



S.A.No.76 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.76 of 2020 and
C.M.P.No.1650 of 2020

Perumal

...Appellant

Vs.

1. K.Sundaravadivelu
2. Thanigaivel
Respondents

...

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 17.10.2019 passed in A.S.No.83/2016, on the file of the Principal Sub Court, Kancheepuram, reversing the decree and judgment dated 03.08.2016 passed in O.S.No.23/2011, on the file of the District Munsif cum Judicial Magistrate, Uthiramerur.

For Appellant : Mr.K.Govi Ganesan

For Respondents : Mr.Y.Jothish Chander

JUDGMENT

The plaintiff who filed the suit in O.S.No.23/2011 before the District Munsif cum Judicial Magistrate, Uthiramerur, has filed the



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present second appeal.

2. The plaintiff filed the suit for declaration of his title to the suit property, morefully described in the plaint schedule as a Punja land in survey no.313/1 (subdivided into survey nos.313/1A2 and 313/1C) of Thirupulivanam Village, Uthiramerur Taluk, Kancheepuram District ad-measuring 0.96 cents. He also sought for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The plaintiff's father viz., Velu pillai purchased the suit property measuring 0.48 cents from one Munusamy and his wife through a registered sale deed, dated 09.03.1970 (Ex.A1). The brother of the plaintiff's father Manickam pillai executed a Release deed, dated



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30.03.1970 (Ex.A2) in favour of the plaintiff's father Velu pillai with regard to 0.48 cents in the same survey number. After the death of the plaintiff's father, the plaintiff is in possession and enjoyment of the suit property. Since the plaintiff was unable to cultivate the land as he was residing away from the suit village, he engaged the services of his uncle Narasimman to cultivate the suit property. The first defendant who is the adjacent land owner is attempting to trespass into the suit property and one such attempt was made on 18.03.2011. Hence, the suit.

5. The suit was resisted by the defendants on the following grounds:

- i. The suit property does not belong to the plaintiff as alleged by him.
- ii. The entire extent of land in Survey numbers.313/1A2 and 313/1C of Thirupulivanam village, Uthiramerur Taluk, Kancheepuram District belonged to one Ramasamy Pillai and all the Revenue records stood in his name.
- iii. Ramasamy Pillai had two sons by names Munusamy Pillai and Subramania Pillai and the first defendant purchased an extent of



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0.24 cents in both the survey numbers through a registered sale deed, dated 11.12.1979 (Ex.B1). Subsequently, the remaining extent of land in the same survey number was also purchased by the first defendant from Ramasamy Pillai and others orally and that the first defendant has been in possession and enjoyment of the suit property for more than 30 years and thus he prescribed title by way of adverse possession and prescription. Therefore, the defendants prayed for dismissal of the suit.

6. On the basis of the above pleadings, the trial Court framed the following issues:

- i. *Whether the plaintiff is entitled for a declaration and permanent injunction as prayed for?*
- ii. *Whether the plea of adverse possession by the defendants is maintainable?*
- iii. *To what relief is the plaintiff entitled?*



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7. In the trial Court, the plaintiff examined himself and marked Ex.A1 to Ex.A6. The first defendant examined himself and marked Ex.B1 to Ex.B20.

8. After full contest, the learned District Munsif cum Judicial Magistrate, Uthiramerur, vide his decree and judgment dated 03.08.2016, decreed the suit filed by the plaintiff on the following grounds:- :

- i. The plaintiff's father purchased 0.48 cents in the suit property through a sale deed, dated 09.03.1970 (Ex.A1).
- ii. The brother of the plaintiff's father executed a Release deed, dated 30.03.1970 (Ex.A2) in favour of the plaintiff's father in respect of the remaining extent of the land in the suit property.
- iii. The plaintiff after coming to know of the fact that Patta (Ex.A3) stood in the name of the defendants, sent a request to the District Collector (ExA4 and Ex.A5) to change patta in his name. Thus the plaintiff has proved his title over the suit property.
- iv. The defendant though has claimed adverse possession over the suit property, has not proved the same by adducing acceptable



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evidence.

- v. The defendants have not also proved their title over the suit property.

9. Aggrieved over the decree and judgment passed by the trial Court, the defendants filed an appeal in A.S.No.83/2016, before the Principal Sub Court, Kancheepuram. The learned Principal Sub Judge, after analysing the oral and documentary evidence adduced on both sides, allowed the appeal and dismissed the suit filed by the plaintiff vide her decree and judgment dated 17.10.2019, as against which the present second appeal is filed by the plaintiff.

10. Heard Mr.K.Govi Ganesan, learned counsel for the appellant and Mr.Y.Jothish Chander, learned counsel for the respondents.

11. At the outset, it may be observed that the plaintiff sought for a declaration of his title to the suit property through a sale deed, dated 09.03.1970 (Ex.A1) executed in favour of his father Velu pillai by one



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Munusamy and his wife. He also relies on the Release deed, dated 30.03.1970 (Ex.A2) executed by his father's brother Manickam pillai, who claimed title to the remaining extent of 0.48 cents through an unregistered Will dated 26.12.1962 executed by one Raghava pillai. It is relevant to point out that the said Will dated 26.12.1962 has not been filed by the plaintiff. Further, the plaintiff has not filed any documentary evidence to show that Munusamy and his wife became entitled to 0.48 cents in the suit property. The parent documents have not been filed. Further more, the boundary description in Ex.A1 and Ex.A2 are one and the same. Therefore, the property conveyed through Ex.A2 is the same as that of one found in Ex.A1. As already observed, the unregistered Will dated 26.12.1962 allegedly executed by Raghava pillai in favour of Manikam pillai has not been filed. Thus, the plaintiff has not proved his title over the suit property.

12. The plaintiff's contention is that since he was away from the suit village, he engaged service of his uncle Narasimman to cultivate the suit property and that the Revenue Authorities had mistakenly issued



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patta in favour of the first defendant under UDR scheme. He therefore, gave a representation to the District Collector, Kancheepuram for cancelling Patta as is seen from Ex.A4. The result of the said representation is not known. The plaintiff has not also adduced adangal extract to show that he has been cultivating crops in the suit property. Thus the plaintiff has not also proved his possession over the suit property.

13. The defendants in the written statement had claimed title over the suit property through a registered sale deed, dated 11.12.1979 (Ex.B1). According to them, the suit property originally belonged to one Ramasamy pillai and the first defendant purchased an extent of 0.24 cents in both survey numbers 313/1A2 and 313/1C of Thirupulivanam Village, Uthiramerur Taluk from Munusamy pillai and Subramania pillai, sons of Ramasamy pillai. They have also averred that they prescribed title by adverse possession over the suit property by long and continuous possession for more than 30 years. When the defendants claimed possession through a registered sale deed, they cannot claim adverse



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possession, since both the pleadings are contrary to each other, However, the plaintiff who has filed the suit for declaration and injunction has to prove his case and cannot take advantage of the weakness of the defendants' case.

14. Therefore, I do not find any reason to interfere with the decree and judgment passed by the first Appellate Court and the substantial questions of law are answered against the appellant.

15. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.
- ii. The decree and judgment dated 17.10.2019 passed in A.S.No.83/2016, on the file of the Principal Sub Court, Kancheepuram is upheld.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.



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To

1. The Principal Sub Court, Kancheepuram.
2. The District Munsif cum Judicial Magistrate,
Uthiramerur.
3. The Section Officer, VR Section,
Madras High Court, Chennai.

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