



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.08.2017**

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.361 of 2017

and

C.M.P(MD)No.7673 of 2017

1.K.Shajahan

2.K.Haja Mydeen

... Appellants/Appellants/Defendants

Vs.

Vanaraja

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 18.10.2016 made in A.S.No.20 of 2015 on the file of the III Additional District and Sessions Court, Thanjavur, confirming the Judgment and Decree, dated 28.10.2014 made in O.S.No.60 of 2012 on the file of the Sub Court, Pattukkottai.

For Appellant : Mr.S.K.Mani

JUDGMENT

The above Second Appeal arises against the Judgment and Decree, dated 18.10.2016 passed in A.S.No.20 of 2015, on the file of the III Additional District and Sessions Court, Thanjavur, confirming the Judgment and Decree, dated 28.10.2014 passed in O.S.No.60 of 2012, on the file of the Sub Court, Pattukkottai.

2.The defendants, who have lost before the Courts below, have filed the above Second Appeal. The suit is filed by the plaintiff for declaration of title and for recovery of possession of the suit property.

3.The case of the plaintiff is that the property originally belonged to one Veerasamy. After his death, his legal heirs were in possession and enjoyment of the suit property. The plaintiff had purchased the suit property from the legal heirs of Veerasamy on 18.09.1996 and also as per the Release Deed, dated 13.10.1998, the plaintiff has been in possession and enjoyment of the suit property from the date of purchase, though the suit property is a vacant site. The plaintiff was away from the suit property living at Singapore. When he returned to his native place in the year 2011, he found that the defendants occupied the suit property and doing firewood business. When the plaintiff approached the defendants to vacate the suit property, the defendants refused. Hence, the suit has been filed for declaration of title and



recovery of possession.

4.The defendants had resisted the suit denying the facts stated in the plaint. According to the defendants, his father Kamaludeen shifted his residence to the suit property in the year 1985, when the suit property was a vacant site at that point of time. The defendants' father had put up a hut over the suit property and doing firewood business since 1985. After the death of the defendants' father, the defendants have been in possession of the suit property doing the said business. Hence, the defendants also claim right and title over the suit property by adverse possession.

5.On the side of the plaintiff, two witnesses have been examined as P.W.1 and P.W.2 and Exs.A.1 to A.9 were marked and on the side of the defendants, four witnesses have been examined as D.W.1 to D.W.4 and Exs.B.1 to B.16 were marked.

6.The Courts below have concurrently held that the plaintiff has established his title and the defendants have entered without any right or title to the suit property and their occupation is held to be unauthorised. Aggrieved by the above decisions, the present Second Appeal has been filed.

7.It is the specific case of the plaintiff that he had purchased the suit property as per Ex.A.2, pursuant to the sale agreement as per Ex.A.1. The plaintiff also get its title under Ex.A.3, which is a release deed executed by Karuthammal and three others. The plaintiff has produced Ex.A.5, which is chitta extract and Ex.A.7, the property tax receipts of the year 2011. Though the defendants claimed that they are in possession of the property under Exs.B.1 to B.16, Exs.B.2 to B.7 are only letters addressed to the defendants. Ex.B.1 relates to the Certificate of registration issued by the Inspector of Legal Metrology under the standard of Weights and Measures Act. It does not find a mention about the suit property. Therefore, the same was rightly rejected by the Courts below. Sofar as Exs.B.2 to B.7 are concerned, they are postal envelopes and post cards and they are also said to be not related to the suit property.

8.Admittedly, the defendants are running another firewood shop by occupying Pallivasal site opposite to the suit property. The Appellate Court also found that only the street name has been mentioned in Exs.B.1 to B.7 and there is no mention about the suit property in particular. Hence, the documents of the defendants are rejected by the Courts below, as they do not relate to the suit property. Similarly Exs.B.8 to B.13 are also not necessary to the suit property and they are rightly rejected by the Courts below.

<https://hcservices.courts.gov.in/hcservices/> the plaintiff had produced the sale deed in his favour and also the revenue records and also the property tax for having patta for the property. The above documents are not



challenged by the defendants. The suit is filed for recovery of possession, as the specific case of the plaintiff is that when he was away in Singapore on his employment, the defendants have taken advantage of the absence of the plaintiff and occupied the suit property.

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9. Though the learned counsel appearing for the appellant vehemently argued by citing **City Municipal Council Bhalki vs Gurappa (D) By Lrs & Another [2016 (2) SCC 200]**, the plaintiff has to succeed on the strength of his own title notwithstanding the lacuna in the defendants case, it is a settled principle that in a suit for recovery of possession based on title, it is for the plaintiff to prove his title and satisfy the Court that he is entitled in law to dispossess the defendant from his possession over the suit property and restore the possession in his favour.

10. In the case on hand, the plaintiff has produced documents to show his title to create a high degree of probability to shift the onus on the defendants. Once the burden is discharged by the plaintiff, the onus automatically shifts on the defendants to discharge their onus.

11. Though the defendants claimed to occupy the suit property from the year 1985, there is no scrap of paper produced by the defendants to prove their possession. The documents that are produced by the defendants are held to be not related to the suit property. Therefore, this Court is of the opinion that the plaintiff has established his title and the defendants have occupied the suit property without any right or title and the decree granted in favour of the plaintiff for recovery of possession is correct. The Judgment and Decree of the Courts below do not warrant any interference in the absence of any question of law in the given facts. Hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge,
Thanjavur.
2. The Sub Judge,
Pattukkottai.

<https://hcservices.courts.gov.in/hcservices/>
3. The Record Keeper,
V.R Section,



Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.K.Mani, Advocate Sr.No.73707
+1cc to Mr.C.Bharathi Advocate Sr.No.73734

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