered "Othi" deed in favour of Thadiveera Thevar, who is the ancestor of the appellants/defendants. It is proved that the original owner Puravelatha Pillai is the owner of the property who executed the registered lease deed in favour of the appellants/defendants. The respondents/plaintiffs have not proved that, based on Ex.A1, their ancestors have taken possession and they were enjoying the property. The appellants/defendants have produced the documents, which clearly show that from 1915 to till the



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date of filing of the suit, they were in possession of the property and the same was also admitted by the respondents/plaintiffs. The respondents/plaintiffs have not produced discharge receipt or redemption of lease deed. Possession is admitted and lease is also proved by the appellants/defendants and even after limitation period also, the appellants/defendants were in continuous possession and redemption is barred by limitation. After limitation period, the appellants/defendants continued to be in possession till the date of filing of the suit. Hence, the appellants/defendants have prescribed title by adverse possession. Both the appellants/defendants and the respondents/plaintiffs admitted that the Puravelantha Pillai is the original owner of the property. Ex.B1 is executed prior to Ex.A1. Though the respondents/plaintiffs have not admitted Ex.B1, however they admitted the possession and construction of the appellants/defendants in the property. There are no materials to show that the said Puravelantha Pillai, after executing the registered othi deed, had redeemed the “Othi” deed. Thereafter, he executed Ex.A1. Since Ex.A1 is prior to Ex.B1, the respondents/plaintiffs have not proved that Ex.B1 was not acted upon on the date of execution of Ex.A1, as the ancestors of Shanmugasundaram took over the possession of the



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property and he was enjoying the property. Except Ex.A1, the respondents/plaintiffs have not produced any evidence in between 1917 and 1959 ie., the period between Ex.A1 and Ex.A2. No documents have been produced to show that the respondents/plaintiffs were enjoying the property. Whereas, the appellants/defendants have produced several documents. Exs.B1 to B8, show that the appellants/defendants were in possession of the property. As per plaint, the appellants/defendants are in possession of the property on the date of filing of the suit. The appellants/defendants have established that from the date of Ex.B1, till the date of filing of the suit, they were in possession of the property. The ancestors of the appellants/defendants have entered into the suit property as a lessee and so far, the lease deed is not redeemed as per the old Act. No materials are available to show that the respondents/plaintiffs' ancestors have redeemed the "Othi" and had taken over the possession of the property. From 1975 till the filing of the suit, after the lease period, the appellants/defendants were in possession and enjoyment of the property for more than 12 years with the knowledge of the respondents/plaintiffs. Hence, the appellants/defendants have prescribed title by adverse possession. Further, the respondents/plaintiffs



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have not proved that, either the respondents or their ancestors were in possession of the property from 1917 ie., from the date of Ex.A1. It is the duty of the respondents/plaintiffs who filed the suit for declaration and recovery of possession, to prove not only the title, but also to show that they were in possession of the property, from the date of purchase till the date of construction in the suit property. Within 12 years from the date of dispossession, they have filed the suit for recovery of possession.

15. Under the above facts and circumstances, this Court finds that the respondents/plaintiffs have not proved that the othi deed has been redeemed. The respondents/plaintiffs have not proved that within 12 years, prior to the filing of the suit, they were in possession. The appellants/defendants have prescribed title by adverse possession. The respondents/plaintiffs are not entitled to the relief of recovery of possession.

16. The respondents/plaintiffs have not proved that they were in possession of the property from their ancestors. The appellants/defendants have proved that they were in possession of the



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property from the date of Ex.B1 till the date of filing of the suit and even till today. Unless the respondents prove that they were in possession of the property within the period of 12 years prior to the date of suit, they are not entitled to the relief sought for in the property. The respondents/plaintiffs have not proved that they were in possession of the property within the period of limitation. Therefore, the suit is barred by limitation. It is stated by the respondents/plaintiffs that, in the year 1994, they approached the appellants/defendants and asked them not to trespass into the property, whereas it is stated by the appellants/defendants that they have constructed the building much earlier. Though the respondents/plaintiffs are aware of the same, they have not taken immediate steps to stop the construction. The respondents/plaintiffs aware about the possession of the property even right from 1915 ie., from the date of lease deed till the date of filing the suit.

17. For the reasons aforestated, the substantial questions of law formulated in the second appeal are accordingly answered against the respondents/plaintiffs and in favour of the appellants/defendants.



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18. In fine, the judgement and decree passed by the both the Courts below are liable to be set aside. The Second Appeal is allowed. Consequently, connected miscellaneous petition is closed.

19. The judgment and decree dated 11.10.1999 passed in A.S.No.69/98 on the file of the Ist Additional District Court, Tirunelveli confirming the judgment and decree passed in O.S.No.589/96 dated 20.04.1998 on the file of the Principal District Munsif Court, Tirunelveli are set aside. The suit shall stand dismissed. No costs.

15.06.2023

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Ist Additional District Judge, Tirunelveli
2. The Principal District Munsif, Tirunelveli.
3. The Section Officer,



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VR Section,
Madurai Bench of Madras High Court.

P.VELMURUGAN,J.,

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and
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15.06.2023