



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.91 of 2010

1. Veeramani Chettiar (Died)

2. Ponmalar

... Appellants

[2nd appellant is brought on record as LR of the deceased sole appellant, vide Order of this Court dated 27.09.2022]

/Vs./

Muthulakshmi Achi,
Represented by Power Agent
Ramanathan.

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree, dated 15.09.2009 in A.S.No.124 of 2008 on the file of the Sub Court, Pudukkottai, reversing the judgment and Decree, dated 14.12.2007 in O.S.No.86 of 2001 on the file of the District Munsif Court, Aranthangi.



WEB COPY



For Appellants : Mr.N.Balakrishnan

For Respondent : Mr.H.Lakshmi Shankar, for
Mr.AN.Ramanathan

JUDGMENT

This Second Appeal is filed by the defendant to set aside the Judgment and Decree, dated 15.09.2009 passed in A.S.No.124 of 2008 on the file of the Sub Court, Pudukkottai, reversing the Judgment and Decree, dated 14.12.2007 passed in O.S. No.86 of 2001 on the file of the District Munsif Court, Aranthangi.

2. The plaintiff in the suit is the respondent herein and defendant in the suit is the appellant herein. For the sake of convenience, the parties shall be referred to as plaintiff and defendant as per the ranking in the suit.

3. Heard Mr.N.Balakrishnan, the Learned Counsel appearing for the Appellant and Mr.H.Lakshmi Shankar, for Mr.AN.Ramanathan, the Learned Counsel appearing for the respondent and perused the material documents available on records.



WEB COPY

4. The brief facts as stated by the plaintiff Muthulakshmi Achi is that the suit property belongs to Valliammai @ Pottal Achi wife of Kasi Chettiyar. Thereafter the suit property was purchased by one Meiyappa Chettiyar, as power agent for his son, namely Chokkalinga Chettiyar, who was staying in Dubai for more than 10 years. The said Meiyappa Chettiyar is the husband of the plaintiff Muthulakshmi Achi. Subsequently, after the death of the Meyappa Chettiyar, the plaintiff Muthulakshmi Achi wife was in possession and enjoyment of the suit properties as manager of the joint family. Further stated that 4 ½ acres of the property on the eastern side of suit property originally belongs to one Natesan Chettiyar, who is father-in-law of Muthulakshmi Achi. On 09.10.1941 the said adjoining property was sold to Sathappa Chettiyar son of Velappa Chettiyar, but somehow the adjoining property was in possession of the defendant. The suit property is situated on the western side of this property. The defendant along with the said 4 ½ acres of property is trying to grab the suit property. With the help and connivance of the revenue officials the defendant had obtained joint patta in the name of Lakshmi Achi and the said patta was granted without any enquiry. Since the son Chokalingam is in abroad, the husband Meiyappa Chettiyar died, the



WEB COPY

plaintiff being a lady is not able to take any proceedings to cancel the patta. Even though illegally the patta was issued, the possession is with the plaintiff. For the lands 1st item the patta No.1521 and 2nd item the patta No.1665 the plaintiff is paying the kist to the government. The defendant was never in possession and enjoyment of the suit property, but deliberately enter into the plaintiff's property by taking advantage of the fact that his 4 ½ acers is on the eastern side of the suit property and openly challenging that he would not allow the plaintiff to enjoy the suit property. On 10.04.2001 when the plaintiff was doing the agriculture activities the defendant with his men forcibly entered into the plaintiff's property and prevented the plaintiff from carrying on the agriculture activities, thereby disturbed the peaceful possession and enjoyment of the suit property. Hence the present suit in O.S.No.86 of 2001 was filed for declaration and injunction.

5. The defendant had filed written statement wherein he had denied the contents of the plaint. And submitted that the land on the eastern side of 2nd item of suit property is not 4 ½ acres but 5.26 acres. The said 5.26 acres was sold by Natesan Chettiyar to Sathappa Chettiyar on 23.09.1941. Then from the said



WEB COPY

Sathappa Chettiyar the defendant father Krishnan Chettiar had purchased the said 5.26 acres of property through sale deed on 02.10.1944 and were in possession and enjoyment of the property. After the demise of defendant's father Krishnan Chettiar, the defendant being sole son was in possession and enjoyment of the suit property situated in S.No.256/2. Hence the allegation that the defendant is trying to usurp the property is blatant lie. During the period of settlement, then during UDR after proper enquiry the patta was issued in the name of the defendant. Further submitted that the plaintiff may be the owner of the property, but based on the long possession and also adverse possession the defendant is entitled to the suit property and prayed to dismiss the suit.

6. The parties went for litigation based on the above stated facts and the Trial Court has considered the issue and marked various documents and based on the deposition has come to the conclusion that the plaintiff is not proved his case and hence, the Trial Court has dismissed the suit. Aggrieved over the same, the plaintiff has preferred an appeal in A.S. No.124 of 2008 and the same was allowed reversing the judgment and decree passed by the Trial Court, the



WEB COPY

Appellate Court has granted declaration and injunction against the defendant. Aggrieved over the same, the defendant in the suit has preferred this Second appeal.

