**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reserving the Judgment	Date of Pronouncing the Judgment
05.03.2019	15.03.2019

WEB COPY

CORAM**THE HONOURABLE MR. JUSTICE R.PONGIAPPAN****S.A(MD)No.79 of 2011**

Rajeswari ... Appellant/Respondent/
Defendant

Vs.

Dhanalakshmi ... Respondent/Appellant/
Plaintiff

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.09.2010 and made in A.S.No.60 of 2007 on the file of District Judge, Sivagangai reversing the judgment and decree dated 27.12.2005 in O.S.No.143 of 2004 on the file of the District Munsif Court, Sivagangai.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.R.Vijayakumar

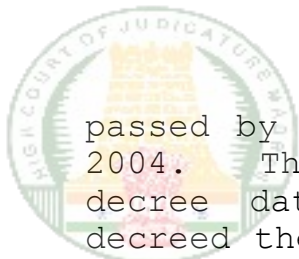
J U D G M E N T

This second appeal has been filed by the appellant/ defendant against the judgment and decree dated 30.09.2010 made in A.S.No.60 of 2007 on the file of District Judge, Sivagangai reversing the judgment and decree dated 27.12.2005 in O.S.No.143 of 2004 on the file of the District Munsif Court, Sivagangai.

2.The unsuccessful respondent/defendant in A.S.No.60 of 2007 on the file of the District Munsif Court, Sivagangai, is the appellant herein.

3.The respondent/plaintiff herein filed a suit before the learned District Munsif, Sivagangai in O.S.No.143 of 2004 for the relief of declaration declaring that the plaintiff has perfected title to the suit property by means of adverse possession and also for the relief of permanent injunction restraining the defendant in interfering with the peaceful possession and enjoyment of the suit schedule property. The learned District Munsif, Sivagangai by judgment and decree dated 27.12.2005 had dismissed the suit with costs.

4.Approved over the same, the respondent/plaintiff herein filed an appeal before the learned District Judge, Sivagangai in A.S.No.60 of 2007 praying to set aside the judgment and decree



passed by the learned District Munsif, Sivagangai in O.S.No.143 of 2004. The learned District Judge, Sivagangai, by judgment and decree dated 30.09.2010 had allowed the appeal and ultimately decreed the suit without costs. Feeling aggrieved by the same, the appellant/ defendant has filed the present second appeal.

WEB COPY

5.For the sake of convenience, the parties are referred to as, as described by the trial Court.

6.The averments made in the plaint, in brief, are as follows:-

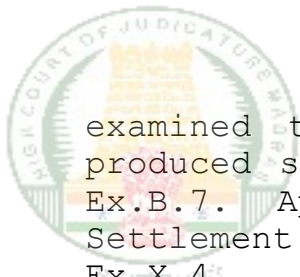
Earlier the suit property was originally belonged to one Pandi and one Rajamani. They were in possession and enjoyment of the suit property with their thatched house. After some time due to damage of the thatched house, the suit property became the vacant land. In the oral partition which was happened between the Pandi and Rajamani, the suit schedule property was allotted in favour of the Pandi. In such situation, the plaintiff purchased the suit property from the said Pandi under a sale deed dated 05.02.2004 and thereafter, she was keeping fire wood, haystack and thatched toilet. Subsequent to that, as a purchaser she mortgaged the suit property in favour of one Ayyanar for Rs.5000/-. The plaintiff and her predecessor in title are in possession and enjoyment of the suit property for a long period. Further the plaintiff also derived prescriptive title in the suit property. In such circumstances, the defendant unreasonably attempted to disturb the plaintiff's possession and enjoyment of the suit property.

7.The averments made in the written statement filed by the defendant, in brief, are as follows:-

In the revenue records the suit property was mentioned as unobjectionable house site, belong to the Government. The house of the defendant is situated adjacently on the west of the suit property. So, this defendant is keeping dove-nest, hearth and bore-well with electric motor in the suit property for more than 30 years as appurtenance to her house property. So, she, by adverse possession, derived title in the suit property. The suit property does not belong to either the plaintiff's predecessor or the plaintiff and they never possessed and enjoyed the suit property as their property. The allegations that the plaintiff purchased the suit property under a sale deed dated 05.02.2004 from Pandi and he is in possession and enjoyment of the same, are denied as false. Hence, the suit is liable to be for dismissal.

8.Based on the above said pleadings, the learned District Munsif, Sivagangai, had framed necessary issues and tried the suit.

9.Before the trial Court, during the time of trial, the plaintiff examined herself as P.W.1 and she has examined three more witnesses as P.W.2 to P.W.4. Further on her side, she produced five documents, which were marked as Ex.A.1 to Ex.A.5. On the side of the defendant, the defendant examined herself as D.W.1 and she



examined two more witnesses as D.W.2 and D.W.3. Further, she produced seven documents and the same were exhibited as Ex.B.1 to Ex.B.7. Apart from that, the extract of the Adangal, Rough Sketch, Settlement Register and 'A' Register were marked as Ex.X.1 to Ex.X.4.

WEB COPY

10. After concluding the trial, the learned District Munsif, Sivagangai had observed that the plaintiff has not proved the partition happened between Pandi and one Rajamani and by observing that the oral partition stated by the plaintiff happened between the Pandi and Rajamani has not proved, he came to the conclusion that the vendor of the plaintiff had no title and because of the said reason, the relief sought by the plaintiff cannot be granted.

