



S.A.No.18 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.18 of 2024

Valliammal

...Appellant/Defendant

Vs.

Porkilai (Died)

1. Elumalai

2. Mangavaram

...Respondents/Plaintiffs 2 & 3

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, as against the Judgment and Decree dated 24.03.2020 made in A.S.No.15 of 2018 on the file of the learned II Additional District Judge, Pondicherry confirming the Judgment and Decree dated 14.12.2017 passed in O.S.No.52 of 2102 on the file of the learned Additional Subordinate Judge, Pondicherry.

For Appellant : Mr.S.Madhar Khan

For Respondents : Mr.D.Senthil Kumar



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JUDGMENT

This Second Appeal is filed by the defendant against the Judgment and Decree dated 24.03.2020 made in A.S.No.15 of 2018 by the II Additional District Judge, Pondicherry.

2. The parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, 'A' Schedule property and other two items originally belonged to one Krishnan, son of Thangavelu, the husband of the first plaintiff and father of the plaintiffs No.2 and 3 as per sale deed dated 10.02.1975. Survey Number of 'A' schedule property is not mentioned in the said sale deed but the boundary details are correctly mentioned therein. Since the date of purchase, the first plaintiff's husband Krishnan had been in possession and enjoyment of 'A' schedule property till his life time (died on 01.07.1978). After the life time of her husband Krishnan, the first plaintiff his wife has been in possession and enjoyment of the suit property along with other properties. The defendant is the brother's daughter of deceased Krishnan. She was not provided accommodation by her father.



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3.1. The first plaintiff permitted the defendant to occupy 'B' schedule property by putting up a shed in the year 2005. Taking advantage of the same, the defendant was trying to construct a permanent structure in April 2012 and it was resisted by the plaintiffs. The plaintiffs lodged complaint before Kalapet Police Station on 25.04.2012. The plaintiffs caused to issue to the defendant legal notice on 27.04.2012, by revoking the permission already granted to the defendant. Despite the receipt of notice, the defendant neither sent a reply, nor handed over the 'B' schedule property to the plaintiff. Hence, the suit.

4. Per contra, the defendant would contend that the suit properties and the entire properties in R.S.No.190/4 in Pillaichavady Revenue Village, belongs to one Amsavalli Thayarammal and her legal heirs, who are the descendants of Anandaranga Pillai. The sale deed mentioned in the plaint is a forged one. The plaint 'A' and 'B' schedule properties were in possession and enjoyment of the grand father of the defendant Thangavelu for more than 30 years till his death since 1970. After his death, the defendant's father Solayappan and his brother Krishnan were in possession and enjoyment the suit of properties.



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4.1., After the death of her father, the defendant is in continuous possession and enjoyment of plaint 'B' schedule property from 1982. The defendant has obtained electricity connection in the year 1993 which stands in the name of defendant's husband Ramalingam. The plaintiffs have no right at all over the plaint 'B' schedule property.

5. Based on the divergent pleadings, trial Court framed relevant issues.

6. At trial, to substantiate plaint details, on the plaintiff side, two witnesses have been examined and twenty three documents were marked. Ex.A1 dated 10.02.1975 is the certified copy of sale deed executed in favour of first plaintiff husband-Krishnan, S/o Thangavelu in respect of 'A' schedule property and other two items. On the defendant side - Valliyammal, two witnesses were examined and twenty six documents were marked. The First Appellate Court has after receipt of the documents in I.A.No.684 of 2019 and marked as Ex.B27 & Ex.B28. Ex.B1 dated 14.10.1976 is the copy of the KudiyiruppuOppadaiPathiram issued in the name of defendant's father Solaiyappan. Ex.B24 is the Settlement Register extract dated 27.06.2012 in respect of Survey No.190/7M.



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7. The first plaintiff's husband name is Krishnan. Name of the father of the defendant is Solaiyappan. The said Krishnan and Solaiyappan are the sons of Thangavel. The first plaintiff is the wife of said Krishnan and plaintiff Nos.2 & 3 are their sons. During the pendency of the suit, the first plaintiff's husband Krishnan passed away.

8. As per the plaint, 'A' schedule property comprised in S.No.190/4B, Cadastre No.1744 plot with the house to an extent of 32 feet - east west and 57 feet - north south, within boundaries west of Sivaperumal manai and Jeyaraman manai and east of Therodum Veethi, South of Subburayon house, north of Motta Gounder Manai. 'B' schedule property is not a ancestral property brought with an extent of 32 feet east west and 56 east north south within the boundaries. West of Sivaperuman and South of Subburayan house on the south Motta gounder house.

9. It the evidence of PW1 Elumalai s/o Late Krishnan that the 'A' schedule property and other three items originally belong to his father Krishnan as per the sale deed dated 10.02.1975 (Ex.B1). He would further state that 'A' schedule property survey number is not mentioned in the sale deed. But, the boundaries details are correctly mentioned. It



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is his further evidence that his father died on 01.07.1978 and thereafter, his legal heirs, namely plaintiffs No.2 & 3 are in possession and enjoyment of the suit property. She is a permissive occupier and she put up the 'B' schedule property in the year 2005 which is situated on the south west of the 'A' schedule property. He would further state that when the defendant tried to put up construction upon 'B' schedule property, complaint was lodged at Kalapet Police Station on 25.04.2012 and a legal notice was also issued to the defendant on 27.04.2012 revoking the permission granted to the defendant to occupy 'B' schedule property and required her to vacate and hand over the possession of the 'B' schedule property. After receipt of notice also she was continuing the construction of foundation work in the 'B' schedule property. After lodging complaint, the suit was filed. P.W.2 Venunathan would state that his garden situate on the eastern side of the 'A' schedule property. He would support the case of the plaintiffs and he also spoken about the defendants occupation of 'B' schedule property on the southern side of the plaintiff's property.

