

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1025 of 1995

Panchalai Ammal

... Appellant

Vs.

1.Kulanthaivel Udayar
2.Murugaiyan
3.Alamelu Ammal
4.Palanisamy

(R4 is brought on record as LR of the deceased 1st respondent vide order of Court dated 13.03.2008 made in C.M.P.Nos.8604 to 8606 of 2006 in S.A.No.1025 of 1995)

... Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed in A.S.No.228 of 91 dated 19.12.1994 on the file of Sub Court, Ariyalur, confirming the judgment and decree passed in O.S.No.235 of 1990 dated 28.11.1991 on the file of the Principal District Munsif Court, Ariyalur, in so far it affects the appellant.

For Appellant : Mr.A.Ilango

For Respondents: M/s.R.Mahamandra Rajalakshmi for R2

for M/s.Sarvabhauman Associates

R1 - Died

No Appearance for R3

J U D G M E N T

The plaintiff who lost the case before the lower Court as well as the lower Appellate Court in respect of seven cents of land is the appellant before this Court. The plaintiff filed suit for declaration declaring that the 98 cents of land belong to the plaintiff and for permanent injunction.

2.The case of the plaintiff is as follows: Initially the suit schedule property was owned by one Kumarappa Udayar. Kumarappa Udayar had two sons namely, Karuppanna Udayar and Palani Muthu Udayar. The plaintiff purchased the property from

the legal heirs of Karuppanna Udayar vide sale deed dated 10.09.1980. That sale deed is marked as Ex.A1. By virtue of Ex.A1, the plaintiff is owner of the property. However, the second defendant claiming 7 cents out of 98 cents thereby, interfered with the peaceful possession and enjoyment of the suit schedule property. Thereby, the plaintiff filed suit for declaration and permanent injunction. However, the lower Court decreed the suit in respect of 91 cents and rejected the claim for 7 cents as if the 7 cents belonged to the second defendant. Hence, the plaintiff filed appeal before the lower Appellate Court. The lower Appellate Court also confirmed the order passed by the lower Court. As against the concurrent findings, the plaintiff has filed the second appeal before this Court.

3.The sum and substance of the written statement filed by the first defendant is as follows: The first defendant denied the allegations made in the plaint. The plaintiff is not the owner of the entire suit property. Infact, the suit property to an extent of 3-1/2 cents was purchased by the defendant from one Valliyammai who sold the lands for herself and on behalf of her minor children by means of a sale deed dated 26.07.1972. Subsequently, the defendant purchased another 3-1/2 cents from the legal heirs of Ganapathy on 08.07.1985 and from the date of purchase, the defendant was in enjoyment and possession of the same as absolute owner and the defendant has acquired seven cents as per the above said sale deeds and he was in possession and enjoyment of the suit schedule property and subsequently, the property was sold to the second defendant and the Revenue Authorities also mutated the patta in favour of second defendant and sub division was also made at the relevant point of time and only in order to grab the property, the plaintiff filed the suit for declaration and permanent injunction.

4.The sum and substance of the written statement filed by the second defendant as follows: Originally, 98 cents was comprised in S.No.130/2 and the same was owned by Kumarappa Udayar/ father of Palani Muthu Udaiyar. The said Palani Muthu Udayar is none other than the paternal uncle of Thangaraju Udayar from whom the plaintiff purchased the property and father of Pitchaipillai and Ganapathy. Though Thangavel's father and Pitchaipillai and Ganapathy secured the properties through family partition that took place between them by metes and bounds, 91 cents fell to the father of Thangavel and 7 cents was allotted to the father of Ganapathy and Pitchaipillai. After the death of their father, the land belonging to Palani Muthu Udaiyar was divided and 3-1/2 cents each was possessed by Ganapathy and Pitchaipillai. Thereafter, the first defendant Kulanthaivel Udaiyar purchased the property from the legal heirs of Pitchaipillai and Ganapathy on 26.07.1978 on 08.07.1985

through Ex.B1 and Ex.B2. Thereafter, the second defendant purchased the property from the first defendant through a sale deed dated 09.07.1990 which was marked as Ex.B11. Thereafter, the second defendant is in absolute possession and enjoyment of 7 cents of the suit property and approached the Revenue Authorities for mutation of Revenue records. Accordingly, the Revenue records were mutated in favour of the second defendant.

5.After considering Ex.B1, Ex.B2, Ex.B11 and Ex.A1, the lower Court granted declaration in favour of the plaintiff with regard to 91 cents and rejected the claim with regard to 7 cents of land. As against the said order, the appellant/ plaintiff filed appeal before the lower Appellate Court and the lower Appellate Court dismissed the appeal and confirmed the order of the lower Court. Aggrieved by the same, the appellant/ plaintiff has filed this second appeal.

6.At the time admission of the second appeal, this Court framed the following substantial question of law:

"Is it not the appellant has acquired and prescribed title by way of adverse possession tagging into the possession of the appellant's vendor?"

7.The learned counsel appearing for the appellant would submit that the appellant/ plaintiff purchased the property from the legal heirs of Karuppanna Udayar in the year 1980 through Ex.A1. After purchase, the entire property comprising 98 cents was enjoyed by the plaintiff. The entire property was comprised in S.No.130/2. The plaintiff purchased the property from one Thangavel Udayar and Thangaraju Udayar/ legal heirs of Karuppanna Udayar. The said Thangavel Udayar and Thangaraju Udayar acquired the property through family partition. However, he fairly conceded that no documents were filed with regard to possession of 98 cents by Thangavel Udayar and Thangaraju Udayar.