11. In the appeal, the learned District Judge, Sivagangai following the principle "possession follows title", came to the conclusion that the title and possession of the suit property are with the plaintiff and thereby, she is entitled the relief prayed in the suit. Feeling aggrieved by the same, the first appellant/defendant filed the present second appeal.

12. In the said circumstances, while at the time of admitting the Second Appeal, this Court has formulated the following Substantial Questions of Law, for consideration:-

1. Whether the lower appellate Court having found that there was no evidence to prove the possession of the respondent herein/plaintiff, but however holding that the principle 'possession follows title' could be applied in favour of the respondent/plaintiff when the plaintiff's vendor's title itself is in question?

2. Whether the finding of the lower appellate Court regarding the alleged title of the respondent/plaintiff is not supported by sufficient evidence to reverse the well considered finding of the trial Court to say that the first appellate Court's finding is perverse?

Substantial Questions of Law No.1 and 2:

13. It is the definite case of the plaintiff that the suit property was purchased by the plaintiff from one Pandi vide sale deed dated 05.02.2004. It is the further case of the plaintiff that before the date of purchase, the vendor of the plaintiff is in continuous possession and enjoyment of the suit property. Further after purchase, the plaintiff is in continuous possession and enjoyment of the suit property. In order to prove the same the copy of the sale deed, dated 05.02.2004, was marked as Ex.A.1.

14. The learned counsel appearing for the appellant/ defendant would vehemently contend that in order to prove the title of the vendor, the respondent/plaintiff has not produced any document. Therefore, without proving the title of the vendor, the Court cannot



hold that the vendor of the plaintiff is having better title in respect to the suit schedule property. On the other hand, the learned counsel appearing for the appellant/defendant would contend that only the defendant is in possession and enjoyment of the suit schedule property from time immemorial.

WEB COPY

15. Now, upon considering the arguments advance by either side, it appears that the SLR register of the suit property was marked on the side of the plaintiff as Ex.A-2 and the copy of the same document was marked on the side of the defendant as Ex.B-6. In both the documents, it is mentioned that the suit schedule property is a vacant site. Further one Rajamani and the vendor of the plaintiff are in possession of the suit schedule property. Before the trial Court, the vendor of the plaintiff was examined as P.W.2. He has specifically stated that till the date of sale, no patta was issued in his favour in respect to the suit schedule property. Accordingly, we cannot hold that the vendor of the suit schedule property is in long continuous possession of the suit property. In this case, even though the SLR Register reflects the name of the vendor of the plaintiff as he was in possession, in order to confirm the same, the patta has not been issued in his favour.

16. It is the further case of the plaintiff that as per the SLR Register, one Pandi, vendor of the plaintiff is in possession of the suit schedule property. In this regard, P.W.1 and P.W.2 have specifically stated in their evidence that the partition was effected in respect to the suit schedule property in between the vendor of the plaintiff and Rajamani. But in order to prove the same, no partition deed has been marked on the side of the plaintiff, which will probabalise and create a doubt whether the vendor is having the better title. On the side of the defendant, the mortgage deed executed by the defendant in favour of one Ayyanar dated 03.02.2004 was marked as Ex.B.7. The said document establishes that on 03.12.2004 the defendant is in possession and enjoyment of the suit schedule property. Except those documents, in order to prove the possession, on the side of the plaintiff no document was exhibited. In fact Ex.X.1 to Ex.X.4, which are the documents maintained in the revenue department, will clearly expose that the suit schedule property is the Government Poromboke. So, without any document in respect to the title, the sale made by the vendor of the plaintiff is questionable. Accordingly, the purchase made by the plaintiff from one Pandi, did not confer any title in favour of the plaintiff.

17. The first appellate Court had decreed the suit based on the principle of possession follows title. In this case, in order to prove the possession from the year of 2004, no document has been produced on the side of the plaintiff. On the side of the plaintiff, there was an oral evidence that she is in possession of the suit schedule property. In order to substantiate the same, no relevant document has been produced by the plaintiff. P.W.2, in his evidence, had specifically stated that the land tax was paid to the Government for his possession. But, no such tax receipts were



produced on the side of the plaintiff for the period till filing the suit. So in any way, in order to prove the possession no documents have been produced on the side of the plaintiff. Accordingly, following the principle that possession follows title, is not correct to decide the case in favour of the plaintiff. The first appellate Court without considering the said aspect, came to the said conclusion and reversed the judgment rendered by the trial Court. The judgment rendered by the first appellate Court is not supported by reliable evidence and document. Therefore, the substantial questions of law 1 and 2 are answered in favour of the appellant / defendant.

18. In the result, this Second Appeal is allowed and the Judgment and Decree dated 30.09.2010 passed in A.S.No.60 of 2007 by the learned District Judge, Sivagangai is set aside and the judgment and decree dated 27.12.2005 passed in O.S.No.143 of 2004 by the learned District Munsif, Sivagangai is restored. No costs.

Sd/-

Assistant Registrar (CS-II)

/ True Copy /

Sub Assistant Registrar (CS)

cp

To:

1. The District Judge,
Sivagangai.

2. The District Munsif,
Sivagangai

Copy To:

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

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate
(SR-54385[F] dated 15/03/2019)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate
(SR-54504[F] dated 15/03/2019)

Judgment Made in
S.A(MD) No.79 of 2011
15.03.2019