

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 14.06.2019

JUDGMENT DELIVERED ON : 20.09.2019

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.2177 of 2002

Radhakrishnan

... Appellant

...Versus...

1.Lalitha (Deceased)

2.K.Balachander

3.Valsala

* R1 Died

[Memo dated 25.07.2018 is recorded. RR2&R3 sole appellant L.R's of the deceased R1 viz., Lalitha vide order of Court dated 25.07.2018 made in S.A.No.2177/2002 (PRMJ)]

... Respondents

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.25 of 1999 dated 27.06.2000 on the file of the Principal District Judge, Coimbatore, confirming the judgment and decree made in O.S.No.1041 of 1990 dated 11.11.1998 on the file of the II Additional Sub-Judge, Coimbatore.

For Appellant :: M/s.V.Srimathi

For R1 :: Died

For R2&R3 :: Mr.K.Selvaraj

J U D G M E N T

The defeated defendant is the appellant herein.

2. The respondents herein (plaintiffs) have filed suit in O.S.No.1041 of 1990 praying for declaration and for recovery of possession.

3. The plaint proceeds on the basis that the appellant/defendant was residing in the suit property as a tenant and liable to be evicted and in the earlier application filed by him in R.C.O.P.No.360/1984, the Rent Controller has found that there is no landlord-tenant relationship between the parties in the manner known to law and accordingly, the suit property which is a industrial site allotted by the Society and the plaintiffs being the legal heirs of one Krishnan Nair i.e., the wife and the sons of one Krishnan Nair.

4. The appellant/defendant resisted the claim of declaration and recovery possession on the ground that he is the son of the said Krishnan Nair and he had also remitted certain monthly E.M.I.s to the Society and hence, prayed for dismissal of the suit.

5. During the time of Trial, the first plaintiff had examined herself as P.W.1 and marked Exhibits A1 to A15. While, also the defendant was examined himself as D.W.1, besides, D.W.2 and D.W.3 were examined and Exhibits B1 to B17 were marked on behalf of the defendants and X1 to X4 were marked.

6. On a consideration of both oral and documentary evidence, the learned II Additional Sub-Judge, Coimbatore, decreed the suit as prayed for and also awarded a sum of Rs.7,000/- towards the loss and damages to be paid by the defendant to the plaintiffs.

7. Aggrieved by the said judgment made in O.S.No.1041/90, the defeated defendant preferred in A.S.No.25/99 before the learned Principal District Judge, coimbatore and after contest, the appeal was dismissed and hence, the Second Appeal is filed by the defendant.

8. The above Second Appeal has been admitted on 20.12.2000 on the following Substantial Question of Law:-

"Whether the Courts below are right in ignoring the admission of the plaintiff and the service records wherein Lakshmiammal is described as the wife of krishnan Nair and particularly when there is no dispute that the appellant is her son?"

9. Heard both sides and perused the records.

10. The respondents/plaintiffs have filed the suit for declaration and title and for recovery of possession alleging that the suit property was allotted to the husband of the first plaintiff, namely krishnan Nair and he has remitted the entire amount payable to the Society and her husband died on 3.2.1984 in proof of which Ex.A1 Death Certificate was filed and Ex.A2 is the Receipt for treatment.

11. Before the Trial Court, Ex.X1 is the first page of S.S.L.C Certificate book issued to the first defendant, Ex.X2 is the school admission certificate of the defendant, Ex.X3 is a book of the society which is allotted to the side to the plaintiff's husband namely of

'சிங்காநல்லூர் தொழிலியல் தொழிலாளர்கள் கூட்டுறவு வீடு கட்டும் சங்கம் '

12. Both the Courts below having given consideration to the plea raised by the defendant that he is the alleged son of the allottee, namely the Krishnan Nair, has held the same to be false. Based upon Exs.X1 and X2, it was also held that, as pleaded by the respondents/plaintiffs, he only worked under the deceased Krishnan Nair and on his death, the plaintiff has taken the site to run the business.

