

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2018

PRONOUNCED ON : 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2323 of 2003

1. K.Natarajan
2. Rajagopal

Appellants

...

Vs.

1. R.Rukmani
2. R.Venkatesan
3. R.Srinivasan
4. R.Varadaraj (deceased)
5. R.Ranganathan
6. N.Kalarani
7. Brindadevi
8. Minor C.V.Adithyaraj
Rep.by Guardian/mother R7
Brindadevi

(RR7 & 8 brought on record as LRs of the deceased R4 vide order of Court dated 22.04.2014 made in CMP.Nos.78 to 80 of 2014 in S.A.No.2323 of 2003)

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 27.03.2001 passed in A.S.No.221 of 1999 on the file of the Principal District Court, Coimbatore, partly confirming the Judgment and Decree dated 07.09.1999 passed in O.S.No.649 of 1988 on the file of the Principal District Munsif Court, Coimbatore.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Mukundan
for M/s.Sarvabhauman Associates

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 27.03.2001 passed in A.S.No.221 of 1999 on the file of the Principal District Court, Coimbatore, partly confirming the Judgment and Decree dated 07.09.1999 passed in O.S.No.649 of 1988 on the file of the Principal District Munsif Court, Coimbatore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and possession.

4. The case of the plaintiff, in brief, is that the suit property, consisting of two house sites measuring 25 cents and 236 sq.feet, originally belonged to Ponnammal, the mother of the plaintiff, who acquired the property by way of a registered sale deed dated 27.11.1963 and she was in peaceful possession and enjoyment of the property till her demise on 04.07.1974 and during her life time, she had executed a registered Will dated 06.12.1973 bequeathing the suit property in favour of her son, the plaintiff and pursuant to the same, the patta has also been transferred to the name of the plaintiff in respect of the suit property and the plaintiff has been paying kist in respect of the suit property and in 1984, the plaintiff put up a house in the suit property, which is assessed as Door No.6/23A and is paying tax in respect of the

house portion and accordingly, is in peaceful possession and enjoyment of the suit property. On the northern side, the plaintiff has put a live fence and trees also and the defendants owned properties on the further northern side of the above said fence and are living in their own houses bearing Door Nos.213 & 214 in Karunanidhi Nagar and the defendants, without any authority, started damaging the fence and trees lying on the plaintiff's property and when questioned, they had made a false claim that the said fence is situated well within their property limits and accordingly, the defendants continued to interfere with the plaintiff's possession and enjoyment of the suit property and hence, left with no other alternative, according to the plaintiff, he has been constrained to lay the suit for permanent injunction against the defendants and during the pendency of the suit, the plaintiff vacated the house bearing door No.6/23A situated in a portion of the suit property and went to live along with his son at Saibaba Colony, Coimbatore and accordingly, kept the house portion under lock and key and taking advantage of his absence, the defendants broke open the lock and trespassed into the house portion and illegally occupied the same and hence, according to the plaintiff, as the defendants had trespassed into the suit property without any right whatsoever, he has been thus forced to amend the suit for the reliefs of declaration and possession and hence, the suit.

5. The case of the defendants, in brief, is that the suit laid by the

plaintiff is not maintainable either in law or on facts. It is false to state that the suit property consisting of two house sites measuring 25 cents and 236 sq.feet was originally acquired by the plaintiff's mother Ponnammal by way of a registered sale deed dated 27.11.1963 and she has been in possession and enjoyment of the same and the defendants are not aware about the alleged execution of the registered Will by her in favour of the plaintiff, her son and originally the suit property was a Poramboke land and it is true that the suit property is situated in S.F.No.155/ 1 of Sangapur village, Coimbatore and it is false to state that the patta has been transferred in the name of the plaintiff and that, he has been paying kist etc., in respect of the suit property and it is true that the area, where, the suit property is located is now known as Periar Nagar and the property measuring 25 cents is divided into two parts, one part measuring 12 cents is situated northern side of East-West road and another part measuring 13 cents is situated southern side of East-West road and the defendants are in possession and enjoyment of the southern side portion measuring 13 cents for the past 16 years and in the northern side, six houses had been constructed and the same belonged to the third parties and four political parties are also running Mandrams there, apart from six houses and the plaintiff never put up a house in the suit property as claimed and on the otherhand, it is only the defendants, who had put up a tiled house on the southern side of the East-West road. It is false to state that the plaintiff has put up a live fence on the northern side of the

suit property as well as the trees and that, the defendants attempted to cut the trees and trespass into the plaintiff's property and the defendants have been in possession and enjoyment of the suit property for the past 6 years as above stated. There is no cause of action for the suit and the defendants have been issued "B" Memos in respect of the portions occupied by them in the name of the defendant's wife Lingammal and son Mani. Further, the defendants have perfected their title to the suit property by way of adverse possession and it is only the plaintiff, who attempted to evict the defendants from the suit property by using force and his attempts having ended in vain, has come forward with the suit containing false allegations.