7. At the time of admission, the second appeal is admitted on the following substantial questions of law:

1. Whether the Decree and Judgment of Lower Appellate Court in decreeing the suit for suit 2nd item for declaration and injunction reversing the decree and judgment of trial Court is vitiated by non-consideration material evidence on record i.e., Ex.A.9 vis-a-vis B5 to B.32?

2. Whether the Decree and Judgment of Lower Appellate Court upholding title and possession of respondent, upsetting well considered judgment of Trial Court without setting aside its finding on possession is bad in law and tainted with illegality?

3. Whether the Lower appellate Court has failed to exercise the power vested in it under Order 41 Rule 31 of Civil Procedure Code in not framing proper points for determination resulting in miscarriage of justice?



WEB COPY

8. The first substantial question of law is whether the Appellate Court failed to rely on and appreciate the Ex.A.9 *vis-a-vis* Ex.B.5 to Ex.B.32. It is seen that the Ex.A9 is kist receipt issued in the name of Chokkalingam. The Ex.B5 is the village map indicating S.No.256 and Ex.B6 is Settlement Patta issued to defendant's father. And Ex.B7 to Ex.B20 is Adangal and Ex.B21 to Ex.B28 are kist receipts issued in the name of defendant's father. Thereafter Ex.B29 is settlement chitta in the name of defendant, Ex.B30 and Ex.B31 kist receipts in the name of defendant. Ex.B32 is sale deed executed by Meiyappa Chettiar to Palaniappa Chettiar.

9. After perusing the above said documents it is seen that Ex.A9 is the kist receipt issued to plaintiff's son and Ex.B6 is settlement patta issued to defendant's father. The defendant insisted to compare these two documents to determine the title. If these two documents are compared then settlement patta of defendant has more value than the kist receipt of plaintiff. But these two documents cannot be compared since the plaintiff is having a valid sale deed. If the Ex.A1 sale deed dated 04.11.1986 in favour of plaintiff is compared with



WEB COPY

Ex.B6 settlement patta of defendant then the sale deed of plaintiff has more value. This further indicate that the land in question was already in enjoyment of another individual and hence the government has not right to issue settlement patta in the name of the defendant. Therefore the plea of the defendant that his documents marked in Ex.B5 to Ex.B32 were not properly appreciated is incorrect and the same is rejected. Hence the first substantial question of law is concerned, Ex.B.5 to Ex.P.31 are revenue documents cannot prove the case of the defendant and the same is held against the defendant and in favour of the plaintiff.

10. Further it is seen already there were litigations regarding S.No. 256/2 and the defendant is one of the parties in the said suit. While deposing the defendant herein had admitted that the S.No.256/3 belongs to the plaintiff and had claimed that the S.No.256/2 belongs to the defendant. The said statement is marked as Ex.A7. The judgment and decree rendered in O.S.No.29 of 1974 and O.S.No.636 of 1970 are marked as Ex.A.2, Ex.A.3, Ex.A.4. From the aforesaid deposition of the defendant in the aforesaid suit it is clearly evident that the defendant herein had admitted that the S.No.256/3 belongs to the plaintiff. Now



WEB COPY

the defendant cannot turn around and deny the same. Therefore, the finding rendered in O.S.No.29 of 1974 had proved the plaintiff's title to the S.No.256/3. And the said finding is against the defendant.

11. The defendant is relying on the four boundaries stated in Ex.B.32 sale deed and submitted that his father's land is shown as one of the boundaries. The relevant portion of the sale deed is extracted hereunder:

“கிரையச் சொத்து தஞ்சாவூர் டி, புதுக்கோட்டை ரிடி அறந்தாங்கி, அறந்தாங்கி பஞ்சாயத்து யூனியன் ஆவணத்தா ந.மெய்யப்ப செட்டியார் 5வது பிட் கோட்டை கிராமம் பஞ்சாயத்து எல்லைக்குட்பட்ட ஆவணத்தான்கோட்டை கிராமத்தில் கிராமழக்கம் 32 அடிகோலுக்கு ஁ஜாதி 28 அடிகோல ராமசுந்தரிகு பாய்ச்சலில் (1) வாய்க்காலுக்கு தெ வீர ராமசாமி தேவர் நஞ்சைக்கு மேற்கு பழனி நா வகேராவிற்ரு வடக்கு என் வீட்டிற்கு கிழக்குள்பட்ட பள்ளச் செய் நஞ்சை தாக்கு 1கு 26 1-2ல் கீழ்பிரமாய் கு 11 1-2 N.S.No.207/0.0.19 புஞ்சை (2) தொழுவங்காடு எல்லைக்கு கிழக்கு ர.கிருஷ்ணன் செட்டியார் புஞ்சைக்கு தெற்கு.”