13. The plea of adverse possession raised by the appellant herein has also been negated by concurrent findings rendered by the Courts below. After going through the findings rendered by the Tribunal by the Courts below on the plea of adverse possession, the same appears to be well considered and well merited and it does not warrant any interference.

14. The learned counsel for the appellant/defendant has made submissions in support of the Substantial Question of Law framed at the time of the admission of the Second Appeal and also made a submissions in support of the judgments of the Court below.

15. After hearing both the parties and after perusing Exs.X1 and X2, this Court is of the considered view that the Substantial question of Law as framed at the time of the admission itself, is found to be defective. Since it is a disputed fact that whether the appellant is the son of the plaintiff, when that being so, the disputed fact has been described as a non-disputed fact in the Substantial Question of Law.

16. Be that as it may. This Court proposes to deal with the merits of this case on the question touching upon the substantial question of law.

17. P.W.1 in his evidence has categorically stated that she is the wife of the deceased Krishnan Nair and the plaintiffs 2 & 3 are their sons and also deposed that the defendant is not the son born to the said Krishnan Nair and she also denied suggestions made during the cross-examination.

18. On the contrary, the defendant as D.W.1 specifically pleaded that he is the son of the said Krishnan Nair and a suggestion has been made as to disputing the said paternity of the said Krishnan Nair to that of the defendant.

19. It remains to be stated that a site was allotted to the first respondent/plaintiff's husband by the Ondipudhur Industrial Co-operative Society on 30.04.1964 and initially, the site was allotted and subsequently, the building was constructed thereon and the entire sale consideration had been paid by her husband. Subsequently, till the death her husband in 1983, the respondent/defendant has paid the amount since his tenancy from 1980 and she issued legal notice and exchange of legal notices were marked as Exs.A4 to A8.

20. It is the specific case of the appellant/defendant that he was born to Krishnan Nair through his first wife Lakshmi Ammal. After her death in the year 1974, the said Krishnan Nair married the first plaintiff and begotten the plaintiffs 2 & 3 and Ex.B3 School Certificate was relied upon.

21. After hearing the rival submissions and also perusing the documents, it is not in dispute that in the year 1964, the site was allotted to Krishnan Nair and on a perusal of Ex.B1 Pass Book, it is seen that the entire amount due for the Society had been paid in the year 1972 and as per Ex.A1, Krishnan Nair died only in the year 1983 and thus, the concurrent findings rendered by both the Courts below that even before the death the said Krishnan Nair, the entire E.M.I amount was remitted and the same does not warrant any interference by this Court and the fact that the first plaintiff is the wife of Krishnan Nair and the plaintiffs 2 & 3

are the children born through the first plaintiff to the Krishnan Nair are all not in dispute and hence, the plaintiffs are the legal heirs of the deceased Krishnan Nair.

22. As stated supra, P.W.1 has categorically disputed that the appellant/defendant is not the son of the said Krishnan Nair and in fact, in the long cause title to the suit, she has mentioned the name of the father of the defendant as Sivaramakrishnan which also assumes significance. As per Ex.X1 SSLC Certificate (first page) of the defendant, it goes to show that his father's name is Sivaramakrishnan and he studied in Municipal Boys High School, R.S.Puram, Coimbatore. When D.W.1 was confronted with the Ex.X1 during the cross-examination, he has admitted the same based upon his admission in the witness box regarding Ex.X1. Both the Courts below have categorically held that the defendant is the son of Sivaramakrishnan and not Krishnan Nair, namely the allottee of the suit property (also the husband of the first plaintiff) and accordingly, both the Courts below have concurrently held that based upon Exs.X1 and x2 coupled with the admission of D.W.1 and have given a concurrent finding that the defendant is not the son of the said Krishnan Nair, who is the owner of the site property and plaintiffs being the legal heirs of the deceased Krishnan Nair are entitled for a declaration of title and accordingly, rendered the concurrent findings to that effect.

