



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.569 of 2017 and
C.M.P.(MD)No.12146 of 2017

Chellathurai

... Appellant/2nd Respondent/
2nd Defendant

Vs.

1. Kalyani
2. AR.Kandasamy
3. N.Visalakshi
4. AR.Vijaya
5. AR.Mallika
6. S.Anandavalli
7. Minor S.Arunachalam

*(Represented by his mother and
natural guardian 6th respondent)*

... Respondents 1 to 7/
Appellants/Plaintiffs

8. Kavitha Kalimuthu

... 8th Respondent/
1st Respondent/1st Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and Decree, dated 11.09.2017 in A.S.No.15 of 2014 on the file of the learned Subordinate Judge, Devakkottai, reversing the Judgment and Decree, dated 20.03.2014 in O.S.No.7 of 2012 on the file of the learned Additional District Munsif, Karaikudi.

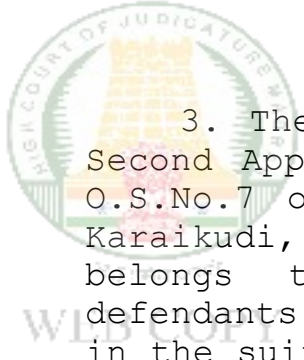
For Appellant : Mr.R.Sundar Srinivasan

For Respondents : Mr.S.Srinivasa Raghavan

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree, dated 11.09.2017 in A.S.No.15 of 2014 passed by the learned Subordinate Judge, Devakkottai, reversing the Judgment and Decree, dated 20.03.2014 in O.S.No.7 of 2012 passed by the learned Additional District Munsif, Karaikudi.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.



3. The second defendant in the Suit is the appellant in the Second Appeal. Respondents 1 to 7 as plaintiffs filed a Suit in O.S.No.7 of 2012 before the learned Additional District Munsif, Karaikudi, for a declaration that the suit "B" Schedule property belongs to the plaintiffs and consequently directing the defendants to deliver possession after removing the encroachment in the suit property. The suit property has been described in two schedules. "A" Schedule property consists of 2.86 Acres of land in Survey No.252/4. "B" Schedule property also forms part of the "A" Schedule property, measuring an extent of 40 cents within specific boundaries.

4. The case of the plaintiffs are as follows:-

The suit "A" Schedule property belonging to one Arunachalam Ambalam, son of Kandasami Ambalam by virtue of a Sale Deed, dated 18.04.1980. It is stated that Patta for the "A" Schedule property was transferred to the name of the said Arunachalam Ambalam and that he has paid Kist for the said property. The plaintiffs stated that they are the legal heirs of the deceased Arunachalam Ambalam. The first plaintiff is the widow of the deceased Arunachalam Ambalam and others are the children and daughter-in-law of the said Arunachalam Ambalam. The seventh plaintiff is the grand son of the deceased Arunachalam Ambalam.

5. It is the specific case of the plaintiffs that during the month of July, 2008, the defendants had encroached upon the "B" Schedule property which forms part of the "A" Schedule property and they had put up a tiled building thereon. After sending a legal notice to the defendants, the plaintiffs stated that they were constrained to file the Suit as the defendants failed to respond to the legal notice.

6. The first defendant was stated to be the then President of Thiruvelangudi Panchayat and it is stated that on the strength of Tax receipt illegally issued by the first defendant, electricity supply was availed for the suit property. The second defendant filed a written statement disputing the title of the plaintiffs and it was contended that the suit property belonged to Government. It is the specific case of the second defendant that in the disputed property the Jeeva Samathi of one Vellai Vesti Sithar is located and that their ancestors were conducting Guru Pooja for a long number of years. It is also stated that the defendants are in enjoyment for more than 15 years and that they have prescribed title by adverse possession. The plaintiffs filed Ex.A.1 to Ex.A.12 apart from examining the second plaintiff as P.W.1 and first plaintiff as P.W.2. Defendants did not produce any document but the second defendant examined himself as D.W.1. The trial Court accepted the plaintiffs' title to the entire suit property. The second defendant refused to grant any relief to the plaintiffs by assuming that the suit "B" Schedule property is in the enjoyment of the second defendant for a long number of years.

