



S.A.No.583 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.583 of 2013

and

M.P.No.1 of 2013

1. Muthusamy
S/o.Karuppanna Gounder

2. Shanmugam
S/o.Muthusamy

.. Appellants

vs.

1. Palaniappan
S/o.Kalianna Gounder

2. Ramayee
W/o.Chinnappan

3. Periasamy
S/o.Chinnappan

4. Sengoda Gounder
S/o.Ramasamy

5. Ponnusamy
S/o.Sengoda Gounder

6. Nallammal
W/o.Rangasamy @ Chinnappa Gounder



S.A.No.583 of 2013

7. Subramani
S/o.Rangasamy @ Chinnappa Gounder
8. Balasubramani
S/o.Rangasamy @ Chinnappa Gounder ..Respondents

Second Appeal filed under Section 100 of CPC against the judgment and decree dated 31.07.2012 made in A.S.No.43 of 2010 on the file of the Sub Court, Namakkal, reversing the judgment and decree dated 23.04.2010 made in O.S.No.19 of 2006 on the file of the District Munsif cum Judicial Magistrate, Paramathi.

For Appellants : Ms.D.Sathya

For Respondents : Mr.T.Deeraj

J U D G M E N T

The present second appeal arises out of the judgement and decree of the Court of Subordinate Judge at Namakkal in A.S.No.43 of 2010 dated 31.07.2012 in reversing the judgement and decree of the Court of the District Munsif-cum-Judicial Magistrate at Paramathi and thereby decreed the suit.

2. For the sake of convenience, parties are referred to as per their ranks in the suit.



S.A.No.583 of 2013

3. O.S.No.19 of 2016 was presented for the relief of declaration of title and for recovery of possession of 'B' schedule mentioned property.

4. The case of the plaintiffs is that the first plaintiff and his brother Chinnappan had purchased the property situated in Survey No.52, Sithampoondi village, Paramathivelur Taluk, Namakkal District from Karuppanna Gounder and others. This was by way of a registered sale deed dated 31.01.1985. The extent of the property purchased under the sale deed was 7 acres and 60 cents. After the purchase of the property, they had been in possession and enjoyment of the same in their own right. According to them, in the first week of September 2005, the defendants 1 to 4 who are their Eastern neighbours encroached upon a portion of the property which has been demarcated as 'B' schedule in the suit. They had encroached in order to lay a pathway in and over the property belonging to the plaintiffs. Their attempts to bring sense to the defendants failed and being left with no other option they presented the suit for declaration of title and for recovery of possession.

5. The defendants entered appearance and filed a detailed written



S.A.No.583 of 2013

statement. In their written statement, they pleaded that they have been in possession and enjoyment of the property from 1960 onwards when the defendants had purchased the property and had entered possession into the same. According to them, they have perfected the title by adverse possession over the 'B' schedule mentioned property and the plaintiffs do not have right, title or interest over the same.

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

'1. தாவா சொத்தில் பிரதிவாதிகளுக்கு எதிர்நிலை உடைமை பாத்தியம் ஏற்பட்டுள்ளது என்பது உண்மையா?

2. தாவா 'பி' அட்டவணை சொத்தில் வாதிகள் கோரும் விளம்புகை பரிகாரம் வாதிகளுக்குக் கிடைக்கக்கூடியதா?

3. தாவா 'பி' அட்டவணைச் சொத்தினை பிரதிவாதிகளிடம் இருந்து வாதிகள் கோரும் கவாதீனம் பரிகாரம் கிடைக்கக்கூடியதா?

4. வாதிகளுக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன?

கூடுதல் வழக்கெழு வினாக்கள்-



S.A.No.583 of 2013

WEB COPY

1. வாதிகளின் வழக்கு காலவரையறையால்
பாதிக்கப்பட்டுள்ளது என்பது சரியா?

2. ச.எண்.52ல் ஏற்பட்டுள்ள உட்பிரிவுகளை
ரத்து செய்ய நடவடிக்கை எடுக்காமல் வாதிகளின்
வழக்கு பாதிக்கப்பட்டுள்ளது என்பது சரியா?'

