

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2016
Pronounced on : 05.01.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1246 of 2002

1.Veerappa Gounder ..1st appellant/13th defendant
2.Kannan ..2nd appellant/20th defendant
3.Vedi ..3rd appellant/22nd defendant
4.T.S.Ajoy
5.T.S.Sridhar
6.Kuppu @ Usha ..Appellants 4to6/Defendants 76 to 78
7. Chakkarai @ Shanmugam ..7th appellant/15th appellant
8.Venkatarama Gounder ..8th appellant/15th appellant
9.Madhaiyan ..9 & 10th appellants/17th
& 18th appellants
10.Muniyappan
* Respondents 80, 83 and 88 are transposed as appellants 8 to 10 vide Order of Court dated 23.11.2016 made in CMP No.7591 of 2004.

Versus

1. Dhanabagiam @ Seethalakshmiammal ..1st Respondents/2nd Plaintiff
2. Lalitha
3. Manoharan
4. Parameswari
5.Jagadeesan
6. Usha
7.Jayanthi ..Respondents 2to9/Plaintiffs 4to9
8.Rani Chinnamani
9.Sowbagiyam ..Respondents 8&9/Plaintiff 10&11
10.V.Muthannan ..10th respondent /13th Plaintiff
11.V.Chennannan ..11th respondent/15th Plaintiff
12.V.Boopathi ..12th respondent/17th Plaintiff
13.Gowrammal
14.Nagendran
15.Vijayalakshmi
16.Renuka
17.Kalyaniammal
18.K.A.Shankaran
19.A.Prema

20.A.Sundaram
21.A.Shanmugam
22.A.Lalitha
23.A.Padmini
24.A.Kamakshi
25.A.Kirubakaran
26.M.P.Chandrappa Maniagar
27.C.Padmanabhan
28.C.Vaidhegi
29.C.Kowsalya
30.C.Prabakaran
31.C.Kavitha @ Jayasudha

..Respondents 13 to 31/Plaintiffs 18 to 36

32.Lala @ Tirupathi ..32nd respondent/3rd defendant
33.Chinnasami ..33rd respondent/18th defendant
34.Rangammal
35.Karungammal ..34th & 35th respondent/
defendants 6&7

36.G.Kannan ..36th respondent/17th defendant
37.Chinnasamy ..37th respondent/30th defendant
38.Govindan ..38th respondent/19th defendant
39.Raji ..39th respondent/23rd defendant
40.Kariyan ..40th respondent/16th defendant
41.Villali ..41st respondent/25th defendant

42.Kaveri
43.Alraju ..42nd & 43rd respondent/
defendants 27 & 28

44.Sevathan
45.Chinnasamy ..Respondents 44 and 45/
Defendants 29&30

46.Mariappan
47.Pachiappan ..Respondents 46 & 47/
Defendants 32 & 33

48.Periyathambi
49.Govindan
50.Subramani
51.Raman
52.Chinna Arjunan
53. Periya Arjunan
54.Chettiappan
55.Velmurugan

..Respondents 48 to 54/
Defendants 37 to 44

56.Chinnammal ..56th respondent/46th defendant

57.Rangammal@ Mangai ..57th respondent/50th defendant
(died)

58.Rangappan@ Koothaiyan
59.Lakshmi
60.Chinnasamy
61.Thirupathi @ Chinnasamy
62.Mangammal
63.Raman
64.Muthu

..Respondents 58 to 64/
defendants 51 to 57

65.Chinnapillai

..65th respondent/59th defendant

66.Chinnathambi
67.Chinnakolandai
68.Chinnaraju
69.Mani
70.Viswanathan
71.Menaka

..Respondents 66 to 71/
Defendants 61 to 66

72.Ramalingam
73.Rajammal
74.Madhu

..Respondents 82 to 84/
Defendants 68 to 70

75.Chinnappappa
76.Sali

..75th and 76th respondents/
Defendants 71 & 72

77.Chinnathai

..77th respondent/74th defendant

78.Dhanakodi

..78th respondent/5th defendant

79.Andheri Gounder

..79th respondent/10th defendant

80.Venkatarama Gounder
(Transposed as appellant 8
vide Order of Court
dated 23.11.2016 made
in CMP No.7591/04)

81.Venkatachalam
82.Vediammal
83.Madhaiyan

..81st respondent/60th defendant
..82nd Respondent/47th defendant

(Transposed as appellant 9 vide
Order of Court dated 23.11.2016 made
in CMP No.7591/04)

84.Murugathammal @ Dhanalakshmiammal

..84th respondent/75th defendant

85.Chinnakannu

..85th respondent/14th appellant

86.Purukala
87.Madaiyan ..86 & 87th respondent/16th and
17th appellants
88.Muniappan
(Transposed as appellant 10 vide
Order of Court dated 23.11.2016
made in CMP No.7591/04)
89.Tharaman
90.Palani ..89 &90th respondents
19th & 20th appellants

PRAYER : Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree on the file of the III Additional District Judge, Dharmapuri @ Krishnagiri in A.S. No.64 of 1997, dated 30.04.2002 in confirming the Judgement and Decree on the file of the Subordinate Judge, Krishnagiri in O.S.No.261 of 1977 dated 22.04.1997.

