

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2018

PRONOUNCED ON : 02.03.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.849 of 2003

Sakunthala ... Appellant /Plaintiff

Vs.

1. The State of Tamilnadu,
Rep. By the Collector,
Villupuram,
Villupuram District.

2. The Tahsildar
Kallakurichi.

3. The Executive Engineer,
P.W.D. Kallakurichi.

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.50/2003 dated 24.4.2003 on the file of the Additional District judge (Fast Track Court), Kallakurichi reversing the judgment and decree made in O.S.No.44/91 dated 31.03.1998 on the file of the II Additional District Munsif, Kallakurichi.

For Appellant : Mr.S.Krishnaswamy
for M/s. Malath Devapriyan

For Respondents: Mrs. A.Madhumathi
AGP (CS) for R1 to R3

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JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 24.4.2003, passed in A.S.No.50/2003, on the file of the Additional District judge, (Fast Track Court), Kallakurichi, reversing the judgment and decree dated 31.03.1998, passed in O.S.No.44/91, on the file of the II Additional District Munsif Court, Kallakurichi.

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

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that the suit property belonged to S.A.Abdul Shukoor and his wife and they were in possession and enjoyment of the suit property for more than thirty years by putting up thatched houses and were living in the same by paying house tax and electricity charges and the plaintiff purchased the suit property from them by way of a registered sale deed dated 20.08.80 and since then, it is only the plaintiff who has been enjoying the suit property by constructing a terraced house thereon and obtained electricity connection and paying necessary tax to the panchayat and thus, it is only the plaintiff who has been openly, continuously and peacefully in possession and enjoyment of the suit property in her own right for more than the statutory period, even as against the Government and thus, the plaintiff has prescribed the title to the suit property by way of adverse possession and the Government is estopped from disputing the claim of the plaintiff's title to the suit property and her possession and enjoyment and while so, the plaintiff was surprised to find that a notice of eviction has been issued by the defendants to her in respect of the suit property. However, the defendants are not entitled to dispossess the plaintiff from the suit property in any manner as the plaintiff has prescribed her title to the suit property and inasmuch as the defendants attempted to interfere with the possession and enjoyment, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is false to state that the suit property originally belonged to S.A.Abdul Shukoor and his wife and they had been in possession and enjoyment of the suit property for several years as claimed in the plaint and it is false to state that the plaintiff had purchased the suit property from them and by putting up a terraced house thereon enjoying the suit property for several years as claimed and the case of the plaintiff that she has been in peaceful possession and enjoyment of the suit property, openly and continuously to the knowledge of one and all including the Government beyond the statutory period and thereby prescribed her title to the suit property by way of adverse possession is false and not admitted and it is false to state that the plaintiff has acquired possessory title in respect of the suit property. The suit property is a poramboke land earmarked for police garden. It is mentioned as Police Garden Poramboke in the revenue records and the plaintiff cannot claim

any claim of right or title over the suit property and the Government, on coming to know that the plaintiff has occupied the suit property unlawfully and illegally, issued a notice of eviction to the plaintiff and the Government is all competent to evict the plaintiff from the suit property and the claim of the plaintiff against the Government as projected in the plaint is unacceptable and not valid and the suit property is acquired for the local police and hence, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

6. In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A11 were marked. On the side of the defendants, DW1 was examined, Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court, on an appreciation of the materials placed, was pleased to set-aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

1. Whether the lower appellate Court erred in law by holding that the valuation of the suit property in the trial Court under Section 25(d) of the Tamilnadu Suits Valuation and Courts Fees Act 1955 is not correct, when the said Court has permitted the respondents to value the suit property in the 1st appeal under Section 25 (d) of the Court Fees Act and pay Court fee accordingly and thereby the Lower Appellate Court has accepted the valuation given by the appellant/plaintiff in the trial Court?

2. Whether the lower appellate Court failed to consider material evidence of the appellant resulting in miscarriage of justice?

3. Whether the lower appellate Court failed to hold in law that the appellant has perfected title over the suit property by adverse possession and prescription for over 30 years by the appellant and her

predecessors in title continuously?