23. Taking into consideration that even in the year 1972, during the lifetime the said Krishnan Nair, he has paid the entire E.M.I amount and he died in the year 1983 and hence, the plaintiffs are entitled to get the sale deed executed from the Society.

24. It remains to be stated that in the absence of any evidence to corroborate the signature of the said Krishnan Nair as found in Ex.B1 both the Courts below have categorically held that the letter of allotment of the site property said to have been given by Krishnan Nair, cannot be believed.

25. On re-appreciation, this court finds no ground to interfere with the said findings. Accordingly, this Court rejects the said contentions of the appellant and furthermore, with regard to possession, Krishnan Nair was in possession in property and thereafter, the defendant was in possession of the property and hence, the plaintiffs are entitled to recovery of possession and the concurrent finding with regard to the alleged plea of adverse possession, on re-appreciation of the evidence does not warrant any interference and the substantial question of law as framed as extracted above, is answered in negation against the appellants.

26. In the result,

(i) This Second Appeal is dismissed.

(ii) The judgments and decrees of the First Appellate Court and the Trial Court are confirmed.

(iii) No costs.

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Index:Yes/No

Internet:Yes/No

Speaking Order:Yes/No

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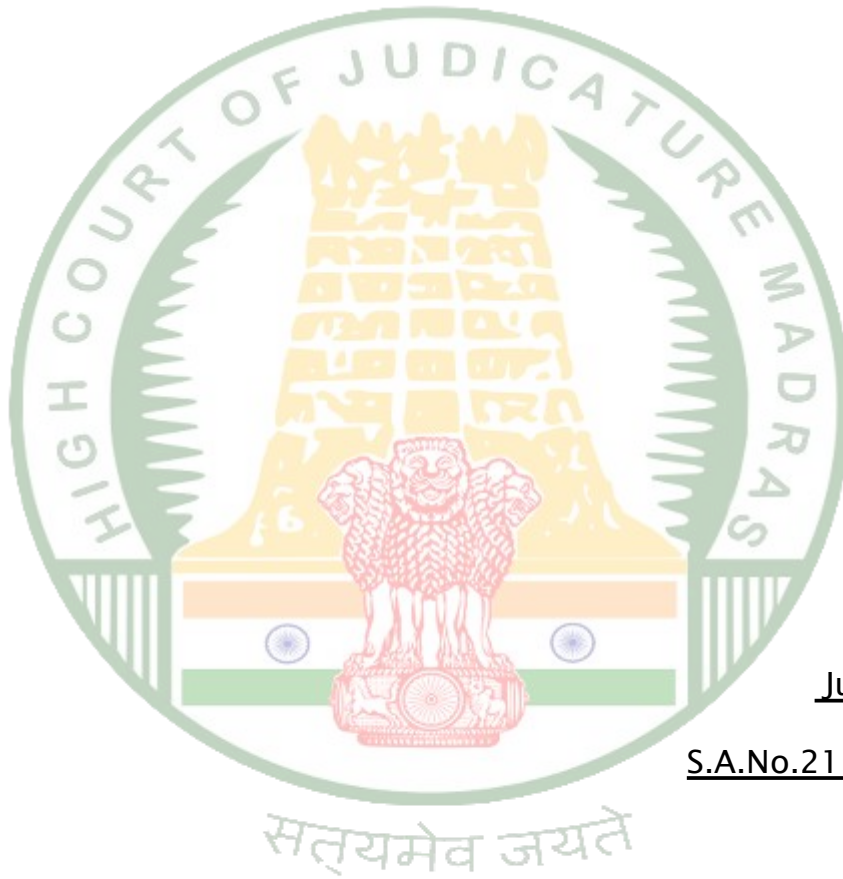
1.The Principal District Judge, Coimbatore

2. The II Additional Sub-Judge, Coimbatore.

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RMT.TEEKAA RAMAN,J.,

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Judgment in

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