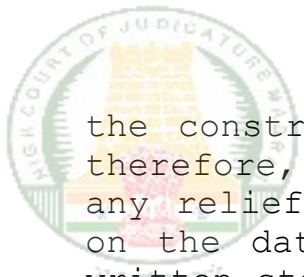


7. The trial Court dismissed the Suit mainly on the ground that the plaintiffs have not explained the delay in filing the Suit after encroachment. It was further held by the trial Court that the plaintiffs have not proved that the encroachment was only in the year 2008 and that the Suit has not been filed within twelve years from the date of such encroachment by the defendants. The trial Court therefore held that the plaintiffs are not entitled to get recovery of the suit "B" Schedule property. Aggrieved by the findings of the trial Court, the plaintiffs in the Suit filed an Appeal before the learned Subordinate Judge, Devakottai District, in A.S.No.15 of 2014.

8. The lower Appellate Court concurred with the trial with regard to ownership of the property. After finding that the defendants had put up only a temporary superstructure in the suit "B" Schedule property held that the second defendant as D.W.1 has admitted that the defendants have put up the superstructure only in the year 2008 and that he had erected pillar stones and put up barbed wire fence and got electricity connection in the year 2009. Since the second defendant is not in enjoyment for more than 12 years, the trial Court had no other option but to accept the case of the plaintiffs and to Decree the Suit as prayed for. Though the defendants have pleaded adverse possession, by stating that the second defendant and his ancestors were in continuous enjoyment over the suit "B" Schedule property, it is for the second defendant to prove that he is in enjoyment for more than the statutory period. Except the Commissioner's report indicating the existence of temporary superstructure there is no evidence to prove adverse possession. Even it is admitted that such temporary structures were put up only in the year 2008.

9. In this case, there is neither proper pleading nor proof with regard to the continuous enjoyment of the defendants claiming title adverse to the plaintiffs for more than twelve years. The lower Appellate Court has rightly relied upon the Judgment of this Court in the case of **A.Vedanayagam and others Vs. Annakily and five others**, reported in **2006 (2) L.W. 742**.

10. It is to be noted that at the time of filing the Suit, the defendants have put up only a temporary tiled shed and a temporary superstructure. Since the second defendant admitted that he has put up the construction only in the year 2008 but claimed that he is in continuous possession and enjoyment of the property for more than 12 years, his case can not be accepted unless there is independent evidence. The second defendant also relied upon a Judgment of this Court reported in **AIR 1981 Madras P 220**, to plead acquisition. It is true that the plaintiffs have filed the Suit some time after the construction came into existence. However,



the construction put up by the defendants is temporary and that therefore, the lower Appellate Court has rightly declined to grant any relief on the basis of the superstructure that was available on the date of the Suit. Further, there was no pleading in the written statement regarding acquiescence.

WEB COPY

11. The Commissioner's Report relied upon by the lower Appellate Court clearly disclose that there is only a small tiled room annexed with a thatched shed. Since the superstructures are temporary in nature, it is rightly held by the lower Appellate Court the principle of acquiescence cannot be applied in this case. Since the plaintiffs are held to be the owners of the suit property, they are also entitled to get recovery of the "B" Schedule property. The second defendant's plea of adverse possession was negatived. The lower Appellate Court after careful analysis of pleadings, evidence and documents produced before the lower Appellate Court, found that the plea of the defendants is not established by any evidence.

12. This Court is not able to see any substantial question of law that arises for consideration in this case, as the findings on facts are well founded and no infirmity or irregularity in the Judgment is pointed out.

13. As a result, the Second Appeal is dismissed and the Judgment passed by the learned Subordinate Judge, Devakottai, in A.S.No.15 of 2014, dated 11.09.2017, is confirmed.

14. The learned counsel for the appellant seeks indulgence of this Court to grant time for vacating the property. The learned counsel for the respondents has no objection for giving reasonable time. Hence, time is granted till 31.05.2018, on condition that the appellant shall file an affidavit of undertaking within ten days from the date of receipt of a copy of this order. If the appellant does not file the affidavit of undertaking within 10 days, the time granted for vacating the premises shall stand automatically revoked. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

sd/
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Devakkottai.

<https://hcservicesapp.in/> 2. The District Munsif, Karaikudi.



3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.R.Sundar Srinivasan, Advocate in SR.No.40157

+1cc to Mr.Srinivasa Raghavanan, Advocate in SR.No.40372

GJM/SV/MMS/SAR-2-22.3.18-5p-7c

S.A.(MD)No.569 of 2017 and
C.M.P.(MD)No.12146 of 2017
03.01.2018