

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2015

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.1721 of 2001

Judgment reserved on 13.04.2015	Judgment pronounced on 22.04.2015
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1.Sadayan
2.Mani
3.Selli

.. Appellants/Appellants/Defendants 2 to 4

Vs

1.Paramasivam
2.Nallammal

.. Respondents 1 & 2/Respondents 1 & 2 /
Plaintiffs

3.Kettu
4.Chinnakannu

.. Respondents 3&4/ Respondents 3 & 4
Defendants 5 & 6

Prayer: Second appeal filed under Section 100 of CPC against the Judgment and Decree dated 20.07.2001 in A.S.No.76 of 2000 on the file of the III Additional District Court, Salem, modifying the Judgment and Decree dated 08.09.1999 in O.S.No.484 of 1994 on the file of the II Additional District Munsif Court, Salem.

For Appellants : Mr.T.Murugamanickam

For Respondents

R1 & R2 : Mr.V.R.Rajasekaran

Mr.S.Muthukumarasamy

R3 & R4 : No appearance

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 20.07.2001 in A.S.No.76 of 2000 on the file of the III Additional District Court, Salem, modifying the Judgment and Decree dated 08.09.1999 in O.S.No.484 of 1994 on the file of the II Additional District Munsif Court, Salem.

2.The averments made in the plaint are as follows:-

The suit property was assigned and allotted in favour of one Krishnan by the Special Thasildar for Adi Dravida and Harijan Welfare, Salem Town under Roc.No.593/1965 dated 30.06.1966, who is the father of the first plaintiff and defendants 5 and 6 and husband of the second plaintiff. The said Krishnan and his family members were residing in the property by putting up thatched house till 1971. Then they left to Bombay city in the year 1971 for eking out their livelihood. The said Krishnan died in the year 1986 leaving behind the plaintiffs and the defendants 5 and 6 as his legal heirs. The first plaintiff returned to Valapady Town in the first week of April 1994 and found his surprise a terraced building and also a thatched shed in the suit property and during enquiry he came to know that the defendants 1 to 4 had encroached upon the suit property in the year 1993 and put up the new terraced building in the suit property and also a thatched shed in the suit property. They have no right over the property. Hence, he demanded for delivery of vacant possession of the suit property. But the defendants 1 to 4 refused to deliver possession of the suit property. Therefore, the first plaintiff gave a police complaint to the Valapady Police Station on 27.04.1994. But they refused to hand over the possession. Hence, the first plaintiff issued a notice on 11.05.1994 and received a reply on 06.05.1994 containing false and untenable allegations. Therefore, the plaintiffs were constrained to file a suit in O.S.No.484 of 1994 for declaration of title, mandatory injunction to remove the superstructure in the suit property and also for recovery of possession.

3.The gist and essence of written statement filed by the first defendant adopted by the defendants 2 to 4 are as follows:

The suit is not maintainable both on facts and law. The suit property was not assigned and allotted to one Krishnan, the father of the first plaintiff by the Special Tahsildar for Adi Dravida and Harijan Welfare, Salem Town under Roc.No.593/1965 dated 30.06.1966. The description given in the schedule is perverted. The plaintiffs have no manner of right over any portion of the suit property and the alleged complaint is false and misconceived. The defendants are not aware of the relationship between the plaintiff and the defendants 5 and 6. the plaintiff and defendants 5 and 6 are not entitled for the relief muchless a joint decree. There is no cause of action for the suit, The suit was not properly valued and this Court has no pecuniary jurisdiction. Hence, he prayed for dismissal of the suit.

4.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1, P.W.2 D.W.1 to D.W.5 and Exs.A1 to A16 and Exs.B1 to B12, decreed the suit as prayed for in the plaint. Aggrieved against the judgment and decree of the trial court, the

defendants 2 to 4 preferred an appeal in A.S.No.76 of 2000 on the file of the III Additional District Court, Salem.

5.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and modified the Judgment and Decree passed by the Trial Court and allowed the appeal in part. Against the Decree and Judgment of the first Appellate Court, the present second appeal has been preferred by the defendant.

6.At the time of admission of the above second appeal, the following substantial questions of law were framed for consideration.

"1.Whether a decree for declaration of title to a property can be granted, when the claim is based on intestate succession, but, no proof of the death of the original title holder or a legal heirship certificate is produced to prove that, the plaintiffs are competent to maintain such an action?

2.When the assignee of a Government land violates the conditions of assignment by making an alienation, whether his heirs can still claim a right to the property as if the assignment continues to be valid?

3.When an assignee of a Government land dies, whether his legal heirs can claim title to such property in a Civil Court, in the absence of the Government recognising the right of such legal heirs and transferring the assignment in their favour?"

7.Challenging the judgment and decree of the First Appellate Court and the Trial Court, the learned counsel for the appellants/defendants 2 to 4 raised the following points:

(a)The Trial Court has not considered the fact that the respondents/plaintiffs were away from the property from 1971 onwards and the appellants herein were in possession and enjoyment of the property and they have put up construction and residing there and the appellants prescribed title by adverse possession.

