

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.11.2016

Pronounced on :07.12.2016

CORAM

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Second Appeal Nos.1390 and 1391 of 1998
and

C.M.P.Nos.13218 of 1998 and 13219 of 1998

1.G.Kalyanasundaram(died)
2.Jayakodi
(2nd appellant is brought on record as
LR of the deceased sole appellant
vide C.M.P.No.307 of 2000 dated
11.01.2000 ... Appellants in
S.A.No.1390 of 1998

1.Govindasamy @ Sakkarai (deceased)
2.G.Kangambujam
3.G.Murugaiyan
4.G.Suresh
5.G.Umamaheswari
(appellants 2 to 5 brought on record as
LRS of the deceased sole appellant vide
order of Court dated 15.11.2016 made in
C.M.P.Nos.18152 to 18154 of 2016 in
S.A.No.1391 of 1998) ...Appellants in
S.A.No.1391 of 1998

/vs/

1.V.Arunachalam (deceased)
2.A.Rajeswari
3.A.Natarajan
4.A.Sivarajan
5.A.Karthikeyan Jeyapal
6.K.Vasanthi
7.R.Saroja
8.B.Manoranjitham
9.Mallika
(R2 to R9 are brought on record as
LRs of the deceased sole respondent
vide. C.M.P.No.469 & 470 of 1999 dated
11.01.2000) .. Respondents in
S.A.No.1390 & 1391 of 1998

Prayer in S.A.No.1390 of 1998: Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.02.1998 in A.S.No.42 of 1997 on the file of the Additional District Judge, Karaikkal confirming the judgment and decree dated 31.07.1997 in O.S.No.628 of 1996 on the file of the Principal District Munsif, Karaikkal, Union Territory of Pondicherry.

Prayer in S.A.No.1391 of 1998: Second Appeal is filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 23.02.1998 in A.S.No.45 of 1997 on the file of the Additional District Judge, Karaikkal confirming the judgment and decree dated 31.07.1997 in O.S.No.609 of 1996 on the file of the Principal District Munsif, Karaikkal, Union Territory of Pondicherry.

In both cases:

For Appellants :Mr.R.Selvakumar in both the appeals

For Respondents:Mr.A.Muthukumar R2 to R9 in both the appeals

R1 died

COMMON JUDGMENT

In both the appeals, the defendant is the appellant herein. Aggrieved by the concurrent findings of the Courts below, these second appeals are preferred.

2. The suits are filed for delivery of possession, after removing the superstructure put up in the suit schedule property.

3. The case of the plaintiff is that the plaintiff purchased 60 kuzhies of land under notarial sale deed dated 10.10.1957 from one Somasundaram Desikar and was enjoying the same peacefully. One Kaliaperumal purchased 60 kuzhies of land from the neighbouring land owners vide sale deed dated 03.09.1982. Though the vendors of abovesaid Kaliaperumal, having land lesser by 11 kuzhies, sold 60 kuzhies to him, however, the plaintiff had conceded 11 kuzhies of his land and that is not the subject matter of dispute in the plaint. The plaintiff restricted his claim in respect of 43 kuzhies of land, which remains with him.

4. According to the plaintiff, one Duraisamy was allowed to live in a small house-site in the suit property, since he was employed as a driver under the plaintiff. After the death of Duraisamy, his son- in- law, who is the defendant herein, continues to be in possession and refused to vacate by joining with another person by name Govindasamy @ Sarkarai. Hence, suit for recovery of possession and declaration of title was filed by the plaintiff before the Additional District Court, Karaikal in O.S.No.26 of 1992 against the defendants Kalyanasundaram and

Govindasamy @ Sakarai. The said suit was dismissed for mis-joinder of cause of action. Hence, two separate suits in O.S.Nos.628 of 1996 and 609 of 1996 respectively were filed for the relief of recovery of possession, one against Kalyanasundaram and another one against Govindasamy @ Sarkarai. The defendants denying the title of the plaintiff claimed that they are the permissive occupants under Dharmapuram Adeenam for more than 50 years, which is the actual landlord. Therefore, the suit for possession is not maintainable.

5. With this pleading the trial Court framed issues, examined witnesses and admitted documents relied by the respective parties. Relying upon the earlier judgment in O.S.No.26 of 1992 marked as Ex.A1 (O.S.Nos.628 and 609 of 2006) and Ex.A4-sale deed in favour of the plaintiff (O.S.No.628 of 1996) and Ex.A5-patta (O.S.No.628 of 1996), the trial Court has held that the plaintiff is entitled for recovery of possession. The occupation of the defendants in the suit premises is a permissive occupation. Therefore, they are liable to vacate the premises and hand over the vacated premises.

6. Aggrieved by this, the defendants have preferred separate appeals on the ground that when the title is in dispute, the suit for possession without declaration is not maintainable and further contended that the plaintiff have not prove the title in the manner known to law. The first appellate Court on re-appreciation of evidence has held that Ex.A4- sale deed and Ex.A5-patta are sufficient to prove the ownership in favour of the plaintiff. In the earlier proceedings, the defendant attempted to disprove the title of the plaintiff by examining the temple staff as DW2. However, the said witness did not support the case of the defendant and has categorically deposed that the suit property is not owned by the temple Dharmapuram Adeenam. Relying upon the deposition of DW2, in the earlier suit in O.S.No.26 of 1992, which was marked as Ex.A6 in the present in O.S.No.628 of 1996, the first appellate Court dismissed the appeal and confirmed the judgment and decree of the trial Court.