4. Whether the lower appellate Court erred in law to hold that the respondents have lost their right and title if any over the suit property by the adverse possession and prescription of the appellant and her predecessor in title?

5. Whether the lower appellate Court erred in law to hold that the respondents are subject to estoppel, waiver and acquiescence for over 30 years without claiming any right over the suit property and that the counter part of the respondents, namely the Kallakurichi Town Panchayat, has granted sanction for construction of building over the suit property and other authorities have collected electricity charges and water tax and property tax for the suit property of the appellant and her predecessors and title, to the knowledge of the respondents.

9. The plaintiff claims to have purchased the suit property by way of a sale deed dated 20.08.80 from S.A.Abdul Shukoor and his wife and the said sale deed has been marked as Ex.A1. The plaintiff has not placed any material worth acceptance to show that S.A.Abdul Shukoor and his wife had a valid title to the suit property so as to enable them to legally convey the same in favour of the plaintiff by way of Ex.A1. Equally, there is no material placed on the part of the plaintiff to show that her vendors had been in possession and enjoyment of the suit property by putting up a thatched house and residing therein by paying electricity charges, taxes etc., It is thus found that there is absolutely no material placed by the plaintiff to show that her vendors had legal title to the suit property and been in possession and enjoyment of the same. In such view of the matter, the claim of title to the suit property by the plaintiff, by way of Ex.A1, cannot be accepted in any manner.

10. Knowing fully well that her vendors had no valid title to the suit property, it is found that the plaintiff also did not chose to lay any claim of title to the suit property, by way of Ex.A1, as such. On the other hand, the plaintiff having full knowledge that the suit property belongs to the Government and she is only a occupier of the same unlawfully, accordingly, chose to lay a claim of title to the suit property on the footing that he has been in possession and enjoyment of the suit property for several years beyond the statutory period, openly, continuously and uninterruptedly to the knowledge of the

Government by paying tax, electricity charges etc., and thus, prescribed title to the suit property by way of adverse possession. The plaintiff having raised such a plea and the defendants having disputed the above said claim of the plaintiff's title to the suit property, it is for the plaintiff to establish the said case to obtain the reliefs sought for.

11. From the document marked as Ex.B1, on the part of the defendants, it is found that the suit property has been recorded only as police garden poramboke in the revenue records and thus, the defendants have clearly established that the suit property is only a poramboke land. The plaintiff claims adverse title to the suit property. Only for obtaining the above said relief, it is found that the plaintiff has laid the suit. However, when the plea of adverse possession cannot be used as a sword and only used as a shield, it is found that the plaintiff's suit for declaring her title to the suit property by way of adverse possession is not legally maintainable, in the light of the decision of the Apex Court reported in (2014)1 SCC 669 (Gurdwara sahib Vs. Gram Panchayat Villae Sirthala and another). In such view of the matter, it is found that the suit laid by the plaintiff is not maintainable.

12. As far as the claim of the plaintiff that she has been in possession and enjoyment of the suit property for several years, openly, continuously and exercising adverse interest to the knowledge of the Government, it is found that the documents placed by the plaintiff do not support her case. Merely from the tax receipts, water charges payments and payment of electricity charges, we cannot safely conclude that the plaintiff has been exercising adverse and hostile ownership over the suit property to the knowledge of the Government as prescribed under law. On the other hand, as rightly determined by the first appellate Court, when the Government had exercised its right over the suit property by the issuance of the notice to the plaintiff, marked as Ex.A9 series and accordingly, it is found that the plaintiff cannot be allowed to lay a claim of exercise of adverse title in respect of the suit property against the Government. It is thus found that the plaintiff has failed to establish her claim of title to the suit property by way of adverse possession and as above seen, merely from the documents produced by the plaintiff, marked as Exs.A2 to A11, we cannot come to the conclusion that the plaintiff has been in possession and enjoyment of the suit property, openly, continuously and uninterruptedly exercising hostile ownership over the suit property beyond the statutory period to the knowledge of one and all including the Government. Similarly, the plaintiff cannot be allowed to raise the plea of estoppel on the part of the defendants, on the footing that she had paid the taxes to the panchayat union and the electricity charges and

thereby, prescribed her possessory title to the suit property by way of adverse possession. The documents filed by the plaintiff ranging only after the alleged sale transaction, marked as Ex.A1 and when the plaintiff has failed to establish that her vendors had exercised hostile adverse ownership over the suit property to the knowledge of the Government, it is found that by way of the documents filed by the plaintiff, we cannot uphold the claim of adverse title sought for by the plaintiff against the Government. As above seen, by the issuance of the B memo notice, marked as A9 series, it is found that the Government has exercised its right of ownership over the suit property. That being the position, the plaintiff's claim that she has perfected her title to the suit property by way of adverse possession is found to be unsustainable and rightly declined by the first appellate Court.