(b)He would further submitted that during the lifetime of the first plaintiff's father, namely, Krishnan has executed a sale deed/Ex.B7 dated 31.03.1972 in favour of one Kulandaiammal and the brother of the said Krishnan, namely, Palani, who have allotted the adjacent property also sold the same on 21.11.1967. From the said Kulandaiammal, the appellants herein have purchased the said property and put up construction. Those factum has not been considered by both the Court below.

(c)Since the said Krishnan died intestate, no proof of death of the original title holder is produced. So, the plaintiffs are not competent to maintain the suit. That factum was not considered by both the Court below.

(d)Notice has been issued by the respondents/plaintiffs on

11.05.1994 under Ex.A9 and reply dated 16.05.1994 has been received under Ex.A14, wherein the appellants have also claiming right over the property and to prove their possession, the appellants have filed Voters List, namely, Ex.B9 to Ex.B10 and old age pension of D.W.4/Palaniammal under Ex.B12. That has not been considered by both the Court below.

(e)Hence, he prayed for setting aside the judgment of both the Court below.

8.Refuting the same, the learned counsel appearing for the respondents 1 and 2 would submit that Ex.B7 and Ex.B8 are not reliable. He would submit that no action has been taken by the Government for violation of condition mentioned in Ex.A1/Assignment order. He would further submit that the Trial Court has rightly held that the appellants herein have not proved that they prescribed title by adverse possession. He would also submit that once the appellants pleaded that they are in possession of the property as a owner, the appellants are debarred to claim adverse possession. Therefore, the Trial Court and the First Appellate Court have considered the same in proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of the appeal.

9.Considered the rival submissions made on both sides and perused the typed set of papers.

Substantial Question of Law Nos.1 and 3

10.As per Ex.A1/Assignment Order, in S.No.77 0.05 cents of land has been assigned in favour of one Krishnan, who is the father of the first plaintiff and defendants 5 and 6 and husband of the second plaintiff. The learned counsel appearing for the appellants taken me through the condition imposed in Ex.A1, wherein it was specifically mentioned that the Assignee shall not alienate, encumber, settle or lease out the property to anyone for thirty years. It was also mentioned therein that the Assignee shall alienate or encumber the property provided "That the prohibition against alienation of site by way of sale, mortgage, etc., imposed by Government will not be applicable in cases where site or the buildings on the site or both or hypothecated to a co-operative house building society for the purpose of securing loans for the improvement of the construction of house or for both the purposes." Since the deceased Krishnan has sold the property as per Ex.B8, he has no right in the property. But admittedly only the heirs of the said Krishnan alone is competent to file a suit. It is not their case that other heirs are available but all the legal heirs of the deceased Krishnan are parties to the suit. Now one son and widow of the deceased Krishnan have filed the suit on behalf of the other legal heirs of the deceased Krishnan, namely, defendants 5 and 6 against the person who is in possession of the property, namely, defendants 1 to 4. The suit can be filed by one co-owner on behalf of other co-owner against third party. Merely because the death certificate of the original

title holder was not filed is not a reason for dismissal of the suit. So, I am of the view that the arguments advanced by the learned counsel appearing for the appellants that the suit itself is not maintainable does not merit acceptance. So, the Substantial Question of Law Nos.1 and 3 are answered against the appellants.

Substantial Question of Law No.2:

11.The learned counsel appearing for the appellants would submit that the Assignee of the Government land violates the condition of the Assignment by making alienation and hence, the heirs are not entitled to claim title over the property. Even though Ex.B8 has been marked to show that the deceased Krishnan has executed a sale deed, on perusal of the document, it is seen that the document is for more than Rs.150/-. So, the document to be registered and no relevance can be placed because it is an unregistered document. Furthermore, while perusing the stamp papers it shows that the document is not true and genuine and it has been concocted for the purpose of the case and the writings in the document would also show that it has been created now. Further, the sale is for Rs.150/- and as per Section 54 of Transfer of Property Act, the sale deed has to be registered. Here, in this case, the sale deed was an unregistered one and neither Kullan nor Kulandaiammal was examined. In such circumstances, the document itself is not admissible evidence. So, there is no evidence to show that the deceased Krishnan has sold the property in favour of Kullan and Kulandaiammal. Furthermore, even the Assignee violate the condition imposed in Ex.A1, the Government has not taken any steps to cancel the assignment and not taken back the property. In such circumstances, I am of the view that the appellants herein have not proved the Ex.B8. So, the arguments advanced by the learned counsel appearing for the appellants that the Assignee of the Government land violates the condition imposed by the Government by making alienation would extinguish the rights of the plaintiff does not merit acceptance and the assignment continues to be valid. Hence, the Substantial Question of Law No.2 is answered against the appellants.