10. On careful perusal of Ex.A1 sale deed in the schedule of properties, the third item is 32 X 57 ft house site and 'A' schedule property is bounded on the north by Subburoyan house, on the south



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Motta gounder house site and east Sivaperuman Jeyaraman's site and on the west by Therodum Veethi. Ex.A2 is Settlement Register Extract in respect of S.No.190/4B Cadastre No.1744 Plotin Ex.A2 and the first plaintiff's husband name Krishnan son of Thangavelu is mentioned.

11. Whereas, the defendant who is examined as D.W.1 did not admit the details of the plaint, would state that the entire property in R.S.No.190/4 in Pillaichavady Village belongs to Amsavalli Thayarammal and Ex.A1 sale deed is a forged document. She would further depose that she has been in continuous possession and enjoyment of the 'B' schedule property from 1982. The copy of Assignment Deed in the name of Solaiyappan granted in the year 1975 in respect of S.No.190/7 of Pillaichavady Village is marked as Ex.A1. B11 is the Property Tax Payment List. B12 is the Property Tax Notice issued in the name of defendant's husband Ramalingam in respect of Door No.10, Car Street, Pillaichavady. He has filed Ration Card, Aadhaar Card of her family members. Ex.A1 Certified copy of the sale deed and Ex.A2 Settlement Register would indicate that the property belongs to first plaintiff's husband.



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12. Though the defendant would state that the property belongs to her father, the property tax was paid in the name of her husband (Ex.B11 & B12). The Identity Card and Voter Card will not confer any right on title upon the defendant in respect of the suit property namely 'B' schedule property. Ex.B24 is the Settlement Register extract in respect of 190/4 for an extent of 0.18.0 Hectare. D.W.1 would state that property in S.No.190/4 was in possession of Amsavalli Thayarammal. On the other hand, she would also state that 'B' schedule property belongs to her father Solaiyappan based on Ex.B1., dated 14.10.1976 copy of Kudiyiruppu Oppadai Pathiram issued in the name of defendant's father Solaiyappan. As mentioned supra, Ex.B1 is granted in respect of S.No.190/7M which is different property and not 'B' schedule property.

13. The above said documents of the defendant would not prove her case to the effect that the property belonged to her father. Ex.B2 is a unregistered document which is the released deed cannot be taken into consideration. Apart from the contrary statements made by the defendant, she has stated that the plaintiffs acknowledged the right of defendant to repair the house and for reroofing. If the property really belongs to her father Solaiyappan and absolutely, there is no necessity



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for the defendant to state that the plaintiff acknowledged the right of the defendant to repair the house and for re-roofing. These details of written statement as well as the evidence of DW1 would amply prove the plaintiff's case that the 'B' schedule property was permitted to be used by the defendant by her father as she is his brother's daughter. Conjoin reading of Ex.A1 Sale Deed, Ex.A2 Settlement Register extract and Ex.A3 Encumbrance Certificate in respect of 194/4B explicate that 'A' schedule property is purchased by the plaintiff's father and possessed by him. In recognition of the possession of the said property, his name is found in the Settlement Register in respect of 190/4B. When the boundary details of the suit property is put to DW1 she has admitted the same as correct. Therefore, though survey number is not mentioned in Ex.A1 it has clearly been established based on Exs.A1 & A2, the plaintiffs have been in possession and enjoyment of the 'A' schedule suit property.

14. Law is well settled, if there is any doubt arises in respect of survey and extent, the boundary details prevail over the extent and survey number. D.W.2 Muniyammal would state that she is residing five or six houses away from the suit property.



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15. From a careful analysis of entire evidence available on record it is deducible that the defendant who is the daughter of first plaintiff's father's brother was permitted to occupy 'B' schedule property. As to adverse possession, one as to plead and prove in very specific terms. In the written statement, 'The plaintiffs have acknowledged the right of this defendant to repair the house and for re-roofing.' In fact would go to show that she is a permissive occupier of 'B' schedule property and the trial Court as well as the First Appellate Court having elaborately discussed as the oral and documentary evidence and it was concluded that plaintiffs have proved the case and ultimately the suit was allowed.

16. 'A' schedule property is the suit property. 'B' schedule property is the part of 'A' schedule property which is in occupation of defendant. Ex.27 is the FMB relating to S.No.190 N of Pillaichavady Village. Ex.B28 is the certified copy of Settlement Adangal Register relating to S.No.190/4B and 190/4C. As it is established that the defendant is a permissive occupier and by issuance of notice by the plaintiff to the defendant, the permission granted is revoked. Therefore, the defendant is liable to hand over possession of 'B' schedule property to the plaintiffs.



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17. In such view of the matter, no substantial question of law arises for consideration. This Court does not find any perversity or infirmity in the judgment of the First Appellate Court. This Court also does not find any good reason to upset the finding of the well considered judgment of the First Appellate Court.

18. With these observations and discussions, this Second Appeal stands dismissed. Sequel to this, the judgment dated 24.03.2003 passed in A.S.No.15 of 2018 by the learned Second Additional District Court, Pondicherry stands confirmed. There is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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1.The Additional Subordinate Judge, Pondicherry.

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R.KALAIMATHI, J.

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