



S.A. No. 606 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 606 of 2011
and M.P. No. 1 of 2011

1.Perumal

2.Sathiyamurthy

...Appellants

Vs.

1.Vasanthabai Ammal

2.Kasiammal

3.Raja

4.S.Murugan

5.Sarala

6.Geetha

...Respondents

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 09.04.2011 made in A.S. No. 16 of 2010 on the file of the Subordinate Judge, Panruti, reversing the judgment and decree dated 25.03.2010 made in O.S. No. 707 of 1994 on the file of the District Munsif, Panruti.

For Appellants : No appearance

For Respondents : Mr. V.Ramesh for R1
RR2 to 6–Dismissed vide Order



dated 19.10.2012.

JUDGMENT

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The appellants are the defendants 7 & 8. The plaintiff filed a suit in O.S.No.707 of 1994 against the defendant for the relief of eviction of defendants from the suit property and hand over the possession by removing the superstructure on the suit property along with recovery of money to the tune of Rs.1,800/- towards arrears of rent. The trial Court had dismissed the said suit and hence, the plaintiff preferred a First Appeal in A.S.No.16 of 2010. The First Appellate Court has allowed the First Appeal and set aside the judgment of the trial Court and decreed the suit as prayed.

2. The short facts pleaded in the plaint are as under:

2.1. The suit schedule property originally belonged to one Seetharama Chettiar. After his death, his legal heirs inherited the suit schedule property. The legal heirs of said Seetharama Chettiar sold the suit schedule property to the plaintiff on 30.08.1990. Thus, the plaintiff became the absolute owner of the property. The defendant's mother Kullapattu was a tenant under Seetharama Chettiar. The house in which Kullapattu was



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in possession was burnt in fire. So, the said Kullapattu was permitted to construct a house therein. The original rent for the property was Rs.20/- per month which was periodically increased to Rs.50/- per month. The said Kullapattu died and five years after her death, the defendant was in possession and enjoyment of the property as her legal heir.

2.2. The heirs of Seetharama Chettiar sold the property to the plaintiff and hence, the plaintiff became the land-lord and the defendant became the tenant of the suit schedule property. Though the defendant was informed about the purchase of the schedule property by the plaintiff, the defendant had not paid the rent to the plaintiff. So, the plaintiff terminated the tenancy on 31.10.1994 and called upon the defendant to vacate and hand over the property and also, to pay the rent arrears by issuing a Notice dated 12.09.1994. Even after receiving the said Notice, the defendant did not vacate the property. Hence, the plaintiff has filed a suit for eviction and recovery of possession along with recovery of money to the tune of Rs.1,800/- towards arrears of rent. During the pendency of the

suit, the sole defendant died and hence, the defendants 2 to 6 (legal heirs of the deceased sole defendant) were impleaded as parties in the suit. While so, the defendants 7 & 8 had filed an Interlocutory Application in I.A.No.921 of 2003 seeking to implead them as parties to the suit and the said application was allowed and they were also impleaded as parties in the suit.

3. The brief averments in the written statement of the sole defendant are as under:

3.1. It is false to state that the suit property belonged to Seetharama Chettiar. The property never belonged to Seetharama Chettiar or his legal heirs and they never were in possession and enjoyment of the same. The alleged rent i.e., Rs.50/- per month is also not correct. The defendant was never a tenant and he did not pay any rent at any point of time.

3.2. The deceased 1st defendant's mother Kullapattu trespassed into the property before 50 years and she was in possession of the same. The actual extent of the property is 2 times more than the extent mentioned in the plaint. The



deceased 1st defendant's mother Kullapattu constructed two Mangalore tiled houses and a hut in the property. On permission from Kullapattu, her sister Saradha was residing in one of the tiled houses on the west and Kullapattu was residing in another tiled house, for which, house tax assessment stands in her name for more than 40 years.

3.3. After the death of Kullapattu, the 1st defendant and his three brothers were residing in the tiled house and the hut constructed by Kullapattu. Later, about 5 years, the defendant constructed a storeyed house in the same village and moved over to it. However, the defendant's younger brothers were residing in the suit property. The deceased 1st defendant's mother and heirs by being in open, hostile and uninterrupted possession for over 50 years in the suit property have prescribed title by adverse possession. The house tax and electricity charges have been paid in the name of Kullapattu. The defendant was never a tenant under the plaintiff. Hence, the suit may be dismissed.



