

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

**CORAM :
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

S.A. No. 2034 of 2000

Marayammal

.. Plaintiff/Appellant/Appellant

Vs.

1. Chinnammal
2. Selvaraj
3. Samiyathal

.. Defendants 2-4/Respondents/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 03/07/2000 made in A.S.No. 266 of 1999 (on the file of the Principal District Judge, Erode) confirming the Judgment and decree dated 16.09.1999 made in O.S.No. 628 of 1992 (on the file of the I Additional District Munsif Court, Erode).

For Appellant : Ms. K.Ponmani
for Mr.D.Sivakumar

For Respondents : No appearance

JUDGMENT

The plaintiff in O.S.No. 628 of 1992 on the file of the First Additional District Munsif Court, Erode, is the appellant herein.

2. O.S.No. 628 of 1992 had been filed by the plaintiff, Marayammal against the defendant Veerappan, seeking a Judgment and Decree for declaration that the plaintiff is the absolute owner of the suit property and for permanent injunction restraining the defendant from trespassing into the suit property or interfering with peaceful possession. By Judgment and Decree dated 16.09.1999, the suit was dismissed. The plaintiff then filed A.S.No. 266 of 1999 before the Principal District Court, Erode. By Judgment and Decree dated 03.07.2000, the appeal was also dismissed. Challenging that Judgment, the plaintiff had filed the present Second Appeal. It must be mentioned that pending the suit, the defendant Veerappan died and his legal representatives had been brought on record as second to fourth defendants. They are the second to fourth respondents in the present Second Appeal.

3. The Second Appeal had been admitted on the following substantial question of law:-

“Whether the findings of the Courts below regarding the right of the plaintiff in the suit property are vitiated by perversity?”

O.S.No. 628 of 1992 (I Additional District Munsif Court, Erode):

4. In the plaint, the plaintiff Marayammal claimed that originally the suit vacant site with a dilapidated house belonged to C.M.S. Mohammed Jaffer and his brother C.M.S. Habibulla. The suit property measured 10 ft., x 10 ft., in R.S.No. 203/1 to 5 in Periasemur Village, Erode. It also included a dilapidated house bearing Door No. 329, Sathy Main Road.

5. According to the plaintiff, in 1975 she started a petty shop in front of the suit property. She then removed the walls and the roofing and constructed a Madras Terraced building. She spent Rs.4,000/- in reconstruction. The owners did not raise any objection. The plaintiff claimed that she has been in possession from 1975 till the date of filing the suit. The panchayat board has assessed house tax in the name of the plaintiff. She had obtained electric and water connection. She claimed to have perfected her

title by adverse possession. She further stated that the defendant Veerappan claimed to have purchased the property from C.M.S. Mohammed Jaffer and C.M.S. Habibulla. The defendant requested the plaintiff to vacate the suit property in April 1992. Since the plaintiff refused, he attempted to dispossess the plaintiff on 25.04.1992. The plaintiff resisted. She then filed the suit for declaration of title and permanent injunction to break possession.

6. In the written statement filed by the defendant, he denied the contention of the plaintiff that she started a petty shop in 1975 and reconstructed the house spending Rs.4,000/-. He denied that the plaintiff had perfected title by adverse possession. He claimed that the plaintiff was not in possession of the suit property. She was in occupation of a portion of road poromboke only. She was not doing any business. He was in possession of the suit property by virtue of a sale agreement dated 17.08.1978 from Mohammed Idayathulla. He had put up a terraced house and thatched house and obtained electricity connection. He had also planted coconut trees. He was running a bakery business. In the year 1985 he leased out orally a portion to the husband of the plaintiff for monthly rent at Rs.100/-. They were arrears in rent. It was stated that the plaintiff cannot claim adverse possession. It

was stated that he had filed an earlier suit in O.S.No. 657 of 1983 where the husband of the plaintiff claimed to be in possession. Injunction was granted in the said suit. The defendant stated that there was no cause of action and stated that the suit should be dismissed.

7. After the legal heirs of the defendant were brought on record, they filed an additional written statement. They also claimed that the defendant had entered into an agreement on 17.08.1978 with Mohammed Idayathulla and took possession. It was stated that the defendant alone was in possession of the property. It was stated that in the earlier suit, the plaintiff herein did not claim right over the property but only a right in a shed in the highway poromboke land. It was stated that the suit should be dismissed.

8. On the basis of the above pleadings, the following issues were framed:-

(i) Whether the plaintiff had prescribed title by adverse possession?;

(ii) Whether the plaintiff is entitled for the reliefs sought in the plaint?; and

(iii) To what other reliefs?

