



S.A.(MD)Nos.30 and 31 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.07.2024

PRONOUNCED ON: 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)Nos.30 and 31 of 2017

and

C.M.P.(MD)No.673 of 2017

S.A.(MD)No.30 of 2017:

Punniyakumar : Appellant/Appellant/
1st Defendant

Vs.

1.Murugesan : Respondent/Respondent/
Plaintiff

2.Ganesan : Respondent/Respondent/
2nd Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.3 of 2010, on the file of the Principal Subordinate Judge, Kumbakonam, dated 15.10.2015 confirming the judgment and decree passed in O.S.No.2 of 2004, on the file of the District Munsif cum Judicial Magistrate, Papanasam, dated, 03.02.2009.



S.A.(MD)Nos.30 and 31 of 2017

S.A.(MD)No.31 of 2017:

WEB COPY

Punniyakumar

: Appellant/Appellant/
1st Plaintiff

Vs.

1.Murugesan

: Respondent/Respondent/
1st Defendant'

2.Manjula

3.Latha

4.Ammulu

: Respondents/Respondents/
Plaintiffs 2 to 4

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree passed in A.S.No.7 of 2010, on the file of the Principal Subordinate Judge, Kumbakonam, dated 15.10.2015 confirming the judgment and decree passed in O.S.No.115 of 2004, on the file of the District Munsif cum Judicial Magistrate, Papanasam, dated, 03.02.2009.

For Appellant
in both appeals : Mr.V.Chandrasekar

For Respondents
in both appeals : No Appearance



WEB COPY



S.A.(MD)Nos.30 and 31 of 2017

COMMON JUDGMENT

These Second Appeals are directed against the common judgment passed in A.S.Nos.3 of 2010 and 7 of 2010, dated 15.10.2015, on the file of the Principal Subordinate Court, Kumbakonam, confirming the common judgment made in O.S.Nos.2 of 2004 and 115 of 2004, dated 03.02.2009.

2. Heard the learned Counsel for the appellants in both the appeals and perused the materials available on record. Despite receipt of notice, the respondents have not turned up.

3. The suit in O.S.No.2 of 2014 is filed claiming permanent injunction restraining the defendants and their men from in any manner trespassing into, damaging the vegetables and other crops and removing the fencing in the suit property.

4. The first defendant in O.S.No.2 of 2004 along with her sisters have filed a suit in O.S.No.115 of 2004 claiming the relief of declaration that the suit property shown therein belongs to them and for recovery of



S.A.(MD)Nos.30 and 31 of 2017

possession of the suit property after removal of the constructions made therein and also for mesne profits.

5. The case putforth by both the parties in both the suits are more or less one and same and in the joint trial, evidence was ordered to be recorded in the suit in O.S.No.115 of 2004. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking shown in O.S.No.115 of 2004 and the second defendant in O.S.No.2 of 2004, who is not a party to the suit in O.S.No.115 of 2004 will be referred by his name Ganesan.

6. The case of the plaintiffs is that the suit property originally belonged to one Kuppammal, that the said Kuppammal died leaving behind three sons namely Ramaiya Padayachi, Lakshmana Padayachi and Saminatha Padayachi, that after the death of the said Kuppammal, Saminatha Padayachi has executed a registered release deed dated 09.05.1952 in favour of his two brothers Ramaiya Padayachi and Lakshmana Padayachi, that after the execution of release deed, Ramaiya Padayachi and Lakshmana Padayachi have become the owner of the entire suit property, that the said Ramaiya Padayachi died leaving behind



S.A.(MD)Nos.30 and 31 of 2017

his only son Ranganathan Padayachi, who died leaving behind his children – the plaintiffs 1 to 3, that Lakshmana Padayachi died leaving behind his daughter - 4th plaintiff, that the first plaintiff has been in possession and enjoyment of the properties, that since the first plaintiff is a physically challenged person and in order to safeguard the crops in the punja land situated just behind the suit property, has permitted the defendant who is a close relative, to put up a thatched house in the property, that the defendant has no semblance of right over property, that the defendant in order to grab the property has created documents surreptitiously and hence, the plaintiffs were forced to revoke the permission and directed the defendant to hand over the possession of the same, that the defendant after agreeing for handing over the possession of the property, suddenly filed a suit in O.S.No.2 of 2004 as if he is the owner of the property, that the plaintiffs came to know subsequently that the defendant had influenced the officials and obtained patta for the property in dispute, that the defendant cannot claim any title to the suit property as the same absolutely belongs to the plaintiffs, that since the defendant has denied the title of the plaintiffs in the suit in O.S.No.2 of 2004, the plaintiffs were constrained to file the present suit to declare their title and to get possession of the suit property.



