

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.245 of 2000

1.Ayyanar
2.Balaraman
3.Devanathan (died) ..Defendants/Appellants/Appellant
4.Abirami ...Appellant
(4th appellant brought on record
as legal heir of the deceased 3rd
appellant vide order of Court
dated 05.06.2013 made in
C.M.P.No.136 of 2009 in
S.A.No.245 of 2000)

/Vs/

1.Sulochana Devi (died) ..Plaintiff/Respondent/Respondent
2.P.R.Gnanam
3.G.Sivakumar
4.Ramani Devi
5.G.Vanitha Devi
6.G.Anandhakumar
7.G.Krishnakumar
8.Indira Devi
(RR2 to RR8 brought on record
as legal heirs of the deceased
sole respondent vide order of
Court dated 24.06.2013 made in
C.M.P.Nos.134, 135 & 137 of 2009
in S.A.No.245 of 2000) .. Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the decree and judgment in A.S.No.20 of 1998 and dated
12.08.1999 on the file of the Subordinate Court, Panruti in
confirming the decree and judgment in O.S.No.616 of 1992 and
dated 31.10.1996 on the file of the District Munsif Court,
Panruti.

For Appellants : Mr.A.Nilaphar for
M/s. R.Meenal

For Respondents : Mrs.P.V.Rajeswari for R2 to R8

JUDGMENT

The defendants are the appellants herein. The plaintiffs are the respondents herein, who have filed the suit for declaration of title and for recovery of possession. In the counter statement, the defendants have traced their title from their grandfather and also relied upon the settlement deed in their favour.

2. Before the trial court, PW.1 was examined and Exs.A1 to A3 were marked. On the side of defendants, DW1 and DW2 were examined and Exs.B1 to B13 were marked. After the trial, the trial court has held that the plaintiffs are entitled to declaration of title and for recovery of possession and decreed the suit.

3. Aggrieved against the said judgment and decree dated 31.10.1996 made in O.S.No.616 of 1992 on the file of the District Munsif Court, Panruti the defendants preferred A.S.No.20 of 1998 dated 12.08.1999 before the Subordinate Court, Panruti and the same was dismissed. Challenging the said judgment and decree, the present appeal is filed.

4. The Second Appeal has been admitted on the following substantial questions of law:-

i) whether in law the Courts below are right in overlooking that the appellants had prescribed title by adverse possession?

ii) Whether in law the Courts below are not wrong in overlooking that the onus is on the plaintiff to prove ownership and possession and that the respondent had not discharged this onus?

5.The learned counsel for the appellants has submitted that both the Courts below have erroneously held that the appellants/defendants has failed to discharge the onus and they were not in lawful possession and the finding given by the lower Appellate Court that the settlement deed was not proved by examination of the attesting witnesses has no legal sanctity.

6.The learned counsel for the appellants/ defendants would submit that the respondent/plaintiff filed a suit on the ground that her father krishnamoorthy Padayachi purchased the property under Exhibit A3-sale deed on 29.03.1944 and father had died in the year 1967. Two sisters being the legal representatives, of the succeeded to the property and as the defendant's encroached upon the property, they issued the legal notice, for which, they have given a reply and hence, the suit.

7.The appellants/ defendants filed a written statement denying the various averments contained in the plaint, inter-alia, contending that the suit property originally belonged to one Govindaswamy, who had two sons by name Narayanaswamy and Devanathan and they have been allotted 3 cents of land by way of gift. Out of the 6 cents, the first defendant being the son of Narayanaswamy, has taken 3 cents and while, the second defendant being a son of Devanathan has taken 3 cents under Exhibit B1. He has mortgaged the property and availed loan from the Co-operative Bank and also filed Ex.B2 - Mortgage deed, Ex.B3 - Patta Pass Book, Ex.B4 - Patta tax receipt Exs.B5 to B11 - tax receipts, Ex.B.12 - House patta and Ex.B.13 - Mortgage deed dated 08.08.1983.

8.The learned counsel for the appellant would submit that except Ex.A3 - sale deed of the year 1948, no other document has been filed nor even any Encumbrance Certificate has been filed to show whether the property was kept by the family of the said Krishnamoorthy Padayachi or sold subsequently, the case of the defendant being that the father of the first defendant has obtained through Exhibit B1 settlement deed. Based upon that, these defendants have obtained it through oral partition.

9.The point for consideration in the above second appeal has been admitted on the following substantial question of law:-

Whether both the Courts below were right in holding that the defendants have not discharged the onus of the proof of his title?

10.The learned counsel for the appellants would contend that as per Exhibit B1 the grandfather was in possession and enjoyment of this subject matter of the property and after him, it devolved upon his two sons. The younger son has settled the property in possession of the first defendant herein and first defendant being the daughter of the elder son and the second defendant is the daughter of the younger son. Devanathan (third defendant) settled the property in favour of D1 and D2 as per Exhibit B1. Thereafter, they have mortgaged the property to the Co-operative Bank and availed loan and they are in possession and enjoyment of the property as per Exhibit B3 to B1, and hence, they have prescribed adverse possession also.