6. In the additional written statement, the defendants have pleaded that it is false to state that during the absence of the plaintiff from the suit property, the defendants had unlawfully encroached into the suit property and illegally been occupying the same and on the other hand, the defendants had been in possession and enjoyment of the house as the absolute owners of the same for several years and the plaintiff has not been in possession and enjoyment of the suit property at any point of time and only with a view to lend a colour of reality, the plaintiff has twisted the facts and come forward with new pleas in the suit by way of declaration and possession and the plaintiff is not entitled to seek the reliefs as prayed for in the amended plaint and hence, the suit is liable to

be dismissed.

7. In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A19 were marked. On the side of the defendants, DW1 was examined and Exs.B1 was Marked. CW1 was examined and Exs.C1 to C3 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the reliefs of declaration, possession and permanent injunction in favour of the plaintiff as prayed for. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to modify the judgment and decree of the trial Court by granting a decree in favour of the plaintiff declaring his title to site No.40 including the house therein and also the recovery of possession of the suit property from the defendants and in other respects, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has come to be laid.

9. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration:

" In the absence of pleading and

proof, when one of the attesting witnesses to the "Will" in question is neither alive nor available for being summoned to the Court, have not the Courts below committed an error of law in holding that Ex.A-2, the disputed "Will" stands duly proved?"

10. Originally the suit has been laid by the plaintiff for permanent injunction, subsequently, the plaintiff has amended the suit and by way of the amendment, has included the reliefs of declaration and possession by contending that during the pendency of the suit, the defendants had unlawfully trespassed and encroached into the suit property and illegally occupying the suit property and accordingly, sought for the amended reliefs.

11. Materials placed on record go to show that though the suit property is described as consisting of two site Nos.40 & 47 in S.No.155/1, it is found that during the course of the trial, the plaintiff has filed a memo before the trial Court stating that the reliefs are confined only in respect of site No.40 and the building thereon bearing door No.6/23A. Thus, it is noted and also rightly determined by the first appellate Court, the plaintiff has not pressed his suit as regards site No.47 and confined his reliefs only as regards site No.40 and the building thereon bearing Door No.6/23A. This fact has been omitted to be considered by the trial

Court, during the course of its judgement and accordingly, it is found that the trial Court has proceeded to grant the reliefs in entirety of the suit property as prayed for by the plaintiff.

12. Be that as it may, inasmuch as the plaintiff has confined the suit reliefs only as regards site No.40 and the building put up thereon bearing Door No.6/23A, it has to be seen whether the plaintiff has established his title in respect of the said property and thereby, entitled to obtain the reliefs sought for as regards the said property. It is the specific case of the plaintiff that the suit property had been acquired by his mother Ponnammal by way of a sale deed dated 27.11.1963 from one Marudappa gounder, which has come to be marked as Ex.A1. Further, the parent title deed (partition deed) has also been marked as Ex.A18. It is thus found that by way of the above said documents, the plaintiff has clearly established that the suit property is only a private property and not the Government Poramboke land as contended by the defendants and accordingly, it is found that the same had been dealt with by the private parties as above referred to and accordingly, it is found that the plaintiff is able to establish the legal transactions, which had been done in respect of the suit property right from the days of his predecessor in interest and it is thus seen that the contention putforth by the defendants that the suit property forms part of the Government Poramboke land as such cannot be accepted. Now, according to the plaintiff, during the life time of his

mother Ponnammal, she had bequeathed the suit property in his favour by way of a registered Will dated 6.12.1973, which document has come to be marked as Ex.A2. From Ex.A2, it is evident that Ponnammal had bequeathed the suit property in favour of the plaintiff. It is further seen that accordingly, following the Will, inasmuch as the plaintiff had come to enjoy the suit property as the absolute owner thereto, following the same, the patta had been transferred in the name of the plaintiff in respect of the suit property, which could be evidenced from the Chitta extract marked as Ex.A3 and further, it is the case of the plaintiff that he had put up a house portion in the property belonging to him, which had been assessed as Door No.6/23A and that, the plaintiff has also produced the tax receipt in respect of the above said house portion and also the voters list in respect of the suit property etc., and accordingly, from Exs.A5 to A16, it is evident that it is only the plaintiff, who has been in possession and enjoyment of the suit property, particularly, site No.40 and Door No.6/23A put up thereon and in such view of the matter, as rightly determined by the trial Court as well as the first appellate Court, the plaintiff has established his legal claim of title to the suit property.

