



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.12.2020

Pronounced on: 15.12.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.Nos.1066 of 1992 & S.A.Nos.1233 to 1235 of 1993
& S.A.Nos.787 to 789 of 1998

S.A.No.1066 of 1992:

1. S.Krishnamurthy, (Died)
2. S.Dhanapal, ...2nd Appellant/Plaintiff
3. S.Kalyanam (Died),
4. T.P.Kamatchi,
W/o.Krishnamurthy,
5. K.Rajasundari,
W/o.M.Prabakaran,
6. K.Sripriya,
D/o.Krishnamurthy,

Appellants 4 to 6 are residing
at No.22-III Cross Street,
Phase IV, Wood Creek County,
Nandambakkam, Chennai - 16.
(Appellant Nos.4 to 6 brought
on record as LRs of the deceased
1st appellant viz., S.Krishnamurthy
vide order of Court dated 06.02.2020
made in C.M.P.No.780 of 2012
in S.A.No.1066 of 1992)

7. Pangajam,
W/o.Kalyanam,
8. M.Elavarasi,
D/o.Kalyanam,
9. K.Elavarasan,
S/o.Kalyanam,
10. K.Happy Princes,
S/o.Kalyanam.

Appellant Nos.7 to 10 are residing
at No.39-A/12, Thiyagi Swaminathanar
Street, Sikazhi TK, Nagapattinam District.



Appellant Nos.7 to 10 brought on
record as LRs of the deceased
3rd appellant viz., S.Kalyanam
vide order of Court dated 24.02.2020
made in C.M.P.No.4395 to 4397 of 2020
in S.A.No.1066 of 1992

.... Appellants

/versus/

1. M.Sengaluni Ammal,
W/o.Late Manickam,
2. M.Stalin, (deceased),
3. M.Veeramani,
4. M.Santhi,
5. Minor Raju rep. By
his next friend & guardian
M.Sengaluni Ammal.

...Respondent/Defendants

...Respondents/Defendants

6. Saradha,
7. Jaya,
8. Srinivasan,
9. Narayanan

All residing at Esanyast.
Sirkali.

Respondents 6 to 9 are brought
on record as LRs of the deceased
2nd respondent vide order of the Court
dated 11.07.2003 made in
C.M.P.Nos.16592 to 16594 of 2002.

... Respondents

Prayer in S.A.No.1066 of 1992: Second Appeal is filed under
Section 100 of C.P.C against the judgment and decree dated
21.02.1991 in A.S.No.46 of 1989 on the file of the Court of the
Subordinate Judge, Mayiladuthurai, confirming the Judgment and
decree dated 30/12/1988 made in O.S.No.298/1982 on the file of
District Munsif Court, Sirkali.

S.A.No.1233 of 1993:

1. S.Krishnamurthy (died),
2. S.Dhanapal,
3. S.Kalyanam, (died)
4. T.P.Kamatchi,
W/o.Krishnamurthy,
5. K.Rajasundari,

...Appellants/Plaintiffs



W/o.M.Prabakaran,
6. K.Sripriya,
D/o.Krishnamurthy,
Appellants 4 to 6 are residing at
No.22-III Cross Street, Phase IV,
Wood Creek County, Nandambakkam,
Chennai - 16.

...Appellants

Appellant Nos.4 to 6 brought
on record as LRs of the deceased
1st appellant viz., S.Krishnamurthy
vide, order of Court dated
06.02.2020 made in C.M.P.No.781 of 2012
in S.A.No.1233 of 1993

... Appellants

/versus/

Michael,
S/o.Kesavan,
Esanya West Lane,
Esanya St. Sirkali,
Mayiladuthurai Taluk.

... Respondent/Defendant

Prayer in S.A.No.1233 of 1993: Second Appeal is filed under
Section 100 of C.P.C against the judgment and decree dated
21.02.1991 in A.S.No.49 of 1989 on the file of the Court of the
Subordinate Judge, Mayiladuthurai, confirming the judgment and
decree dated 30/12/1988 made in O.S.No.301/1982 on the file of
District Munsif Court, Sirkali.

S.A.No.1234 of 1993:

1. S.Krishnamurthy (died),
2. S.Dhanapal,
3. S.Kalyanam,
4. T.P.Kamatchi,
W/o.Krishnamurthy,
5. K.Rajasundari,
W/o.M.Prabakaran,
6. K.Sripriya,
D/o.Krishnamurthy,

...Appellants/Plaintiffs

...Appellants

Appellants 4 to 6 are residing at
No.22-III Cross Street, Phase IV,
Wood Creek County, Nandambakkam,
Chennai - 16.



