



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A(MD)No.364 of 2019

and

CMP(MD)No.7293 of 2019

1.Rengammal
2.Valliammai
3.Selvarani

... Appellants/Appellants/
Plaintiffs

Vs.

1.Pennachi
2.Kannammal
3.Gopinath
4.Hemalatha
5.Sakunthala

... Respondents/Respondents/
Defendants

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 30.10.2018 passed in A.S.No.127 of 2014 on the file of the First Additional Subordinate Judge, Trichirapalli in confirming the Judgment and Decree dated 21.04.2014 passed in O.S.No.135 of 2008 on the file of District Munsif Court, Musiri.

For Appellant

: Mr.R.Govindaraj

JUDGMENT

The unsuccessful plaintiffs before the Courts below, are the appellants in the second appeal. The second appeal has been filed challenging the judgment and decree dated 30.10.2018 passed in A.S.No.127 of 2014 on the file of the learned First Additional Subordinate Judge, Trichirapalli.

2.The suit in O.S.No.135 of 2008 was instituted by the appellants/plaintiffs before the District Munsif Court, Musiri, for the reliefs of declaration that they alone are the absolute and exclusive owners of the suit property and also for consequential injunction.

3. The parties are referred to in the same array as in



4. Basis on which the suit has been instituted is that the suit property is the absolute property of one Palkara Mottayan @ Periya Ayithan. The first plaintiff is the wife of Palkara Mottayan and the second and third plaintiffs are their daughters. According to the plaintiffs, the suit property belonged to the said Palkara Mottayan @ Periya Ayithan. He was in possession and enjoyment of the same till his life time and therefore, he perfected the title to the property by adverse possession. Patta was also granted in his favour in respect of the suit property comprised in S.F.No.472/4.

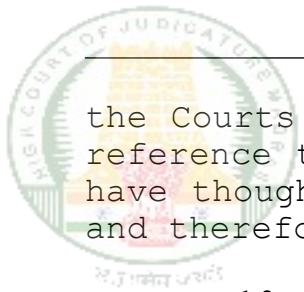
5. After the demise of the said Palkara Mottayan @ Periya Ayithan around eight years prior to filing of the suit, the plaintiffs had succeeded his interest in the suit property. They have been in possession and enjoyment of the same. According to the plaintiffs, during resurvey, the S.F.No.472/4 was now assigned with S.F.No.193/4B. They would also contend that this change has been effected without any notice to them. While so, the defendants without having any right, title or interest in the suit property, started interfering with their possession and claimed title over the suit property. Therefore, the plaintiffs had come forward with the suit.

6. The defendants filed written statement where they *inter alia* contented that the said Palkara Mottayan @ Periya Ayithan is not the husband of the first plaintiff, but is the father-in-law of the first plaintiff and that his father was Mannakkudi Adaikalam Katan @ Pallikoodathan. The wife of the said Pallikoodathan is Valiyathal. The defendants would contend that the suit property belonged to this Valiyathal. After her demise, her only son namely Periya Ayithan inherited the suit property and from him one Thangarasu had purchased the property under a registered sale deed dated 27.09.1983 for a valuable consideration of Rs.2,000/-. After the death of the said Thangarasu on 24.02.2007, the defendants had inherited the property and have been in possession of the same. Therefore, they sought for dismissal of the suit.

7. The learned District Munsif, Musiri, by his judgment and decree dated 21.04.2014 was pleased to dismiss the said suit. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.127 of 2014 on the file of the learned First Additional Subordinate Judge, Trichirapalli. The learned First Additional Subordinate Judge has also concurred with the findings of the trial Court and ultimately, dismissed the appeal. Challenging the same, the plaintiffs is now before this Court.

8. Heard Mr.R.Govindaraj, learned counsel for the appellants and perused the papers.

<https://hcservices.ecourts.gov.in/> The learned counsel for the appellants would contend that



the Courts below despite observing that there is a discrepancy with reference to the identity of the person who was the original owner, have thought it fit to decide the issue in favour of the defendants and therefore the judgments are erroneous.

10.A perusal of the written statement would show that on the date of filing of the written statement, the defendants had come forward with the category case that the relationship as described by the plaintiffs in the plaint was totally erroneous and that the original owner was not the husband of the first plaintiff, but was father. Be that as it may, the said Palkara Mottayan @ Periya Ayithan admittedly sold the property to one Thangarasu through whom the defendants claimed under a registered sale deed dated 27.09.1983 registered at Document No.2671 on the file of the Sub Registrar, Musiri. The plaintiffs have not been able to let in any evidence whatsoever to prove the title except by producing a few stray revenue receipts and that too, just close to the filing of the suit. The Courts below have rightly come to the conclusion that though the plaintiffs came forward to claim title over to the suit property by way of enjoyment, they have not taken any steps whatsoever to prove the same.

11.Hence, I do not find any infirmity in the judgments of the Courts below. There is no question of law muchless the substantial question of law warranting interference of this Court.

12.In the result, this Second Appeal stands dismissed by confirming the Judgment and Decree dated 30.10.2018 passed in A.S.No.127 of 2014 by the learned First Additional Subordinate Judge, Trichirapalli and the Judgment and Decree dated 21.04.2014 passed in O.S.No.135 of 2008 by the learned District Munsif, Musiri. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

cp

To

1. The Ist Additional Subordinate Judge, Trichirappalli.

2. The District Munsif, Musiri.



3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.R.GOVINDARAJ, Advocate (SR-86626[F] dated 13/09/2019)

WEB COPY

S.A(MD) No.364 of 2019

and

CMP(MD) No.7293 of 2019

12.09.2019

_KK/SAR/24.10.2019/4P-6C/