13. As regards the execution of the Will Ex.A2 in his favour by Ponnammal, the plaintiff has examined one of the attestors to the same as PW2 and both the Courts have analysed the evidence of PW2 in all aspects and come to the conclusion rightly that his evidence is

convincing, trustworthy and reliable and accordingly, it is found that PW2 has tendered evidence supporting the case of the plaintiff that it is only Ponnammal, his mother, who had executed the Will Ex.A2 in his favour, bequeathing the same in favour of the plaintiff and that, he had witnessed the execution of the Will by Ponnammal and accordingly, testified the same as per the legal requirements and accordingly, it is found that the genuineness of Ex.A2 Will has been legally established by the plaintiff through the evidence of PW2. It is thus found that the plaintiff was examined his title to the suit property by way of Ex.A2 Will and thus, the Courts below have rightly come to the conclusion that it is only the plaintiff, who is the absolute title holder of the suit property i.e. site No.40 and the building thereon bearing Door No.6/23A.

14. The defendants main projection for defeating the plaintiff's claim is that the suit property forms part of the Government Poramboke land. However, as rightly found by the Courts below, not a shred of paper worth acceptance has been placed by the defendants to come to the conclusion that the suit property forms part of the Government Poramboke land. Accordingly, the defendants are unable to place any "B" memos issued in their favour by the Government in respect of the portion occupied by them for holding that the same belongs to the Government as Poramboke land. It is thus found that absolutely when there is no material projected in support of the defendants' version, the Courts below

have rightly disbelieved their defence and held that the defendants have no manner of right, title or interest in respect of the suit property. It is also noted that the Courts below had refused to accept the case of the defendants that they had perfected their title to the suit property by way of adverse possession, particularly, when there is no proof at all placed either by way of oral and documentary evidence with reference to their abovesaid claim and in such view of the matter, the plea of the defendants that they had also perfected their title to the suit property by way of adverse possession, particularly, when there is absolutely no animus on the part of the defendants in exercising ownership over the portion occupied by them as against the true owner viz., the plaintiff as per the requisites of law pertaining to the adverse possession. Such being the position, it is seen that the defendants have failed to establish that they have a valid claim of title to the suit property as put forth by them.

15. The arguments putforth by the defendants' counsel that the Will has not been established as per the legal requirements and in this connection, he points out the non examination of the other attestor of the Will, on account of his death. However, when the evidence of PW2 in respect of the execution of the Will by Ponnammal in favour of the plaintiff is highly reliable and acceptable in all aspects and nothing has been pointed out to disbelieve his version with reference to the same, it

is found that the death of the other attestor to the Will and the resultant inability of the plaintiff to examine him in support of the Will, would not in any manner undermine the plaintiff's case or lead to the conclusion that the Will Ex.A2 is not a genuine document.

16. The contention has also been put forth that the materials placed on record go to show that there are other houses in the suit property and the third parties are occupying the same and despite the same, the plaintiff has not chosen to implead the said occupants in the suit proceedings. However, as rightly found by the first appellate Court, the plaintiff has sought for the declaration of title to the suit property by relying upon his title deeds and according to the plaintiff, it is only the defendants, who had unlawfully encroached into the suit property without any legal entitlement and thereby, it is found that the plaintiff has chosen to levy the suit only against the defendants and it is further seen that the defendants have not taken any plea that the suit is bad for non-joinder of the above said occupants on the footing that there are necessary parties to the suit proceedings for the adjudication of the plaintiff's claim of title to the suit property. In such view of the matter, it is found that the presence of the other houses in the suit property and the occupation of the third parties of the same, by itself would not in any manner vitiate the plaintiff's title to the suit property as such and in such view of the matter, the approach of the first appellate Court as regards the above

point does not warrant any interference and hence, it is found that the non impleadment of the other occupants of the suit property would not in any manner affect the plaintiff's case.

17. The first appellate Court has also taken into consideration the merits of the application preferred by the defendants for the reception of the additional evidence in I.A.No.181 of 2001 and accordingly, finding that the said application do not satisfy the legal requirements, accordingly, did not countenance the request of the defendants for entertaining the additional evidence and I do not find any valid reason to interfere with the above determination of the first appellate Court, when it is found that the defendants have failed to adhere to the provisions of Order 41 Rule 27 of the Civil Procedure Code with reference to the reception of the additional documents produced by them.

18. In the light of the above said reasonings, the substantial question of law formulated in the second appeal is answered against the defendants and in favour of the plaintiff.

19. The counsel for the defendants placed reliance upon the decision reported in **(2014) 2 Supreme Court Cases 269 (Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others)**. The principles of law outlined in the above said decision are

taken into consideration and followed as applicable to the case at hand.