8.The learned counsel appearing for the appellants further contended that oral partition is also binding on the family members if it is found proved by way of documents or other oral evidence. Even otherwise the plaintiff has acquired the property by way of adverse possession in the year 1980 and the suit was filed in the year 1990. Accordingly, he prayed for allowing the second appeal.

9.The learned counsel for the respondents/ defendants would submit that the first defendant purchased the property in the year 26.07.1978 and 08.07.1985 through Ex.B1 and Ex.B2. Totally 7 cents from the legal heirs of Pitchaipillai and Ganapathy. The first defendant purchased the property prior to the plaintiff's sale deed and the same was marked as Ex.B1.

Thereafter, the other property was purchased in the year 1985 and the same was marked as Ex.B2. The other 3-1/2 cents purchased in the year 1985. Subsequently, the second defendant purchased the property on 09.07.1990 through Ex.B11

Immediately after purchase, he approached the Revenue Authorities for mutation of Revenue Records. Accordingly, the Revenue Authorities after inspection granted patta in favour of the second defendant and the Revenue Authorities also made sub division in favour of the second defendant.

10.After perusing the entire records namely, Ex.A1, Ex.B1, Ex.B2 and Ex.B11, the lower Court and the lower Appellate Court arrived at a fair conclusion that the plaintiff is not entitled to 7 cents of land which was purchased by the second defendant on appropriate valuable consideration. On perusal of documents marked as Ex.B1, Ex.B2, Ex.B3, Ex.B4, this Court do not find any error in the order passed by the lower Court as well as the lower Appellate Court.

11.On perusal of the Revenue records, the second defendant is in possession of the property. However, no contra documents were produced by the appellant/ plaintiff with regard to the adverse possession. Accordingly, the substantial question of law is answered against the appellant/ plaintiff and the second appeal deserves to be dismissed.

12.In the result the second appeal is dismissed. The judgment and decree passed in A.S.No.228 of 1991 dated 19.12.1994 on the file of Sub Court, Ariyalur, confirming the judgment and decree passed in O.S.No.235 of 1990 dated 28.11.1991 on the file of the Principal District Munsif Court, Ariyalur, is confirmed. No costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The Sub Court, Ariyalur.

2.The Principal District Munsif Court, Ariyalur.

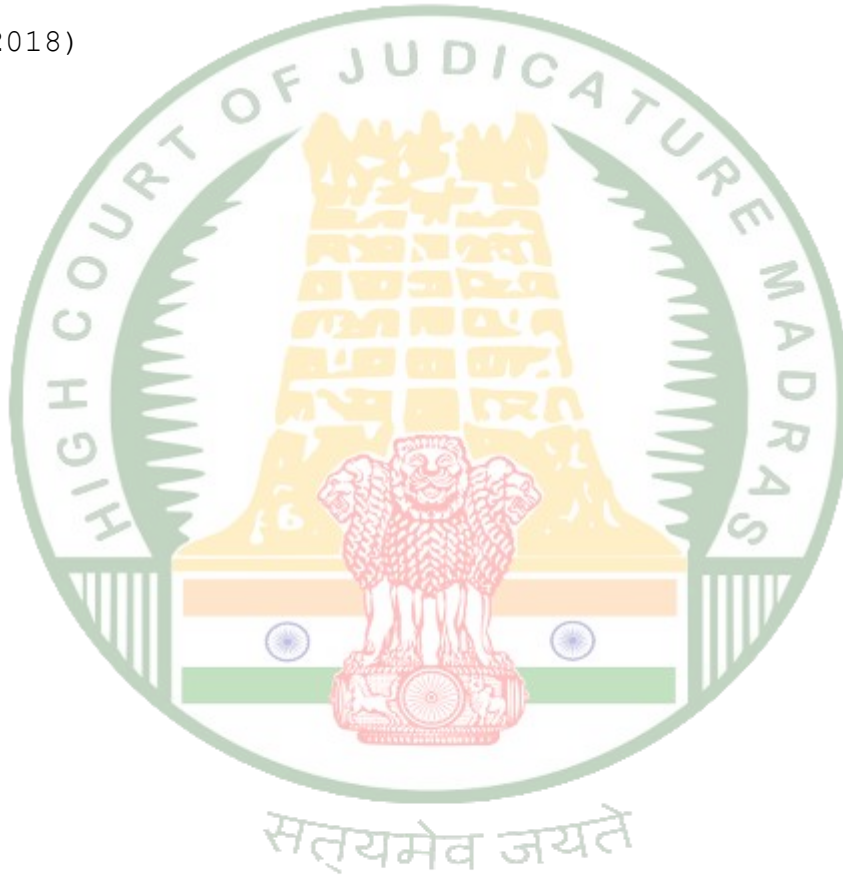
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Copy to
The Section officer
VR Section, High Court, Madras.(2 copies)

+1 CC to M/s. Sarvabhuman Associates sr 5400.
+1 CC to Mr.A.Ilango, Advocate sr 5028(31/05/2018)

S.A.No.1025 of 1995

KS (CO)
SP(17/02/2018)



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