Appellant Nos.4 to 6 brought on
record as LR's of the deceased
1st appellant viz., S.Krishnamurthy
vide order of Court dated
06.02.2020 made in C.M.P.No.782
of 2012 in S.A.No.1234 of 1993

... Appellants

/versus/

1. Sengaluni (died),
Esanya West Lane,
Esanya St. Sirkali.

2. Kaliamurthy,
S/o.Sengaluni

...Defendants/Respondents

Respondent No.2 brought on record
as LR's of the deceased sole respondent
vide, order of Court dated 13.02.2007
made in C.M.P.Nos.17415 to 17417 of 1993.

3.Thillaiammal
4.Murugesan
5.Selvi

Respondents 3 to 5 brought on record
as LRS of the deceased 2nd Respondent
vide order of this Court dated 06/02/2020
made in CMP.No.337/2015 in S.A.No.1234/1993

.. Respondents

Prayer in S.A.No.1234 of 1993: Second Appeal is filed under
Section 100 of C.P.C against the judgment and decree dated
21.02.1991 in A.S.No.51 of 1989 on the file of the Court of the
Subordinate Judge, Mayiladuthurai, confirming the judgment and
decree dated 30/12/1988 made in O.S.No.303/1982 on the file of
District Munsif Court, Sirkali.

S.A.No.1235 of 1993:

1. S.Krishnamurthy (died),
2. S.Dhanapal,
3. S.Kalyanam,
4. T.P.Kamatchi,
W/o.Krishnamurthy,

...Appellants/Plaintiffs

5. K.Rajasundari,
W/o.M.Prabakaran,



6. K.Sripriya,
D/o.Krishnamurthy,

Appellants 4 to 6 are residing at
No.22-III Cross Street, Phase IV,
Wood Creek County, Nandambakkam,
Chennai - 16.

Appellant Nos.4 to 6 brought on record
as LR's of the deceased 1st appellant
viz., S.Krishnamurthy vide order of Court
dated 06.02.2020 made in C.M.P.No.783
of 2012 in S.A.No.1235 of 1993

... Appellants

/versus/

1. Annamalai, (died)
S/o.Pavadai,

...Respondent/Defendant

2. Vaithiyalingam (died),
S/o.Annamalai,

3. Senthamarai,
W/o.Veeramuthu,
D/o.Annamalai.

4. Chinnaponnu,
D/o.Annamalai

5. Jothi,
D/o.Annamalai.

6. Ammu,
D/o.Annamalai.

7. Amsaveni,
W/o.Late Vaithiyalingam.

8. Muruga Pandian,
S/o.Late Vaithiyalingam.

9. Vijayasathya,
S/o.Late Vaithiyalingam.

10. Jayamala,
S/o.Late Vaithiyalingam,



RR2 to R10 are residing at No.7,
Esania Street, Mela Lane Sirkali.

RR2 to 6 were brought on record as
LRs of the deceased R1 viz., Annamalai
and RR7 to 10 brought on record as LRs
of the deceased R2 viz., Vaithiyalingam
vide, order of Court dated 06.02.2020
made in C.M.P.No.8292 of 2005
and 1017 of 2009 in S.A.No.1235 of 1993.

...Respondents

Prayer in S.A.No.1235 of 1993: Second Appeal is filed under
Section 100 of C.P.C against the judgment and decree dated
21.02.1991 in A.S.No.52 of 1989 on the file of the Court of the
Subordinate Judge, Mayiladuthurai, confirming the Judgment and
decree dated 30/12/1988 made in O.S.No.304/1982 on the file of
District Munsif Court, Sirkali.

S.A.No.787 of 1998:

1. S.Krishnamurthy (died),
2. S.Dhanapal,
3. S.Kalyanam(died)
4. T.P.Kamatchi,
W/o.Krishnamurthy,

...Appellant/Plaintiff

5. K.Rajasundari,
W/o.M.Prabakaran,

6. K.Sripriya,
D/o.Krishnamurthy,

Appellants 4 to 6 are residing at
No.22-III Cross Street, Phase IV,
Wood Creek County, Nandambakkam,
Chennai - 16.

Appellant Nos.4 to 6 brought on
record as LRs of the deceased 1st
appellant viz.,S.Krishnamurthy
vide order of Court dated
06.02.2020 made in C.M.P.No.777
of 2012 in S.A.No.787 of 1998

7. Pangajam,
W/o.Kalyanam,



8. M.Elavarasi,
D/o.Kalyanam,

9. K.Elavarasan,
S/o.Kalyanam,

10. K.Happy Princes,
S/o.Kalyanam.

Appellant Nos.7 to 10 are residing
at No.39-A/12, Thiyagi Swaminathanar
Street, Sikazhi TK, Nagapattinam District.