4. The brief averments in the reply statement filed by the plaintiff are as under:

4.1. The suit property was purchased by one Sankaranarayana Chettiar S/o. Sivarama Chettiar, about 60 years before. There was a superstructure in the property which was ruined and therefore, the property was treated as vacant site.

4.2. The said Sankaranarayana Chettiar has executed a Gift Deed in respect of his personal properties in favour of his sons viz., Govindhasamy Chettiar, Ramalinga Chettiar, Seetharama Chettiar and his grandsons viz., Chandran & Dhandayuthapani. In the said Gift Deed, Seetharama Chettiar was given properties in 'C' Schedule absolutely. The suit property form part of 'C' Schedule property. Therefore, it is absolutely false to say that Seetharama Chettiar has no absolute title.

4.3. Seetharama Chettiar was in possession and enjoyment of the property as an absolute owner. However, the assessment of suit property continued in the name of Seetharama Chettiar's brother Ramalinga Chettiar. After the death of Seetharama Chettiar, his wife and children have jointly sold the property to



the plaintiff on 30.08.1990. So, the claim of adverse possession by the defendant is false. The right of the defendant is only as that of the tenancy and hence, it is wrong to claim any title by adverse possession.

5. The defendants 7 and 8 have also filed a written statement in similar lines as the deceased 1st defendant filed a written statement denying the title of the plaintiff.

6. On the basis of the above pleadings, the learned trial Judge has framed the following issues:

- “1. வாதி கோரியவாறு சொத்து சுவாதீனம் பெற அருகதை படைத்திருக்கிறாரா?
2. வாதி கோரியவாறு வாடகை பாத்தி ரூ.1800/- பெற அருகதை படைத்திருக்கிறாரா?
3. வாதிக்கும், ஏதிர்வாதிக்கும் இடையே நில கிழார், வாடகைதாரர் என்ற உறவுமுறை இருக்கிறதா?
4. வழக்குக்கு உரிய நீதிமன்றக்கட்டணம் செலுத்தப்பட்டுள்ளதா?
5. வாதிக்கு கிடைக்கக் கூடிய நிவாரணம் என்ன?

கூடுதல் எழுவினாக்கள் :

(13.11.2002 - ல் வனையப்பட்டது)

1. 17.5.1963 - தேதியிட்ட தானப் பத்திரம் உண்மையானதா? செல்லத்தக்கதா?



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(12.01.2005ல் வனையப்பட்டது)

1. வழக்கு சரிவர மதிப்பீடு செய்யப்படவில்லை. தகுந்த நீதிமன்ற
கட்டணம் செலுத்தப்படவில்லையா?

7. During the course of trial, on the side of the plaintiff, 3 witnesses were examined viz., P.W.1 to P.W.3 and 11 documents were marked viz., Ex.P1 to P11 and on the side of the defendants, 4 witnesses were examined viz., D.W.1 to D.W.4 and 37 documents were marked viz., Ex.D1 to Ex.D37.

8. On the conclusion of trial, considering the evidence available on both sides, the trial Court had dismissed the suit on 25.03.2010. Hence, the plaintiff preferred a First Appeal before the First Appellate Court. The First Appellate Court has allowed the said First Appeal by setting aside the judgment of the trial Court and decreed the suit. Aggrieved over the same, the defendants 7 & 8 have filed the present Second Appeal.

9. The learned counsel for the respondent submits that the plaintiff is not owner of the suit property nor Seetharama Chettiar has got any title over the suit property and the appellant /defendant 6 and mother viz., Kullapattu has been in possession of the suit property right from the year 1958 and she has



only put up a construction in the suit property and in enjoyment of the same.

The respondent /plaintiff has made a false allegation as though the appellant's mother Kullapattu was a tenant. The original document, i.e., title document pertaining to the suit property has also not produced by the respondent /plaintiff and he has filed a suit against the parties, who have not in possession and interested in the suit property. After coming to know about the pendency of the suit, the appellants, who are the necessary parties to the suit filed an application and impleaded themselves in the suit.