S.A.(MD)Nos.30 and 31 of 2017

WEB COPY

7. The case of the defendant as evident from his plaint in O.S.No.2 of 2004 and his written statement in O.S.No.115 of 2004 is that the suit property is a part of Grama Natham lands of Thirumandakudy Village, that the defendant's ancestors had been in possession and enjoyment of the suit property for more than 60 years, that the plaintiffs, after removing the thatched house put up by his forefathers, had constructed a house, that the defendant had availed loan from the Papanasam Taluk Co-operative Housing Society for his constructions in the suit property, that the Revenue Department, after recognising the defendant's possession, has issued patta, that the defendant has been paying house tax and other taxes to the statutory authorities, that the defendant has also obtained electricity service connection in S.C.No.282 and is paying electricity consumption charges to the said department, that the defendant has raised teak trees, coconut trees and other trees on his backyard which measures 24 feets on East West and 180 feets on North South, that when the revenue authorities have also issued patta for a portion of the land abutting the house, the defendant and his ancestors are using the entire backyard for more than 60 years and as such, the defendant has perfected his title by adverse possession, that the plaintiffs' cattles had destroyed



S.A.(MD)Nos.30 and 31 of 2017

WEB COPY

the crops of the defendant available in the backyard portion and since the defendant's request not to allow their cattles was of no avail, the defendant has raised fencing around his property and at that time, the plaintiffs came to the property along with their men on 02.01.2004 and attempted to trespass into the property and attacked the defendant, but the same was thwarted with the help of the neighbours and that since the plaintiffs have proclaimed that they would remove the fencing and destroy the crops available therein, the defendant with no other option was forced to file the suit in O.S.No.2 of 2004 claiming permanent injunction.

8. The learned trial Judge, on perusing the pleadings, has framed the following issues in both the suits:

In O.S.No.2 of 2004:

“(1) Is it correct to say that the plaintiff and his ancestors have been in possession and enjoyment of the suit property for more than 60 years?

(2) Whether the contention of the defendants that in the suit property belonging to them, the plaintiff was permitted to reside therein is true?



S.A.(MD)Nos.30 and 31 of 2017

(3) Whether the plaintiff is entitled to get the relief of permanent injunction?

(4) To what other relief?

In O.S.No.115 of 2004:

(1) Whether the contention of the plaintiffs that the suit property is belonging to them is true?

(2) Whether the contention of the plaintiffs that the defendant was permitted to reside in the suit property in order to safeguard the crops therein is true?

(3) Whether the contention of the defendant that his ancestors had been in possession and the defendant, after obtaining patta and by paying necessary taxes has been in possession of the suit property is true and correct?

(4) To what other relief?

9. During joint trial, the first plaintiff in O.S.No.115 of 2004 came to be examined as P.W.1 and on their side, two documents came to be exhibited as Exs.A.1 and A.2. The defendant has examined himself as



S.A.(MD)Nos.30 and 31 of 2017

D.W.1 and one Murugaiyan was examined as D.W.2 and exhibited 52 documents as Exs.B.1 to B.52. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the argumens of both sides, has passed a common judgment and separate decrees dated 03.02.2009 holding that the plaintiffs have proved neither tittle nor possession of the suit property and the defendant has proved his possession for more than 12 years, dismissed the suit in O.S.No.115 of 2004 and decreed the suit in O.S.No.2 of 2004 as prayed for, granting the permanent injunction.

10. Aggrieved by the impugned judgment and decrees, the first plaintiff in O.S.No.115 of 2004 has preferred two appeals in A.S.No.3 of 2010 and A.S.No.7 of 2010, on the file of the Principal Subordinate Court, Kumbakonam. Pending appeals, the appellant has filed two applications in both the appeals in I.A.Nos.12 and 13 of 2015 for reception of additional evidence under Order 41 Rule 27 C.P.C. The learned first appellate Judge, upon perusing the materials available on record and on hearing the arguments of both sides in the appeals as well as in the applications for reception of additional evidence, has passed a common judgment and order dated 15.10.2015, allowing the applications



S.A.(MD)Nos.30 and 31 of 2017

WEB COPY

and ordered to mark the eight documents as Exs.A.3 to A.10 and dismissed both the appeals. Aggrieved by the dismissal of both the appeals, the appellant/first plaintiff has preferred the present Second Appeals.

11. Though the Second Appeals are pending from 2017 onwards, the same are not yet admitted and hence, the Substantial Question of Law was not formulated.

