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S.A.No.1391 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.1391 of 2013

1. Palaniappa Gounder (deceased)
2. Lakshmi
3. Rajagopal

...Appellants

vs.

1. Ratanbai Pawani
2. Chandresh Pawani
3. Nallappan

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, against the judgment and decree passed by the Principal District Judge, Namakkal made in AS.No.29 of 2010 dated 22.12.2010 conforming the judgment and decree of Subordinate Judge, Namakkal dated 08.07.2009 made in OS.No.252 of 2006.

For Appellants : Mr.M.S.Palaniswamy

For Respondents

for R1 : Died-steps taken
for R2 : Mr.A.Sriram
for M/s.L.Mouli
for R3 : Mr.N.Ponraj



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JUDGMENT

WEB COPY The present Second Appeal arises out of the judgment and decree of the Court of Principal District Judge, Namakkal in AS.No.29 of 2010 in confirming the judgment and decree of the Court of the learned Subordinate Judge at Namakkal in OS.No.252 of 2006 dated 08.07.2009.

2. O.S.No.252 of 2006 was presented for declaration of title of the plaintiff and for recovery of possession of the property and for costs and other relief.

3. The claim of the plaintiffs is that the properties belong to them is absolute. Item 1 of the property is classified as poramboke land. This was granted to their ancestor Govindaji Odavajee Sait. The said Govindaji Odavajee Sait had taken the property for the purpose of mining and he was in occupation and enjoyment of the same. In pursuance of such allotment, he applied to the then British Government for assignment in respect of I item of the property. The British Government was pleased to grant assignment in favour of Govindaji Odavajee Sait on 15.05.1914. He died in the year 1925 and on his death, he was succeeded to by his son Madavadoss. Thereafter, Madavadoss



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had shifted to Chennai for the purpose of his business. Madavadoss passed away leaving behind his only son Vittaldas. Vittaldas also died leaving behind his son Lakshmidoss. The plaintiffs are the wife and son of Lakshmidoss Vittaldas Pawani. For the purpose of litigation they had appointed one K.Chittrambalam s/o Senogda Gounder as power of attorney to contest the suit.

4. While the property is a patta land, the first defendant, who was the president attempted to obtain patta for the same in his name. He applied for patta of the property in the name of Pavayee his wife. The Deputy Tahsildar also granted patta in the name of Pavayee. Therefore, an appeal was preferred by the original owner of the property to the District Revenue officer and the appeal was allowed and the patta granted in favour of Pavayee was set aside. However, since the possession had been taken by the defendants, the present suit for declaration of title and recovery of possession came to be filed.

5. Prior to the suit, plaintiffs issued notice on 16.06.2001 to Pavayee. Pavayee set up title in herself and issued reply on 25.06.2001 and they left with no other option, the present plaint came to be filed.



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WEB COPY 6. On service of summons, the third defendant entered appearance.

It was accepted that the property belongs to Vittaldas. However, according to defendants, Pavayee purchased the property from Vittaldas by way of an oral sale on 05.01.1965 for a sum of Rs.3,500/-. It is stated that she has been in possession and occupation of the property from that day onwards and she had developed the property. They would further state that though oral sale is unlawful in the eye of law, by virtue of the fact that from 05.01.1965 since Pavayee has been in open continuous hostile possession of the property, she perfected her title to the same by adverse possession.

7. On the basis of these pleadings, the learned Trial Judge framed the following issues:

- "1. வழக்கு சரியாக மதிப்பிடப்பட்டுள்ளதா?
2. வழக்கு காலவரை தோசத்தால் பாதிக்கப்பட்டுள்ளதா?
3. வழக்கிடை பி செட்டியூல் சொத்துக்கள் வாதிகளுக்குப் பாத்தியப்பட்டதா?
4. வழக்கிடை பி செட்டியூல் சொத்து பிரதிவாதிகளுக்கு எதிரிடை அனுபோகத்தின் அடிப்படையில் பாத்தியப்பட்டுள்ளதா?
5. வாதிகள் வழக்கில் கேட்டுள்ளவாறு விளம்புகை மற்றும் சுவாதீனம் பெற அருகதையுடையவரா?



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6. வாதிகளுக்கு வழக்கில் கிடைக்கத்தக்க இதர பரிகாரங்கள் யாது?"

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8. On the side of the plaintiffs, PW1 was examined and he had marked Exs.A1 to A26. On the side of the defendants, DW1 was examined and she marked Exs.B1 to B5. On a consideration of oral and documentary evidence, the learned Trial Judge came to the conclusion that the plaintiffs are the owners of the property and decreed the suit as prayed for.

9. Aggrieved by the same, regular appeal was preferred before the learned Principal District Judge at Namakkal in AS.No.29 of 2010. The learned Principal District Judge at Namakkal agreed with the findings of the learned Principal Subordinate Judge and dismissed the appeal. Against the said concurrent findings, the present second appeal arisen before this Court.