For Appellant : Mr.V.Raghavachari
for appellants 1 to 7
Mr.P.Mani
for appellants 8 to 10

For Respondents:Mr.T.Rajasekaran for RR2 to
9,11,13 to 22,26 to 31
Mr.K.A.Ramakrishnan for R12
Mr.K.Srinivasan,
Senior Counsel
for Mr.A.Muthuraman for R24
RR12, 23 and 25 -
No appearance
RR1 and 10 died.
RR32 to 87 - Given up (80 & 83
& 88 respondents as
appellants 8,9 & 10

J U D G M E N T

This appeal filed by the legal representatives of the first defendant and few other defendants is directed against the concurrent findings of the Court below allowing the suit filed for declaration possession and mesne profit.

2. The brief facts of the case is as follows :-

a. The suit was filed by one Nagaraja Manikkar and the legal heirs of Andiyappa Manikkar. They were arrayed as plaintiffs 1 to 9 respectively against T.S.Subbaraya Manikkar and 9 others. Pending suit, the first appeal and the second appeal, many of the original contesting parties died and their legal heirs are arrayed as parties to the lis.

b. The suit properties originally belonged to one Chennanna Manikkar and Thirthagiri Manikkar. They both constitute Hindu Undivided Family (HUF) and they were enjoying the property jointly from 1913. Chennanna Manikkar died leaving behind his wife and two daughters. One of his daughter died in 1926 and his wife died in the year 1935. The sole heir of Chennanna Manikkar was his daughter Kalyaniammal, who lived till 1959.

c. Thirthagiri Manikkar, who was the brother of Chennanna Manikkar, died in the year 1939, leaving behind his wife Thangamuthuammal and his daughter Savithriammal. Thangamuthuammal executed a settlement deed in favour of Kalyaniammal on 05.10.1939, with limited interest for life upon Kalyaniammal and after her demise, the property absolutely vested with the legal heirs of Thirthagiri Manikkar.

d. On the death of Kalyaniammal on 27.04.1959, the property reverted back to Thangamuthuammal and Savithriammal, they being the legal heirs of Thirthagiri Manikkar. While so, one Andiyappa Manikkar claimed right over the property through a gift deed alleged to have been executed by Kalyaniammal and interfered with the possession of the suit properties. Therefore, Thangamuthuammal and Savithriammal jointly filed O.S.No.27 of 1959 before the Salem Munsif Court in respect of properties situated at Thaiyur village. After instituting the suit, Thangamuthuammal died on 17.11.1959 leaving behind her only daughter Savithriammal as her sole legal representative. In respect of the other properties shown in the suit schedule, Savithriammal filed a suit against Andiappa Manikkar before the Sub Court, Salem, which was numbered as O.S.No.26 of 1961. Both the suits were later transferred to Krishnagiri District Court and renumbered as O.S.Nos.09 of 1965 and 10 of 1965.

e. Pending the above said suits, Savithriammal died. There were 4 Interlocutory applications taken out by four different persons to get themselves impleaded as legal heirs of Savithriammal, in which, the Court declared Nagaraja Manikkar as the legal heir of Savithriammal in I.A.No.31 of 1967 by Order dated 07.04.1969. The said Nagaraj Manikkar is the first plaintiff in this suit.

f. In the above suits, Subbraya Manikkar the first defendant in the present suit filed an application to come on record as legatee under a Will alleged to have been executed by Savithriammal. The Trial Court permitted him to watch the proceedings, but declined his request to contest as a party. Under these circumstances, the contesting parties Nagaraja Manikkar and legal heirs of Andiyappa Manikkar in O.S.No.09 of 1965 and 10 of 1965 arrived at a settlement and obtained a compromise decree dated 30.09.1970. The properties, which are the subject matter of the present appeal, are same as that of the properties in O.S.No.09 of 1965 and 10 of 1965.

3. The first defendant contested the suit on the ground that since 1939, he is in possession and enjoyment of the property and Savithriammal executed the settlement deed Ex.B1, in his favour, but on analysing Ex.B1, the Trial Court found that out of 12 names found in the settlement deed marked as Ex.B1, the name of the first defendant is not found, but in the patta issued based on Ex.A1, the name of the first defendant is found along with 12 other persons. The Courts below has observed the first defendant, who was working as Karnam has influenced his counter part in-charge of Pandalampatti suit village and has included his name in the patta though he was not one of the settlee.