12. Before entering into further discussion, it is necessary to refer the mandate of the Hon'ble Supreme Court for High Courts in deciding the Second Appeals under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:

“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to



WEB COPY



S.A.(MD)Nos.30 and 31 of 2017

the case involving substantial question of law and while deciding the *second appeal under Section 100 of the CPC*, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of *Narayanan Rajendran v. Lekshmy Sarojini*, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under *Section 100 of the CPC*, the High Courts under *Section 100 CPC* are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

13. Bearing the above legal position in mind, let us proceed with the present case.

14. The plaintiffs have laid the suit to declare their title to the suit property and to recover the possession from the defendant alleging that



S.A.(MD)Nos.30 and 31 of 2017

they are the owners of the suit property and since permission to reside in the suit property given to the defendant was already revoked, the defendant is liable to hand over the possession of the suit property. But on the other hand, the defendant, by specifically disputing the title to the suit property claimed by the plaintiffs, has claimed the relief of permanent injunction alleging that his ancestors had been in possession and enjoyment of the property for more than 60 years and he has been in possession and enjoyment of the suit property by getting patta and by constructing a house therein and paying taxes therefor.

15. As already pointed out, the plaintiffs have traced out their title from one Kuppammal and according to them, the suit property and another properties came to be owned by the said Kuppammal and after her death her three sons namely Ramaiya Padayachi, Lakshmana Padayachi and Saminatha Padayachi have become the owners of the properties, that Saminatha Padayachi has released his share in the property in favour of his brothers Ramaiya Padayachi and Lakshmana Padayachi, vide registered release deed dated 09.05.1952, that the said Ramaiya Padayachi died leaving behind his only son Ranganathan Padayachi, who in turn died leaving behind his children – the plaintiffs



S.A.(MD)Nos.30 and 31 of 2017

WEB COPY

1 to 3, that Lakshmana Padayachi had died leaving behind his daughter - 4th plaintiff and that the plaintiffs have become the owner of the suit property. Except the release deed dated 09.05.1952, the plaintiffs have not produced any other title deeds.

16. As rightly observed by the Courts below, in Ex.A.1 – release deed, there is no whisper that Kuppammal has become the owner the suit property through any testamentary instruments or by intestate succession or by purchase or by any other transactions, but on the other hand, it has been shown in Ex.A.1 that Kuppammal was enjoying the same with patta Mirasu and the exact words referred as “கூப்பம்மாள் பட்டாமிராகடன் அனுபவித்து வந்ததாக “. Admittedly, the plaintiffs have not produced patta or any other revenue document standing in the name of the said Kuppammal before the trial Court or before the appellate Court. When the first appeal was pending, the plaintiffs have filed two applications in I.A.Nos.12 and 13 of 2015 for reception of additional evidence ie., 10 kist receipts. As already pointed out, kist receipts standing in the name of Renganathan Padayachi, father of the plaintiffs 1 to 3 came to be exhibited as Exs.A.3 to A.7 and kist receipts standing in the name of the first plaintiff came to be exhibited as Exs.A.8 to A.10. The first plaintiff



S.A.(MD)Nos.30 and 31 of 2017

as P.W.1 would admit that they have not produced any revenue records or kist receipts standing in the name of the sons of Kuppammal, either before the execution of Ex.A.1 release deed or subsequently.

17. At this juncture, it is necessary to refer the evidence of P.W.1 hereunder for better appreciation:

“குப்பம்மாள் காலத்தில் அரசுக்கு செலுத்துவ்ணடிய கி!திஇ வரி ஏதும் செலுத்தினாரா என்ற விபரம் எனக்கு தெரியாது. குப்பமாளுக்கு பிறகு அவரது குமாரர்கள் ராமையை படையாச்சிஇ லெட்கமண படையாச்சிஇ சாமிநாத படையாச்சி ஆகியாராவது அந்த சொத்திற்கு கி!திஇ வரி கட்டியிருக்கிறார்களா என்று எனக்குத் தெரியாது. ஆனால் கட்டியிருப்பார்கள். என் தகப்பனார் காலத்தில் வரிகள் கட்டப்பட்டது. அந்த ரசீதுகளை நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. அவ்வாறு செலுத்திய ரசீதுகள் என்னிடம் லேலை. நான் தாவா சொத்துக்குப்பின்னால் உள்ள சொத்துக்களுக்குத்தான் நான் வரி கட்டியிருக்கிறேன்.283 – பி – க்குத்தான் வழக்கு தாக்கல் செய்துள்ளேன். அந்த சர்வ எண் பக்கத்தில் உள்ளவர்களுக்கும் உள்ளது. அந்த சர்வ எண்ணில் னேனும் யார் யாருக்கு பட்டாஇ கி!தி ரேக்கிறது என்ற விபரம் தெரியாது. “