7. On behalf of the plaintiffs, the third plaintiff had entered the witness box as P.W.1. Apart from this witness, one common relative to both plaintiffs and defendants was examined as P.W.2. On the side of the plaintiffs, Ex.A1 to Ex.A6 were marked. On the side of the defendants, third defendant Muthusamy entered into the witness box and he examined another witness by name Sundaram. On the side of the defendants, Ex.B1 to Ex.B16 were marked.

8. On the basis of the respective pleadings and evidence, learned trial Judge came to a conclusion that the statement of the plaintiff that it was only in September 2005, the defendants attempted to interfere with the possession of the plaintiffs is a false one and she further held the documents filed by the plaintiffs proved that the plaintiffs had been in possession of the property from fasli 1397, corresponding to 1988 in the



S.A.No.583 of 2013

Gregorian Calendar, and therefore, the defendants have perfected their title by virtue of long possession.

9. On appeal before the learned Subordinate Judge at Namakkal, the said judgment and decree was reversed. He came to a conclusion that adverse possession had not been proved and that mutation of revenue records are not sufficient for the purpose of proving adverse possession. Against this reversal of finding, the present second appeal has been presented before this Court.

10. This Court did not admit the second appeal but had ordered notice regarding admission on 11.07.2013. Thereafter, the appeal has been listed before me today for the purpose of deciding whether the appeal is fit enough to be admitted or not.

11. I heard Ms.D.Sathya, learned counsel for the appellants and Mr.T.Deeraj, learned counsel for respondents.

12. Ms.D.Sathya, learned counsel would argue that since the



S.A.No.583 of 2013

plaintiffs do not have title documents with respect to 'B' schedule mentioned property, the Court below ought not to have granted a decree in their favour. She would further state that the plaintiffs had not sought for an appointment of Advocate Commissioner to measure the suit property and therefore, a decree for recovery of possession ought not to have been granted and finally she would argue that the plaintiffs have perfected title to the property by adverse possession and the Lower Appellate Court erred in decreeing the suit as prayed for.

13. Mr.T.Deeraj, learned counsel would contend that the plaintiffs are the owners of the entire extent of 7 acres and 60 cents by virtue of Ex.A1 and the mutation and subdivision of the entire extent of survey number purchased by them was without notice to them and insofar as 'A' schedule property is concerned, there is no dispute. The remaining extent of survey number 52 is 'B' schedule property and therefore, there is no dispute in identity of the property. Apart from that, he would contend that since the defendants have taken the plea of adverse possession, the question of identity of the property is not one in question. Therefore, he would plead that the second appeal does not deserve



S.A.No.583 of 2013

admission and it should be dismissed at the admission stage itself.

WEB COPY

14. I have carefully analyzed the arguments on either side and I have gone through the records particularly the judgement and decree of the Courts below.

15. There is no dispute that the first plaintiff and his brother Chinnappan have purchased the property under Ex.A1 dated 31.01.1985. Prior to the presentation of the plaint, the first plaintiff's brother Chinnappan passed away and therefore, his wife and son have been brought on record as plaintiffs 2 and 3. In other words, the persons who had purchased the property on 31.01.1985 have been effectively represented in the suit.

16. A perusal of Ex.A1 would show that the property that was purchased by the first plaintiff and his brother Chinnappan was to the extent of 7 acres and 60 cents situated in S.No.52. After the purchase had been done, the revenue records had been mutated and S.No.52 had been bifurcated into S.Nos.52/1 to 52/4. There is no record which has been produced by the defendants to show that the said subdivision was to



S.A.No.583 of 2013

the knowledge of the plaintiffs. To complete the narration, I have to point out that subdivision of S.No.52/3 into S.Nos.52/3 and 52/4 was again subdivided into S.Nos.52/3A, 52/3B and 52/3C. It is this property which is the subject matter of the dispute before me.

17. A perusal of the records show, at no point of time either during the original subdivision, after the purchase had been made by the plaintiffs on 31.01.1985 nor during the subdivision of S.Nos.52/3 and 52/4, were they put on notice.