4. The case of the first defendant is that he was enjoying the property of Savithriammal and Thangamuthuammal, since 1939. Contrary to his pleadings, in his deposition the first defendant has admitted that till their life time, the property was in possession of Thangamuthuammal and her daughter Savithriammal.

5. The first defendant further rely on the Will to claim possession and right over the suit property. The Will was found to be forged and fraudulent by the competent Court in O.S.No.88/67 filed by the first defendant. Aggrieved by the judgment and decree, the appellant has preferred appeal and the appeal was dismissed.

6. Considering all the above facts both the trial Court and the first appellate Court held against this appellant.

7. At the time of admission of this Second Appeal, this Court by Order dated 06.08.2002 has formulated the following substantial questions of law for consideration :

1. Whether a collusive and fraudulent decree be a source of title and whether Exs.A.15 and A.16 would confer any right upon the plaintiff?

2. Whether the Courts below are right in decreeing the suit for recovery of possession on the pleading set out by the plaintiff that the defendants are tenants in suit property?

3. Whether the orders of the Court below are not against the judgment of the Honourable Apex Court reported in 1983 SC 663?

8. The learned counsel for the appellant vehemently argued that in the earlier suit in O.S.No.09/65 and 10/65, this appellant was not permitted to actively participate, but was asked to watch and wait as a supplementary defendant. Since it will not provide him an adequate opportunity to put forward his case, he withdrew from participating in the litigation. The compromise decree entered behind his back will not bind him.

9. The learned counsel for the appellant further contended that the Courts below have not properly considered the settled possession of the appellant in respect of the suit property. In support of his submissions referred the following judgments

i) (Kuppanna Pannadi V. Rajammal) reported in 2006 - 4 - MLJ 1001

"11. The defendant, no doubt claimed title to the suit property by oral sale. The absence of proof regarding the oral sale as if it would lead to the presumption that there must be a tenancy is not based upon legal principle. But unfortunately, the first appellate Court set aside the finding of the trial Court in this regard and presumed without evidence, that the defendant's possession is that of tenancy, which is liable to be erased. In this view of the matter, it is to be held that the defendant is occupying the property not as tenant, whereas his occupation should be in some other capacity.

12. Admittedly, even before the date of filing of the suit for more than 12 years, continuously the defendant is in possession and enjoyment of the same. Therefore, it is to be seen on the basis of the admitted possession whether that possession is adverse to the real owner, whether that possession had the effect of extinguishing the title of the plaintiffs or in other words, whether that possession vested absolute title with the defendant, on the basis of adverse possession, though its origin is illegal, but because of recognising the long possession, leading to title also."

ii) (Chairman & Managing Trustee Krishnaswamy Educational trust V. C.V.Rajeswari Ammal (Deceased) & others reported in 2013 - 3 - L.W. 381

"61. Therefore, if the original transfer was void, then the alienee or the Donee in this case would have been in adverse possession from the date of transfer, which in the instant case is 06.01.1985, the date on which according to the defendant, the plaintiff is without lawful title. This decision fully supports our conclusion that the date from which the plaintiff is in possession adverse to the interest of the defendants is 06.01.1985.

62. Useful reference may be made to the decision of the Division Bench of this Court in (Karnam) Kandaswamy Pillay Vs.Chinnabha & Ors., [AIR 1981 Madras 82]. The Division Bench held that an unregistered sale cannot be set up as a transaction having effect of itself to transfer

any interest in property; but it is permissible to consider it, as showing the nature of transferees subsequent possession. That being established it would after the expiry of 12 years ripen into a full title."

10. The plea of possession without declaration is not sustainable, in view of the judgment rendered in Anathula Sudhakar V. P. Buchi Reddy (Dead) by Lrs. and others, in 2008 (6) CTC 237.

"17..... A) Where a cloud is raised over plaintiff's title and he does not have a possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter".

11. No doubt, the appellant was not party to the earlier compromise decree. The earlier suit is primarily between the plaintiff and one Andiyappa Manikkar. Whatever right and in whichever manner, the appellant claims either as a legatee under the Will of Savithriammal or person in possession of the property adverse to the title of the true owner Savithriammal, his right can only be through Savithriammal and not otherwise. In the interlocutory applications filed by this appellant, he got himself impleaded as a legatee and later withdrew. Subsequently, he filed suit O.S.No.88 of 1967 relying upon the Will of Savithriammal. The Will was found to be fraudulent and forged one and his claim of possession from 1939 found disproved through his own deposition. Therefore, this appellant has no locus-standi to claim possession adverse to the true owner Savithriammal. He also cannot question the compromise decree entered into between the parties in O.S.No.09 of 1965 and 10 of 1965 since his source of claim is only through Savithriammal. So, beyond the right of Savithriammal, the appellant has no better source to claim right over the property.