10. Mr.M.S.Palaniswamy, learned counsel for the appellant would submit that the first appellant/Palaniapa Gounder is no more and he left behind his legal heirs viz., Lakshmi and Nallappan, as second appellant



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and third respondent. He also filed a memo, dated 14.03.2024 to that effect. The said memo is ordered

11. This Court did not admit the second appeal but had ordered notice regarding admission on 19.12.2013. When the matter came up before me on 13.03.2024, Mr.L.Mouli, had entered appearance on behalf of the second respondent and submitted that the first respondent in this appeal Ratanbai Pawani passed away on 05.04.2021 and further stated that her son Chandresh Pawani is already on record. Recording the same, the second respondent was recognised as the legal representative of the first respondent and representing her estate and on behalf of himself he was recognised in that capacity.

12. I heard Mr.M.S.Palaniswamy, Mr.A.Sriram and Mr.N.Ponraj, for the respective parties.

13. Mr.M.S.Palaniswamy, would state that the property was transferred in favour of his client/Pavayee as early as on 05.01.1965 by way of an oral sale and therefore she has been in possession and enjoyment of the property on from that day. He would further state that



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on account of the fact that she had taken possession as owner on that day,
his clients have crystallised their right by virtue of adverse possession.

He would further state that on the basis of the purchase, Pavayee and thereafter, the defendants had developed the property, and hence the decree of the Courts below require interference.

14. Mr.A.Sriram, would submit that the plaintiffs had pleaded of oral sale, which is unknown to law and in any event, the defendants having pleaded adverse possession, have conceded to the title of the plaintiffs and the burden is on them to prove the openness, hostility and continuous nature of possession. He would further point out that being a concurrent finding, the Court should not interfere with the same.

15. I have carefully perused the materials on record.

16. There are few documents which throw light on the title of the plaintiff. Ex.A1 is an assignment of the year 15.05.1914 issued in favour of Govindaji Odavajee Sait. The other documents are the patta proceedings that had taken place before the Tahsildar and RDO.



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17. It is seen that Pavayee, who has no right over the property, having secured a patta had settled the property in favour of the third defendant by way of settlement deed dated 27.06.1996. This document has been filed before the Court as Ex.B1.

18. Let me now discuss in detail about the title of the property. Item 1 of the property was admittedly a Government Poramboke land. It is up to the Government to decide the manner in which it wants to deal with the property. The then sovereign, the British Government in its wisdom had given assignment in favour of Govindaji Odavajee Sait and assignment patta being a document of title, Govindaji Odavajee Sait became the owner of the property. That Govindaji Odavajee Sait became the owner of the property is not in dispute. Till Vittaldas, by virtue of legal heir certificate that is filed before the Court, I am able to conclude that the property had been continuously dealt with by the family of Govindaji Odavajee Sait. On his death, the property went to his son Madavadoss. After his death, the property went to Vittaldas. Vittaldas is also no more and his legal representatives are before this Court as respondents/plaintiffs. Therefore, I am able to see the continuous title from Ex.A1 till in favour of Vittaldas.



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19. In order to defeat the case, the defendants would plead that Vittaladas had sold the property in favour of Pavayee on 05.01.1965. It is admitted that the sale was for a sum of Rs.3,500/-. By virtue of provisions of the Transfer of Property Act and the Registration Act any property which is being dealt with for a value more than Rs.100/- would necessarily have to be through registration of the document. Oral sale of the property above the value of Rs.100/- is unknown to law. Therefore, that plea of the defendants necessarily has to be fail.

20. I now go to the next aspect as regarding adverse possession. The adverse possession is a plea, which is easily taken but seldom successfully proved. In this case, document Ex.B1, which is of the year 27.06.1996, is a settlement deed executed by Pavayee in favour of the third defendant. Unfortunately, apart from the document under Ex.A1 no other document has been filed to show upon the continuous and hostile possession of the defendants as against the plaintiffs over a period of 12 years. In fact, even the receipts which have been filed commence from 1996 and the suit having been filed in the year 2006, it is within 12 years as required under Article 65. Therefore even I were to treat the settlement deed as an act of hostility on the ownership of the plaintiff, the suit has



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come within a period of 12 years and therefore I am not able to agree with the contention of Mr.M.S.Palaniswamy, that his client have got title to the property by adverse possession. As submitted by Mr.A.Sriram, both the Courts below had property appreciated law on this point and it does not require any interference by this Court. Consequently, I am inclined to dismiss the second appeal. Accordingly, the second appeal is dismissed. The judgment and decree of both the Courts below are confirmed. Time for eviction is 6 months. No costs.

15.03.2024

pvs

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order

Note to Registry:

Since the memo, dated 14.03.2024 is ordered, the Registry is directed to carry out the amendment prior to issuance of a certified copy of this order.

To

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



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V.LAKSHMINARAYANAN, J.

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