18. It is pertinent to note that the defendant in his suit in O.S.No.2 of 2004 has shown a house property constructed in 0.01.69 ares of land



S.A.(MD)Nos.30 and 31 of 2017

WEB COPY

in S.No.283B/12 of Thirumandakudy Village, Papanasam Taluk along with the backyard with Teak trees, Portia trees, coconut trees and other trees, but whereas the plaintiffs in their plaint have shown lands measuring 5 cents situated in Old S.No.283B, new S.No.283B/12 of Thirumandakudy Village, Papanasam Taluk as the suit property. It is also pertinent to note that the defendant has taken a specific stand that the suit property is a Natham land. But the plaintiffs in their written statement filed in O.S.No.2 of 2004 had taken a stand that the suit property is not a Natham land. But whereas in their suit in O.S.No.115 of 2004, had taken a contra stand that the suit property is a Natham land. The plaintiffs have not clarified their stand with regard to the nature of the property either before the Courts below or before this Court.

19. As rightly observed by the learned trial Judge, though some other properties were mentioned in Ex.A.1 release deed, they have not elaborated anything further. P.W.1, in his cross-examination would say that he does not know about the other S.Nos., except the suit property and also its extent. The defendant has produced the kist receipts, house tax receipts, electricity consumption records, patta issued by the revenue authorities under Exs.B.1 to B.52. The defendant has produced kist



S.A.(MD)Nos.30 and 31 of 2017

receipts from 1982 and house tax receipts from 1996 and electricity consumption receipts from 1985. The defendant has also examined the Manager of the Papanasam Co-operative House building Society as D.W.2 and he would say that the defendant had applied and obtained loan for making constructions in his property and he would admit the issuance of receipts under Exs.B.43 to B.51 for repayment of building loan.

20. As already pointed out, according to the plaintiffs, the first plaintiff has permitted the defendant to reside in the suit property for safeguarding the crops available in the property, but admittedly, the plaintiffs have not produced any iota of evidence to show that they have been in possession and enjoyment of the suit property and subsequently, the defendant was permitted to reside in the thatched house available in the suit property. It is also not the case of the plaintiffs that they have raised objections for putting up constructions in the suit property by removing the thatched shed nor for getting electricity service connection, house tax assessment for the house constructed therein.

21. Considering the evidence available on record, the trial Court has come to a decision that the defendant has been in possession and



S.A.(MD)Nos.30 and 31 of 2017

enjoyment of the suit property for the past 25 years and also came to the conclusion that the defendant has proved his possession in the suit property for 12 years prior to the filing of the suit. By holding so, the trial Court has decreed the suit for permanent injunction filed by the defendant and dismissed the suit filed by the plaintiffs. As rightly observed by the trial Court, the plaintiffs have not produced any iota of materials to prove their ownership or their possession prior to the granting of permission to the defendant to reside in the property. Consequently, the Courts below have rightly come to the decision that the defendant is entitled to get permanent injunction as prayed for and the plaintiffs are not entitled to get any of the reliefs claimed.

22. It is not the case of the appellant that any material evidence that had been ignored by the first appellate Court nor there was evidence at all and they have also not shown that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. The appellant has not shown that the Courts below have wrongly casted the burden of proof. It is pertinent to note that the Courts below on appreciating and re-appreciating the entire evidence available on record has come to a definite decision that the plaintiffs



S.A.(MD)Nos.30 and 31 of 2017

have neither shown better title than that of the defendant nor shown possession and the defendant has proved his possession for a period of 12 years. On a perusal of the judgments of the Courts below, this Court is of the clear view that no question of law much less Substantial Questions of Law is made out. Hence, this Court concludes that since no Substantial Question of Law is made out in these Second Appeals, the same are liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the appellant is to be directed to bear his own costs.

23. In the result, both the Second Appeals are dismissed, confirming the concurrent judgments made in O.S.Nos.2 and 115 of 2004, dated 03.02.2009, on the file of the Principal Munsif cum Judicial Magistrate Court, Papanasam and made in A.S.Nos.3 and 7 of 2010, dated 15.10.2015 on the file of the Principal Subordinate Court, Kumbakonam. Consequently, the connected Miscellaneous Petition is also dismissed. The appellant is directed to bear their own costs.

29.07.2024

NCC : Yes:No



S.A.(MD)Nos.30 and 31 of 2017

Index : Yes : No
Internet : Yes : No
SSL

To

1. The Principal Munsif cum Judicial Magistrate Court, Papanasam.
2. The Principal Subordinate Court, Kumbakonam.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)Nos.30 and 31 of 2017

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

S.A.(MD)Nos.30 and 31 of 2017

29.07.2024