9. During trial, the plaintiff examined herself as PW-1 and examined another witness Balan as PW-2. The second defendant examined herself as DW-1 and examined another witness Thulasi Mani as DW-2. The plaintiff marked Exs. A-1 to A-13. These documents included the house tax receipts, electricity receipts, water receipts and the license for running the petty shop. The defendant marked Exs. B-1 to B-5. These included the sale deed dated 09.02.1992 and the pleadings in the earlier suit in O.S.No. 657 of 1983. During trial, an Advocate Commissioner was also appointed and his report and sketch were marked as Exs. C-1 and C-2. On the basis of the oral and documentary evidence, the learned First Additional District Munsif, Erode, held that the door number given in the plaint for the suit property was 392, Sathy Main Road, but the documents filed by the plaintiff did not relate to Door No. 392, Sathy Main Road. Even the re-survey No. 203/1-5 was also not mentioned in any of the documents produced by the plaintiff. With respect to the electricity receipts, it was found that

the electricity connection numbers were given as 458, 355 and 213 in the electricity bills and they did not correlate to the suit property. It was also found that in the house tax receipts different numbers were given as 380 for the year 87-88, 365 for the year 88-89 and 273 for the year 1991-1992. It was found by the learned First Additional District Munsif that the documents filed by the plaintiff did not relate to the suit property. It was also found that in the earlier suit filed by the defendant in O.S.No. 657 of 1983, the husband of the plaintiff had claimed that he was in possession. That suit was decreed in favour of the defendant herein. It was also found that during evidence, PW-1 stated that she was residing in Door No. 125-A/2, Sastri Nagar, Sathy Main Road and not in the suit property. It was also found that the survey number of the suit property was actually 170/2, whereas the plaintiff had given it as Re.S.No. 203/1-5. It was also found that the plaintiff had not proved that she had been in possession of the suit property for a continuous period of time hostile to the defendant. The suit was dismissed by Judgment dated 16.09.1999.

A.S.No. 266 of 1999 (Principal District Court, Erode):

10. The learned Principal District Judge, Erode, reappraised the evidence and framed points for consideration. The learned Principal District Judge also found that the documents filed by the appellant/plaintiff did not correlate with the description of the suit property. It was also found that in the earlier suit in O.S.No. 657/83, the respondent/defendant had been granted an order of injunction to perfect his possession. It was stated that in that suit, both the appellant/plaintiff and her husband did not claim any right over the suit property. It was also found that the documents of the defendant/respondent established that he alone was in possession and that the appellant/plaintiff was not in possession of the suit property. Consequently, the appeal was dismissed by Judgment dated 03.07.2000.

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11. The plaintiff then filed the present Second Appeal challenging the findings of both the Courts below. The Second Appeal had been admitted on the following substantial question of law:-

“Whether the findings of the Courts below regarding the right of the plaintiff in the suit property are vitiated by perversity?”

12. Both the Courts below have concurrently found that the documents filed by the appellant/plaintiff in the trial Court did not correlate with the suit property. It was specifically found that the property tax receipts bore different numbers. It was 380 for the year 87-88, 365 for the year 88-90 and 273 for the year 91-92. They did not relate to the suit property. It was also found that the electricity bills also bore different service connection numbers. They were given as 458, 355 and 213 in different electricity bills and they did not relate to the suit property. Moreover they did not relate to Door No. 329, Sathy Main Road, which is the address of the suit property. Even in the license to run petty shop in Ex.A-3, the door number or the survey number had not been given. The address was not given. It was also found that the appellant/plaintiff had stated during her deposition that she resided in 125-A/2, Sathy Main Road and not in 329, Sathy Main Road, which is the address of the suit property. These facts have been concurrently affirmed by both the Courts below.

13. The appellant/plaintiff had sought a Judgment and Decree declaring that she is the absolute owner of the suit property and had perfected title by adverse possession. It is well settled that the plaintiff cannot seek such a declaration. Adverse possession can be pleaded in defence by a defendant.

14. In ***Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another*** reported in ***(2014) 1 SCC 669***, the Hon'ble Supreme Court has been held as follows:-

"Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/ defence."

15. In the present case, the appellant has not established that she was in possession of the suit property. The documents filed do not correlate to the schedule given in the suit property. I find no reason to defer from the findings of the Trial Court and the First Appellate Court. As stated above, the appellant/plaintiff has not established that she was in possession of the suit property as

described in the plaint.

16. In view of all the reasons stated above, the Second Appeal has to fail and accordingly, it is dismissed. No costs. The Judgment and Decree dated 03/07/2000 made in A.S.No. 266 of 1999 passed by the Principal District Judge, Erode and the Judgment and decree dated 16.09.1999 made in O.S.No. 628 of 1992 passed by the I Additional District Munsif Court, Erode are confirmed.

03.01.2019

Index:Yes/No
Internet :Yes/No
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C.V.KARTHIKEYAN, J.



Pre-Delivery Judgement made in
S.A. No. 2034 of 2000

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