11. The learned counsel for the appellants further contended that the plaintiff has to stand on his own pleading. She cannot take advantage of the weakness of the case of the defendants and further stated that both the Courts below have concurrently erred in holding that the onus lies on the appellants/ defendants, to disprove the possession of the plaintiff and drawn my attention to Ex.B3.

12. It is to be stated that possession follows the title and the schedule of the property under Exhibit A3 and description of the property in the plaint schedule and an Advocate Commissioner appointed by the Trial Court has filed a Rough Sketch in C1 and report in C2. In the cross examination, DW.1 admitted the boundaries and identification of the suit property and also contended that in the absence of any plea in the written statement regarding adverse possession, both the Courts below were correct in holding so and the said finding does not warrant interference.

13. After hearing the rival submission of both the parties and also taking note of the fact that the identification of the suit property has been admitted by Dw.1 in the cross examination coupled with the fact that after the amendment of the schedule in the plaint, the description of the property as per Exhibit A3, (the plaint) and C1 (rough sketch) all tallies in the identification of the suit property and this Court finds that the principle possession follows title applies to the facts and circumstances of the case. Further more, in the absence of any plea of adverse possession being raised in the written statement, though similar plea was raised in the reply statement, the lower Appellate Court has rightly come to the conclusion that since there was no plea of adverse possession in the written statement and alleged commencing date of possession which is hostile and adverse to the title of the landlord has not been pleaded and proven in any manner known to law. Considering the facts, the judgment and decree dated 12.08.1999 in A.S.No.20 of 1998 before the Subordinate Court, Panruti does not warrant any interference by this Court and hence, the substantial questions of law framed are answered in negative against the appellants. Accordingly, the Second Appeal is dismissed. No costs.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

vr

To

1. The Subordinate Court, Panruti.

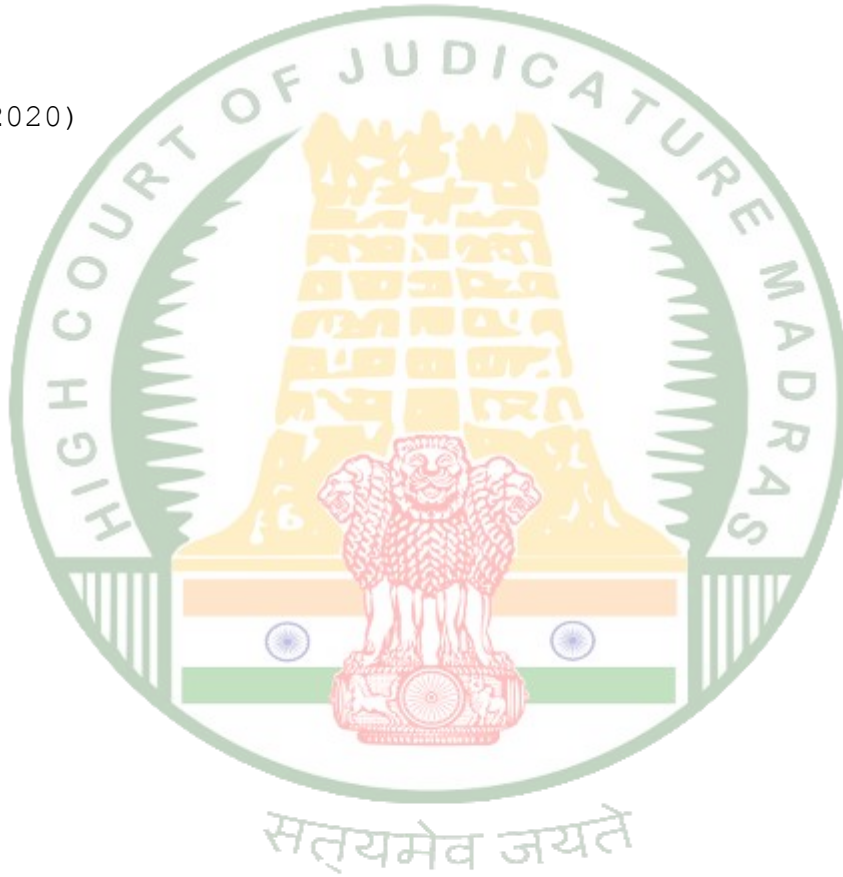
2. The District Munsif, Panruti.

3.The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mrs.R. Meenal, Advocate sr 61636.
+1 CC to Mrs.P.V.Rajeswari, Advocate sr 61073

S.A.No.245 of 2000

PVS (CO)
SP(03/02/2020)



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