18. Curiously enough, the defendants have procured a revenue documents for S.No.52 though their purchase on 08.02.1960 was only with respect to SNo.42. Having purchased the property on 08.02.1960, the said property was subdivided among the defendants on 21.09.2005. It was under this document on 21.09.2005, the defendants stake the claim to the property of the plaintiffs situated in S.No.52. Between the period of 31.08.1985 to 21.09.2005, when the partition was effected in the family of the defendants 1 to 4, they have secured revenue records in order to prove that they are in possession of the property in S.No.52.



S.A.No.583 of 2013

19. In fact, the possession of the defendants is not disputed because the suit itself is only filed for declaration of title and for recovery of possession. When they had purchased only S.No.42 on 08.02.1960 it is beyond one's comprehension as to how they included the neighbouring property in their partition deed on 21.01.2005. Perhaps, this was because the defendants had procured the revenue records in their favour. It is too well settled, but nonetheless I have to reiterate that revenue records cannot confer title on a person.

20. The argument of Ms.D.Sathya that the defendants have perfected the title by adverse possession is not appealing to me. It has been settled over a century ago in ***Perry Vs. Clissold*** [1907] A.C.73 as to what is the test for adverse possession. In order for the defendant to defeat the rights of the plaintiff in a suit for declaration of title and for recovery of possession, the defendant must prove that he had assumed the character of the owner and had been exercising the same peacefully, openly the rights of ownership and thereby had perfected good title as against the entire world other than the true owner. In fact, the true owner would loose his title from the date of assertion of the defendant as



S.A.No.583 of 2013

a rightful owner if he stands by and does nothing when the assertion takes place. I need not labour myself on the settled principles as the same has been reiterated recently by the Supreme Court in ***Government of Kerala and another Vs. Joseph and others*** reported in ***2023 SCC OnLine SC 961***.

21. If I were to go by applying the principles laid down by the Supreme Court, to the facts of the present case, the first time the assertion had been made by the defendants as the owner of the property was on 21.09.2005. Immediately, i.e., within a period of six months, the plaintiffs had filed the suit on 27.01.2006. Therefore, when the claim of ownership was made by the defendants under Ex.A4 dated 21.09.2005, it was the first time, the defendants had asserted the title in and over the property as against the plaintiffs. The plaintiffs did not stand by and watch assertion for a period of 12 years for possession to transfer into adverse possession, but as required under Articles 64 and 65 of the Limitation Act, 1963, immediately filed the suit within a period of three months. Therefore, I am unable to sustain the plea of Ms.D.Sathya that her clients had perfected the title by adverse possession.



S.A.No.583 of 2013

22. A perusal of Ex.A1 shows that the purchase by the first plaintiff and his brother Chinnappan was for the entire extent of 7 acres and 60 cents in S.No.52. Therefore, the subdivision that takes place in and over the property should have been with notice to them. Unfortunately, at the time of subdivision neither the first plaintiff nor his brother Chinnappan was put on notice. Therefore, issuance of கந்தாய receipt or kist in the name of the defendants does not help them to defeat the claim of the plaintiffs.

23. In the light of the above discussion, I do not find any irregularity or illegality on the part of the Lower Appellate Court in decreeing the suit of the plaintiffs and in reversing the judgment and decree of learned District Munsif-cum-Judicial Magistrate Court, Paramathi.

24. In fine, the Second Appeal is not admitted. None of the substantial questions of law presented by Ms.D.Sathya arise for consideration. The questions of law are neither substantial nor in the light of the above discussion, questions of law which arise between the



S.A.No.583 of 2013

parties.

WEB COPY

25. In fine, the Second Appeal is dismissed. The judgment and decree of the Court of the Subordinate Judge at Namakkal in A.S.No.43 of 2010 dated 31.07.2012 in reversing the judgement and decree of the District Munsif-cum-Judicial Magistrate at Paramathi in O.S.No.19 of 2006 dated 23.04.2010 stands confirmed. The plaintiff will be entitled to costs in the trial Court as well as in the First Appellate Court. Consequently, connected miscellaneous petition is closed. No costs in this appeal.

01.03.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking Order / Non-speaking order

mk

To

1. The Sub-Judge
Sub Court
Namakkal.
2. The District Munsif-cum-Judicial Magistrate
District Munsif Court,
Paramathi.



WEB COPY



S.A.No.583 of 2013

V. LAKSHMINARAYANAN, J.,

mk

S.A.No.583 of 2013

01.03.2024