12. Further submitted that the deposition of DW1 is in his favour.

The relevant portion of the cross examination of D.W.1 is extracted here under:

“பழனியப்பச் செட்டியாரின் வெளிநாட்டு முகவரிக்கு அழைப்பாணை அனுப்ப நான் முயற்சி செய்யவில்லை. என் தாத்தா காசி செட்டியார் என்ற ராமன் செட்டியார் என்பதை காண்பிக்க ஆவணம் எதுவும் இல்லை.”

13. By relying on the four boundaries stated in Ex.B.32 the defendant is claiming rights over the suit property. In the larger extent of the property the defendant may have some portion of the property, but the defendant ought to take steps to prove the same, but the defendant failed to prove so. In the earlier litigation the defendant had claimed right in S.No.256/2 but admitted that the S.No.256/3 belongs to the plaintiff. In the present litigation the defendant is claiming right in S.No.256/3, which is inconsistent stand. Therefore, the four boundaries alone cannot be relied on to come to the conclusion that the S.No. 256 / 3 belongs to the defendant. Further the deposition of D.W.1 alone cannot be relied on to grant the relief to the defendant, hence the said plea is rejected.



WEB COPY

14. At this juncture, the Learned Counsel appearing for the defendant submitted that the plaintiff had not pleaded regarding the earlier litigations and hence the same cannot be gone into. And relied on the judgment rendered in Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar reported in (2018) 11 SCC 652 wherein the Hon'ble Supreme Court had held that the Court cannot record any finding on issues which are not part of pleadings and the finding recorded on an issue dehors the pleadings is without jurisdiction. This Court is of the considered opinion that the plaintiff had relied on the deposition of the defendant which was recorded in an earlier litigation. The subject matter in the earlier litigation is the adjacent survey number wherein the defendant had admitted the S.No.256/3 belongs to the plaintiff. The earlier litigation is one of the evidence submitted by the plaintiff to prove the case. Therefore, it is not necessary that the earlier litigation fought between the defendant with another person ought to be pleaded by the plaintiff. Therefore, this Court is of the considered opinion that the said judgment is not applicable to the facts of the present case, hence the contention of the defendant is rejected.



WEB COPY

15. Further, it is seen that the defendant has taken a plea that in the year 1944 he has purchased the property, but the said document was not produced before the Court to substantiate the same. The defendant ought to have proved through a sale deed executed in the year 1944. When he had failed to do so, then the claim of the defendant ought to be rejected.

16. It is settled principles of law that the possession alone cannot be relied on to determine the ownership. When the sale deed is in favour of the plaintiff, long possession cannot give rights to the defendant.

17. As far as the pleadings of the adverse possession is concerned, the defendant had taken the plea of adverse statement but the same is a mere statement. Mere statement is not sufficient to prove adverse possession. The defendant ought to have pleaded from which date the defendant is in possession



WEB COPY

of the land with the knowledge of the plaintiff. When the same is not stated, then the plea of adverse possession cannot be entertained. Therefore, the second substantial question of law is held against the defendant.

18. As far as the third substantial question of law is concerned the Lower Appellate Court had not framed points for consideration and hence the judgment is perverse. The Learned Counsel appearing for the defendant relied on the aforesaid judgment rendered in Shivaji Balaram Haibatti Vs. Avinash Maruthi Pawar reported in (2018) 11 SCC 652 wherein the Hon'ble Supreme Court had held that the findings of the Court without framing question of law is illegal and unsustainable in law. It is seen that the Appellate Court had framed the only question "whether the appeal is maintainable". It is repeatedly held that the appellate court ought to frame points for consideration and the same ought to be specific. In the present case the point for consideration is framed but it is general. Therefore, the third substantial question of law is held in favour of the appellant/defendant.



WEB COPY

19. Even though the third substantial question of law is held in favour of the appellant/defendant, on merits this Court had held that the defendant is not entitled to any relief. The plaintiff sale deed marked as Ex.A1 would prove the plaintiff is the owner of the property. Further the larger extent of the property was belonging to the plaintiff's father-in-law, which is also admitted by the defendant. Therefore, on merits the plaintiff is entitled to the relief of declaration and injunction.

20. Accordingly, this Second Appeal stands dismissed and the Judgment and Decree, dated 15.09.2009 passed in A.S.No.124 of 2008 by the Learned Sub Judge, Pudukkottai, is hereby confirmed and the Judgment and Decree, dated 14.12.2007 passed in O.S.No.86 of 2001 by the Learned District Munsif, Aranthangi is hereby set aside. No Costs. Consequently, connected miscellaneous petition is closed.

22.10.2024

Index : Yes / No



WEB COPY

NCC : Yes / No
KSA

TO:

1. The Sub Court, Pudukkottai.
2. The District Munsif Court, Aranthangi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No.91 of 2010

Dated:
22.10.2024