12. Further having set up right over the property through a Will, the appellant is estopped from claiming adverse possession. Insofar as the suit properties are concerned, it is an admitted fact that the property, which was held by Thirthagiri Manikkar and Chinnananna Manikkar, later devolved upon Savithriammal. The earlier suit and compromise decree in Ex. A15 and A16, do not confirm right or title upon the plaintiff, but it only provided the means of devolution of the property among them, since there was conflict between agnates and cognates in dividing the properties, Andiappa Manikkar, the defendant in earlier suit in O.S.No.09 of 1965 and 10 of

1965 claimed right over the property as a cognate. Thus, the earlier suit was between cognatic relative Andiyappa Manikkar and the direct descendants of Thirthagiri Manikkar. This appellant, has nothing to do with the compromise entered into between direct descendant of Thirthagiri Manikkar and his Cognative relative, Andiyappa Manikkar. Precisely that is why, the Court below permitted the appellant just to watch the proceedings and if any right to Savithiriammal devolves, the appellant to take claim through her Will.

13. As pointed earlier the alleged Will of Savithiriammal dated 21.12.1966 in favour of the appellant already held to be a fraudulent document in the earlier proceedings in O.S.No.88 of 1967. Therefore, neither based on the Will nor adverse possession, this appellant has legs to sustain. This appellant never been in possession from 1939 as claimed and a prudent settlement of dispute between the rival claimants, cannot be termed as a collusive and fraudulent decree by a third party, who tries to set up title over the property through a fraudulent document.

14. In the result, this Court find no merits in this appeal. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions if any, are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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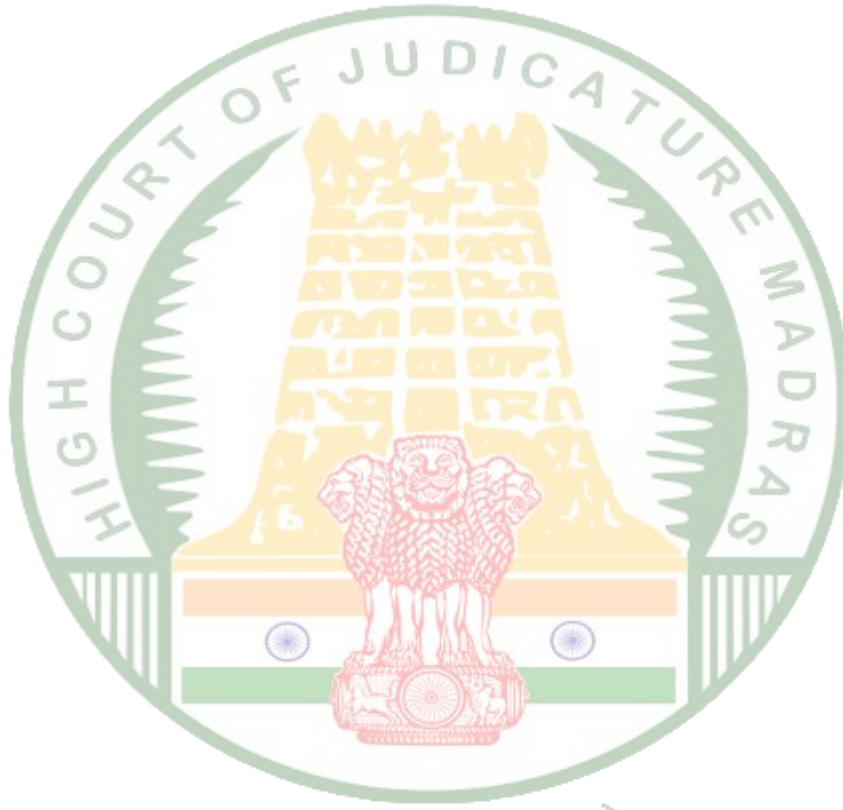
To :

1. The III Additional District Judge,
Dharmapuri,
Krishnagiri.
2. The Subordinate Judge,
Krishnagiri.

+1cc to Mr.V. Ragavachari, Advocate, S.R.No.864
+1cc to Mr.A. Muthuraman, Advocate, S.R.No.1231
+1cc to Mr.T. Rajasekaran, Advocate S.R.No.1827

VD(CO)

EU 02.02.17



सत्यमेव जयते

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