7. Common Substantial Question of Law raised by the appellant in both the second appeals is as under:

"1.Whether the Courts below are right in delivering a judgment in contravention of Section 17 of the Indian Registration Act?

2.Whether the Courts below are right in accepting the evidence of Temple authorities made in O.S.No.26/1992, in the present suit, in contravention of Section 33 of the Indian Evidence Act?"

8. The learned counsel for the appellant submitted that Ex.A4-sale deed is an unregistered document conveying immovable property worth more than Rs.100/-. Therefore, it requires registration under Section 17 of Indian Registration Act, 1908.

This submission is totally untenable because the property is situated in the Union Territory of Pondicherry, Karaikal Region, Thirunalaru. Till 08.01.1969, the Registration Act, 1908 was not adopted by the Union Territory Government and notarial sale was permissible and prevalent, without registration. The Ex.A4-sale deed is dated 30.09.1957 and at that point of time, the Registration Act, 1908 was not enforced within the Union Territory of Pondicherry. Therefore, there is no substance in the above said submission.

9. The learned counsel for the appellant referring Section 33 of the Indian Evidence Act, 1872 submitted that Ex.A6, which is the deposition copy of DW3 in the earlier proceedings viz., O.S.No.26 of 1992 is inadmissible evidence, since it does not fall within the scope and ambit of Section 33 of the Indian Evidence Act, 1872.

10. This Court is of the opinion that de-hors of Ex.A6-deposition of DW3 in O.S.No.26 of 1992, the plaintiff had proved his title and possession through other documents. Ex.A6 is the deposition of the clerk attached to Dharmapuram Adeenam. On referring the records maintained by the Adeenam, he has deposed that the suit property is not owned by the Temple. He has said nothing from his personal knowledge. What he has deposed is from the records maintained by Dharmapuram Adeenam in their regular course of transaction.

11.The defendant has called six witnesses in the earlier proceedings to prove his claim that the plaintiff is not the owner of the suit property. However, these witnesses turned hostile, not supported the case of the defendant. If the defendant/appellant still had a case on this score, he could have very well called for the records of the Devasthanam/temple and established his case that the plaintiff is not the titleholder. The defendant has failed to do so.

12.Therefore, in the light of the other evidence, Ex.A6 pales to insignificance. Therefore, the admissibility of Ex.A6 by the trial Court nowhere prejudiced the case of the defendant and hence, this question of law is also unsustainable.

13. In the result, these second appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Additional District Judge, Karaikkal

2.The Principal District Munsif, Karaikkal, union Territory of Pondicherry.

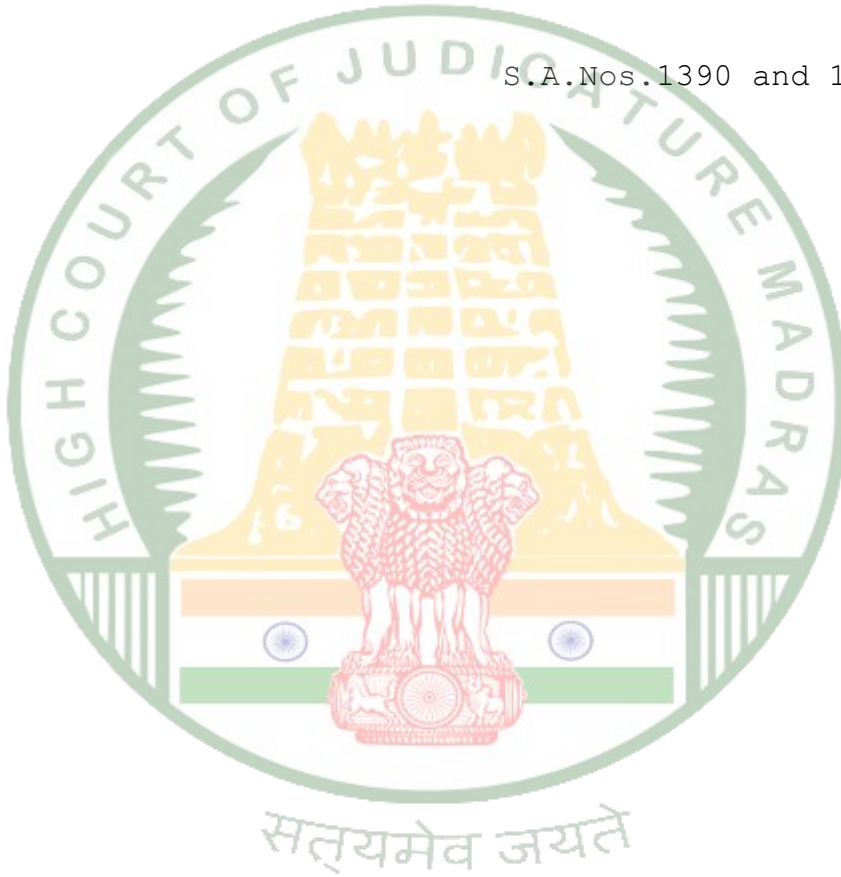
+2 cc's to Mr.A.Muthukumar,advocate,sr.71918

+2 cc's to Mr.R.Selvakumar,advocate,sr.72204 & 205.

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krd 4/1

S.A.Nos.1390 and 1391 of 1998



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