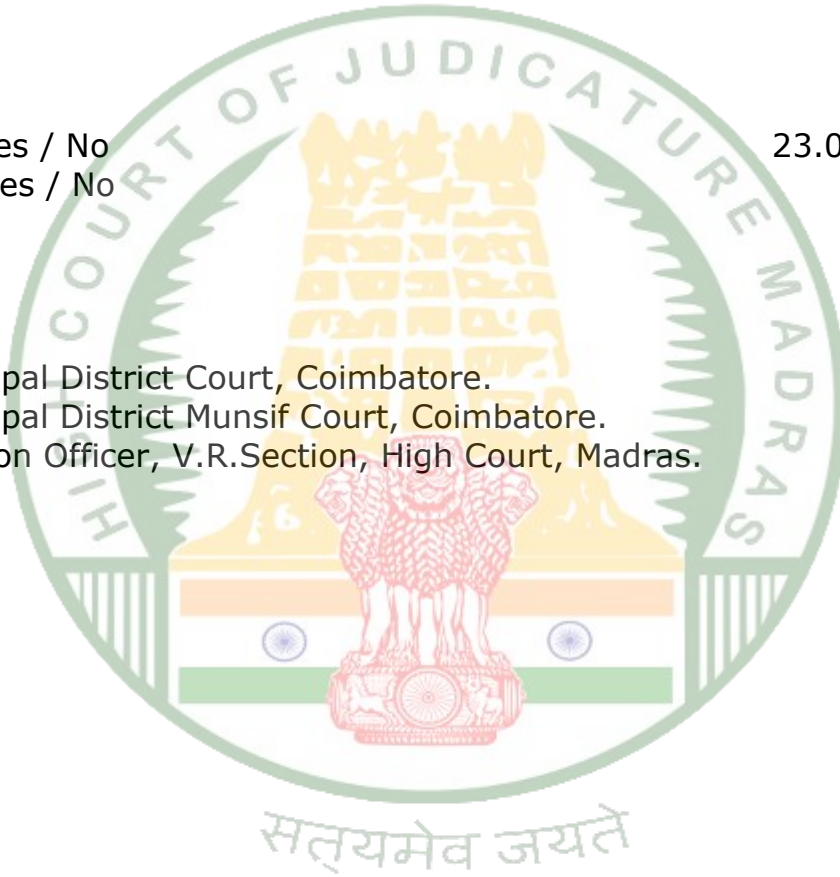
In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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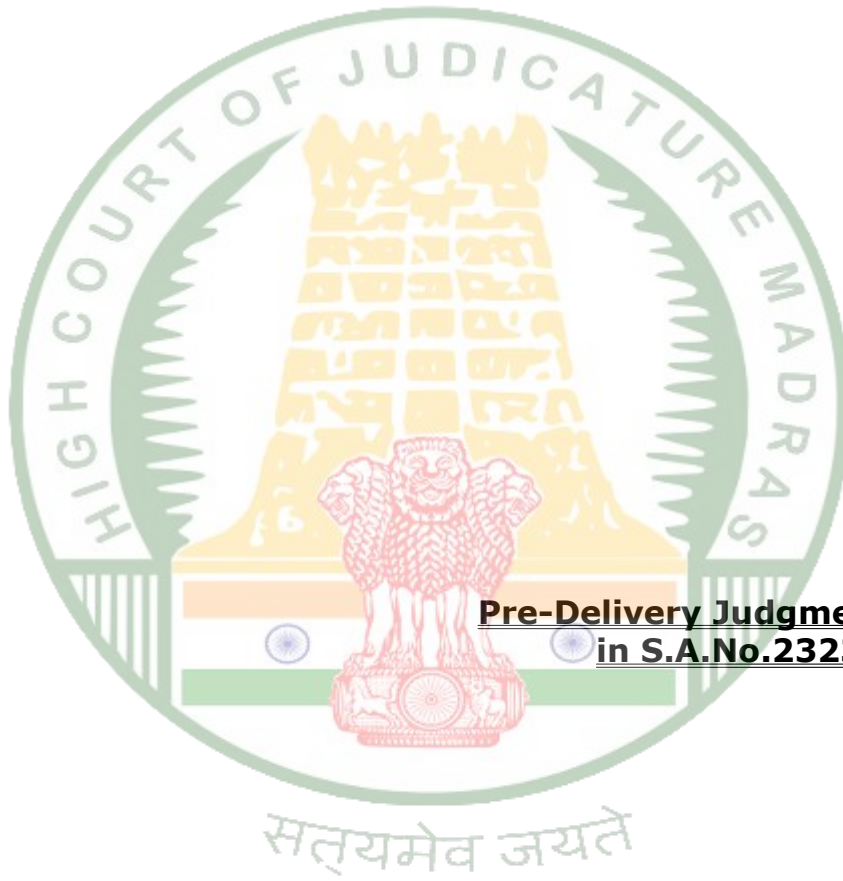
- 1.The Principal District Court, Coimbatore.
- 2.The Principal District Munsif Court, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.2323 of 2003**

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