

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.544 of 2008

Smt.M.Dhanalakshmi Ammal

...Appellant/Plaintiff

Vs.

1. Mr.Suriyanarayana Moorthy
2. Mr.Krishnaraju
3. Smt.Gular Rahima Syed
4. Smt.Fathima Syed
5. Mr.AJ.Rajan
6. Smt.Usha Ramanathan
7. Mr.Seetharamarao
8. Smt.K.Latha
9. Mr.Sivaraman
10. Smt.Meenakshi
11. Smt.V.K.Vatsala
12. Mr.Chandrasekar
13. Mr.N.A.Khanlodi
14. Smt.K.A.Savithri

...Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the judgement and decree dated 26.10.2006 passed in A.S.No.209 of 2005 on the file of the IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 31.03.2004 passed in O.S.No.6776 of 1996 on the file of the XI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.V.M.Rajendran

For Respondents: Mr.V.Bhiman
for M/s.Sampathkumar Associates[R1, R2]
Mr.T.N.Rajagopalan [R8 to R11]
Mr.P.B.Balaji [R14]

JUDGMENT

The appellant herein is the unsuccessful plaintiff before the trial court as well as before the first Appellate Court. The suit is laid for declaration of plaintiff's title over the plaint C-schedule property by prescription and adverse possession.

2. This appeal is not yet admitted. Heard both sides, in order to ascertain if there exists any substantial questions of law which may warrant the consideration of this Court in this appeal.

3.1 The brief facts are: The plaint A-schedule property originally belonged to a certain Murugappa Maistry. He had three daughters and two sons, of who this Court is now concerned essentially with the plaintiff Dhanalakshmi Ammal, who is Murugappa Maistry's daughter, and his grandson Suriyanarayanamoorthy, the second defendant, who is born to the first defendant, and second daughter of Murugappa Maistry namely Dhanakoti Ammal.

3.2 Be that as it may, Murugappa Maistry had divided A-schedule property into two parts. One part constitutes B-schedule which Murugappa Maistry had settled in favour of the plaintiff under Ext.A-1 dated 22.04.1960. The other part is described as C-schedule to the plaint and this was settled in favour of Dhanakoti Ammal, under Ext.B-1. Dhanakoti Ammal was granted only life estate and the remaining estate vested in Suriyanarayanamoorthy, the 2nd defendant.

3.3 While things stood thus, Suriyanarayanamoorthy had sold the property to defendants 3 to 5, who in turn had developed the property and sold it to other defendants. It is, in these circumstances, the plaintiff has laid the suit seeking declaration of her title on the ground that she has preferred title by adverse possession.

4. The law is now settled vide judgment of the Hon'ble Supreme Court in Gurdwara Sahib v. Gram Panchayat Village Sirthala and another [(2014) 1 SCC 669], wherein, the Hon'ble Supreme Court has held that plea of adverse possession can be used only as a shield and not as a sword and therefore, no suit can be laid for declaration on that ground. This is subsequently followed by this Court, in R.Riyaz Ahmed & Others v. J.G.Glass Industries Pvt. Ltd., [2014-2-L.W.455].

5. In view of the aforesaid judgments, it is necessary to hold that the suit itself cannot be sustained and accordingly, nothing survives in this appeal.

6. In the result, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssn/prm

To

1. The IV Additional Judge,
City Civil Court, Chennai.

2. The XI Assistant Judge,
City Civil Court, Chennai.

3.The Record Clerk,
VR Section,
High Court, Madras.

+1cc to Mr.V.Venktasamy, Advocate SR.No. 77953

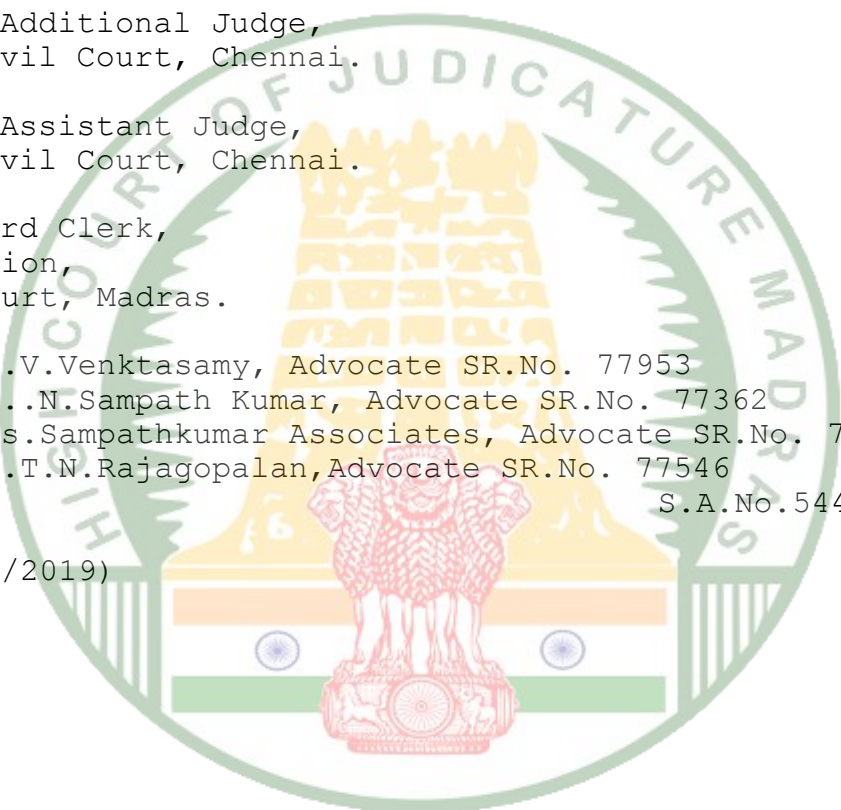
+1cc to Mr..N.Sampath Kumar, Advocate SR.No. 77362

+1cc to M/s.Sampathkumar Associates, Advocate SR.No. 77348

+1cc to Mr.T.N.Rajagopalan,Advocate SR.No. 77546

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A.SK(29/04/2019)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion standing in front of it. The lion is facing forward and is flanked by two smaller lions. Below the lion is a red wheel with a white center. The entire emblem is set against a background of horizontal stripes in orange, white, and green. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular border around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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