12.At this juncture, the assignment is proved even though in the reply notice/Ex.A14 in paragraph No.2, it was stated "My clients the said Sadayan is residing in his own right in the terraced building put up by him. Besides his paternal uncle one Palaniammal w/o Perumal is residing for well over 3 decades in the thatched shed". Further in paragraph No.6 of the written statement also, the appellants/defendants 2 to 4 have stated that they were in exclusive possession and enjoyment of the suit property in their own right, for well over the statutory period of limitation and they have perfected their title by prescription. So they have pleaded adverse possession. But here the appellants have not proved that they are in possession of the property adverse to the interest of the respondents with the knowledge of the respondents openly, continuously and uninterruptedly for more than a statutory period of twelve years.

So, the Trial Court has rightly held that the appellants are not entitled to prescribe title by adverse possession because once the Assignee of the Government land dies, the legal heirs can claim title to the said property in the Civil Court. The appellants herein have failed to prove that they prescribed title by adverse possession. In the evidence itself, it was stated that they purchased the property from one Kulandaiammal. So, once the appellants have stated that they have purchased the property and they are in possession, they are not entitled to raise the plea of adverse possession. Hence, the Trial Court and the First Appellate Court has correctly held that the appellants have not prescribed title by adverse possession and consequently, the respondents are entitled for declaration of title and recovery of possession and mandatory injunction to removal of superstructure in the property.

13. Even though the Trial Court has granted permanent injunction restraining the appellants from alienating or encumbering the suit property, the First Appellate Court has set aside the relief. But the respondents herein have not preferred any cross objection. In such circumstances, I am of the view that the judgment and decree of the First Appellate Court is liable to be confirmed.

14. For the foregoing reasons, the decree and judgment passed by the First Appellate Court does not warrant any interference and the same is hereby confirmed. The second appeal is liable to be dismissed with cost and it is hereby dismissed.

19. In fine,

- Second appeal is dismissed with cost.
- The decree and judgment passed by the First Appellate Court is hereby confirmed.
- Three months time is granted to the appellants/defendants 2 to 4 to deliver the possession of the suit property to the respondents/plaintiffs and defendants 5 and 6.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The III Additional District Judge,
Salem.

2.The II Additional District Munsif Judge,
Salem.

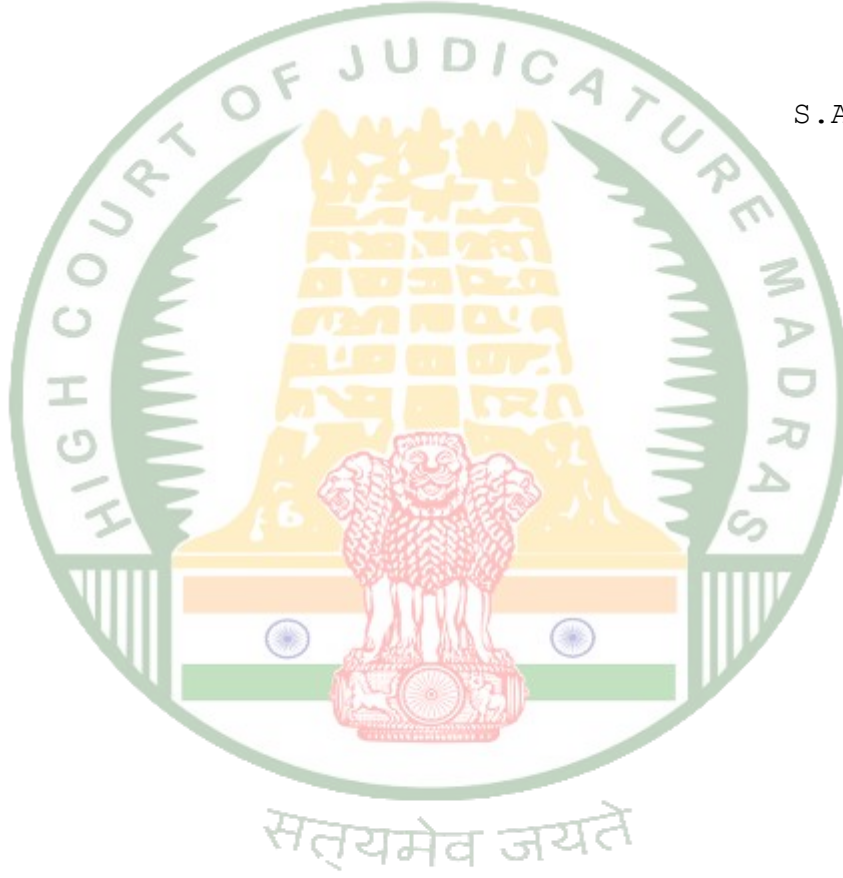
3.The Record Keeper,
V.R.Section, High Court, Chennai.

+1 cc to Mr.T.Murugamanickam, Advocate,sR.21917.

+1 cc to Mr.V.R.Rajasekaran, Advocate,SR.21892.

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krd 5/6

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