10. The appellants mother Kullapattu had been in open, hostile and uninterrupted possession for the suit property for more than 50 years have prescribed title by adverse possession and it is wrong to plead that the appellant's mother Kullapattu was a tenant under the plaintiff. The defendant has not paid any rent and not accepted any person as landlord. Even after the defendant denying the title of the tenancy the plaintiff has not amended the plaint seeking the relief of declaration. The description of the property does not say whether the property is a vacant or a house. Even according to the reply statement of the plaintiff, the suit property continued to be in the name of the Ramalinga Chettiar, who is the brother of the Seetharama Chettiar. On



07.05.2023 when the settlement deed was executed by Sankara Narayana Chettiar in favour of his three sons and two grandsons, the appellants mother Kullapattu was in enjoyment of the suit property.

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11. The Ex. A6 is a deposition of Kulla Ammal @ Kullapattu given in O.S. No. 61 of 1997 which was a suit filed by one of the sons of Sankara Narayana Chettiar against his other brothers sons seeking the relief of partition. Kullammal's evidence is DW3.

12. The learned counsel for the respondent claims that Kulla Ammal @ Kullapattu who is their mother. In Ex. A6, the said Kulla Ammal has stated that she became as a tenant when the property was taken and she has been living there for more than 20 years.

13. The trial Court considered the above facts and dismissed the suit, but the first appellate court without considering the same had allowed the first appeal and decreed the suit.

14. The learned counsel appearing for the respondents submitted that a



tenant cannot claim adverse possession against the true owner. The appellant's mother has given evidence in a suit filed by one of the sons of the Sankaranarayana Chettiar against his other brothers for seeking partition in O.S. No. 61 of 1977(1997). The defendant(s)'s mother Kullapattu has been examined as DW3 and her deposition is produced as Ex.A6. In the said evidence, the Kullapattu has admitted that she was a tenant in the suit property. The very same plaintiff has filed another suit in O.S. No. 707 of 1994 seeking for eviction against another tenant and the same was decreed by the lower court. The first appellate Court reversed the judgment of the trial court and dismissed the suit. The second appeal preferred by the plaintiff in S.A. No. 1299 of 2004 was allowed on 17.12.2018.

15. The following substantial questions of law that were taken up for consideration in the second appeal:-

"(i) Did not the Lower Appellate Court grossly err in failing to see that there is no pleading regarding Ex.A2 in the plaint and that even in the reply statement there is no plea regarding due execution and valid attestation?"

"(ii) Did not the Lower Appellate Court grossly err in failing to see that not even one attester has been examined to prove the settlement deed?"



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(iii) *Did not the Lower Appellate Court fail to see that in the absence of proof of Ex.A2 plaintiff has no title to the suit property?*

(iv) *Was not the First Appellate Court at gross error in decreeing the suit in spite of relationship of landlord and tenant not being established?"*

16. The respondent /plaintiff has pleaded that the suit property is a self-acquired property of the plaintiff by virtue of a sale deed dated 30.08.1990. As she has also alleged that the original owner Sankaranarayana Chettiar has executed a gift in respect of his personal property to sons and grandsons on 17.05.1963 and the suit property has been allotted to one of the sons of Sankaranarayana Chettiar under 'C' Schedule. In the name of the son, the above property has been gifted under 'C' Schedule to the Seetharama Chettiar. The plaintiff has purchased the property from the legal heirs of the Seetharama Chettiar after his death.

17. It is not correct on the part of the appellant to state that the sale deed of the plaintiff dated 30.08.1990 has been marked as Ex.A1 and the settlement executed dated 17.05.1963 in favour of the predecessor in title has been marked as Ex.A2. It is not wrong on the part of the appellant to state that the



respondent has not stated about the Ex.A2 Settlement deed in her pleadings. If the plaintiff claims title to the suit property by virtue of her sale deed, it is the duty of the plaintiff to prove that the executants of the sale deeds had title to pass that in her favour though she has not specifically pleaded.

18. The pleadings that the suit property is a self-acquired property of the plaintiff itself would suffice to produce the relevant documents as Ex.A2. The relevant documents for the pleadings already made there is no necessity to plead about the Ex.A2 document separately. However in the instant case, the plaintiff has not only stated that she has purchased the property and she has also stated about the antecedent of the property. She had pleaded that the suit property has been gifted to her predecessor in title by virtue of the sale deed dated 17.05.1963. Ex.A2 is a 30 years old document. As per Section 90 of the Indian Evidence Act, if a document is proved to be 30 years old and it is produced from a proper person, who has the custody, the Court may presume about its execution and attestation of the document that it has been properly executed and attested as stated therein. Since Ex.A2 is a parent document of the property she purchased vide Ex.A1, the plaintiff is a proper person, who can have the custody of the documents. The plaintiff has gone to the extent of



the examining one of the attesting witnesses as PW2, who has stated that he had attested the above document.