13. Though the first appellate court may not be proper in holding that the suit has not been properly valued, however, on an appreciation of the judgment and decree of the first appellate Court, it is found that the first appellate Court has rightly analysed the materials placed on record in the proper perspective both factually and legally in all aspects and on proper reasonings, rightly come to the conclusion that the plaintiff has miserably failed to establish her plea of claim of title in respect of the suit property as projected in the plaint and in such view of the matter, no interference is called for with reference to the same. The substantial questions of law formulated are accordingly answered.

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

Sd/-

Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Court, (Fast Track Court),
Kallakurichi.
2. The II Additional District Munsif Court,
Kallakurichi.

3.The Collector,
The State of Tamilnadu,
Villupuram,
Villupuram District.

4. The Tahsildar
Kallakurichi.

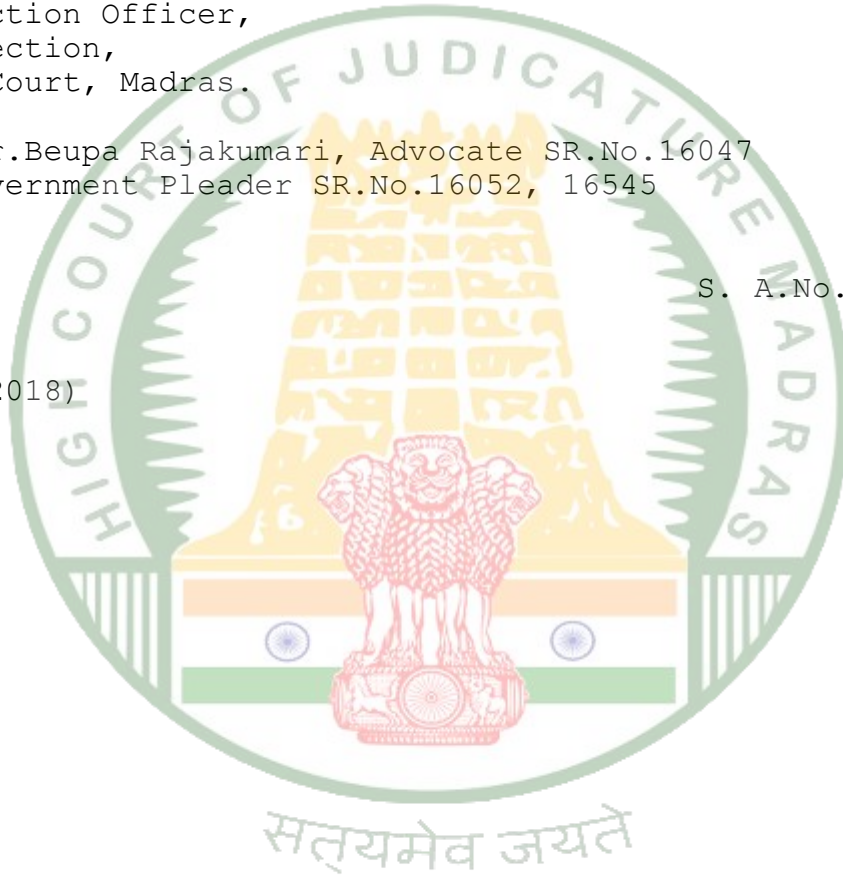
5. The Executive Engineer,
P.W.D. Kallakurichi.

6. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.Beupa Rajakumari, Advocate SR.No.16047
+cc to Government Pleader SR.No.16052, 16545

S. A.No.849 of 2003

SS(CO)
GN(17/04/2018)



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