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19. As the original document is misplaced, the plaintiff has produced the secondary evidence, which is the registration copy of the original settlement deed and she has also stated the same in her evidence also. By virtue of Ex.A2 being a 30 years document and also with the evidence of the attesting witness the plaintiff has proved the genuineness of Ex.A2 transactions. As the plaintiff predecessor in title has got valid title, the plaintiff can get a good title to the suit property through her sale deed Ex.A1.

20. Insofar as the appellants /defendants are concerned, their specific claim is that the suit property is being enjoyed by them though encroachment. In the absence of any proof to show that the suit property is a Government Poramboke, the appellants are duty bound to prove that they know the owners of the property and they have been in enjoyment of the property with the knowledge of the owner, but hostile to their interest and without their objections for more than the statutory period.



21. The appellants /defendants 7 & 8 have stated about the origin of their suit property is through encroachment, but they have not stated anything about the person, who owned the property. The defendant's mother is said to have given evidence in some other case in O.S. No. 61 of 1977 as DW3 and in her evidence, which is produced as Ex.A6, she has stated that she is a tenant in the suit property. In the said evidence, she has also deposed that she was a tenant under the plaintiff. It is denied by the defendants that the said evidence was by name Kulla Ammal that does not belongs to defendant's mother, Kulla Pattu. However, the plaintiff has submitted that the name Kulla Ammal refers only Kulla Pattu and there is no other tenant under the plaintiff other than the defendant's mother. Even the defendants did not produce any material to show that there is yet another person is in existence by name Kulla Ammal, who was the tenant under the plaintiff and it did not refer to the defendant's mother. As the defendant's mother had taken the suit property for rent from the original owners, viz., Sankaranarayana Chettiar and Seetharama Chettiar and had put up thatched shed over the same.

22. In all probabilities, the evidence in the other suit in O.S. No. 61 of 1977 by DW3 could be only the defendant's mother, Kulla Pattu and now one else.



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And the First Appellate Court had confirmed the same by recording the fact that the Ex.A6, the deposition of DW3 has been stated to have been given by one Kulla Ammal and the said person has signed as Kulla Pattu and that she has stated that she is residing in Door No.13/b and 13/c at Panangattu Street as a tenant under the Sankaranarayana Chettiar. The Lower Appellate Court has further observed that the defendant's witnesses 2 and 3 have stated in their cross-examination that the father name of Kulla Pattu ammal is Subburaya Padayachi and the same has been written in Ex.A6 deposition of DW3 also. So the defendant's mother's admission that she was only a tenant in the earlier suit is very much relevant to the facts of this case. Because, the plaintiff could succeed the case only in the event of proving that the defendants are only tenants. As the defendant's mother was the original tenant under the plaintiff's predecessor and that has been proved by the Ex.A6, the Lower Appellate Court itself is right in accepting the above documents is a relevant piece of evidence on the said of the plaintiff. But the above evidence also would confirm the fact that neither the defendants nor his mother Kulla Patta had been in possession of the suit property by encroachment but only through permissible possession as a tenant.



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23. Once a tenant is always a tenant and the tenant cannot prescribe any title against his landlord, even though he continued to be a tenant for several years. The defendant had failed to prove that they are in possession of the suit property adverse to the interest of its true owner and thereby, prescribe title. As the trial Court has confused its direction itself despite having rendered that the plaintiff is a true owner of the suit property, the Lower First Appellate Court had interfered and re-appreciated the evidence in a proper manner and had arrived at a conclusion that the appeal need to be allowed.

24. Hence, I find no factual or legal infirmity in the judgment of the Lower First Appellate Court and Trial Court pursuant to its appreciation of Ex.A2 and its validity. Hence the substantial questions of law are answered against the appellants and the second appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.12.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya



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To

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1. The Subordinate Judge, Panruti.
2. The District Munsif Judge, Panruti.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

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Dated : 03.12.2024