Appellant Nos.7 to 10 brought on record
as LRs of the deceased 3rd appellant
viz., S.Kalyanam vide order of Court
dated 24.02.2020 made in C.M.P.No.4387,
4390 & 4392 of 2020 in S.A.No.787 of 1998

.... Appellants

/versus/

1. Ammani (deceased),
W/o.Chellan.

2. Kalyani,
D/o.Chellan.

3. Valli,
W/o.Velayuthan,

Respondent Nos.2 & 3 were brought
on record as Lrs' of the deceased
1st respondent as per order of Court
dated 06.01.1994 in memo SR.No.6158 of 1993

...Respondents

Prayer in S.A.No.787 of 1998: Second Appeal is filed under
Section 100 of C.P.C against the judgment and decree dated
21.02.1991 in A.S.No.47 of 1989 on the file of the Court of the
Subordinate Judge, Mayiladuthurai and confirming the judgment
and decree in O.S.No.299 of 1982 on the file of District Munsif
Court, Sirkali, dated 30.12.1988.

S.A.No.788 of 1998:

1. S.Krishnamurthy (died),
2. S.Dhanapal,
3. S.Kalyanam,

...Appellants/Plaintiffs



4. T.P.Kamatchi,
W/o.Krishnamurthy,

5. K.Rajasundari,
W/o.M.Prabakaran,

6. K.Sripriya,
D/o.Krishnamurthy,

Appellants 4 to 6 are residing
at No.22-III Cross Street, Phase
IV, Wood Creek County,
Nandambakkam, Chennai - 16.

Appellant Nos.4 to 6 brought on
record as LR's of the deceased
1st appellant viz., S.Krishnamurthy
vide order of Court dated 06.02.2020
made in C.M.P.No.778 of 2012
in S.A.No.788 of 1998

... Appellants

/versus/

1. Periyamayakam,
W/o.Kothandapani.

2. Arumugam (Minor),
S/o.Kothandapani.

3. Valli,
W/o.Velayutham.

4. Kulli,
W/o.Gandhi.

5. Muthulakshmi,
W/o.Elumalai.

6. Nagammal,
W/o.Kothandapani.

*Minor R2 represented by mother
and guardian and 1st respondent.

All residing at Esanya Street,
Sirkali, Mayiladuthurai Taluk.

... Respondents/Defendants



Prayer in S.A.No.788 of 1998: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 21.02.1991 in A.S.No.48 of 1989 on the file of the Court of the Subordinate Judge, Mayiladuthurai, confirming the judgment and decree in O.S.No.300 of 1982 on the file of District Munsif Court, Sirkali, dated 30.12.1988.

S.A.No.789 of 1998:

1. S.Krishnamurthy (died),
2. S.Dhanapal, ..Appellant/Plaintiff
3. S.Kalyanam(died)
4. T.P.Kamatchi,
W/o.Krishnamurthy,
5. K.Rajasundari,
W/o.M.Prabakaran,
6. K.Sripriya,
D/o.Krishnamurthy,

Appellants 4 to 6 are residing
at No.22-III Cross Street,
Phase IV, Wood Creek County,
Nandambakkam, Chennai - 16.

Appellant Nos.4 to 6 brought on record
as LR's of the deceased 1st appellant
viz.,S.Krishnamurthy vide order of
Court dated 06.02.2020 made in
C.M.P.No.779 of 2012 in S.A.No.789 of 1998

7. Pangajam,
W/o.Kalyanam,
8. M.Elavarasi,
D/o.Kalyanam,
9. K.Elavarasan,
S/o.Kalyanam,
10. K.Happy Princes,
S/o.Kalyanam.

Appellant Nos.7 to 10 are residing
at No.39-A/12, Thiyagi Swaminathanar
Street, Sikazhi TK, Nagapattinam District.

Appellant Nos.7 to 10 brought on record
as LR's of the deceased 3rd appellant viz.,



S.Kalyanam vide order of Court dated
24.02.2020 made in C.M.P.No.4382,
4383 & 4385 of 2020 in S.A.No.789 of 1998

.... Appellants

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/versus/

Stalin,
S/o.Manickam,
Esanya St.Sirkali.

... Respondent/Defendant

Prayer in S.A.No.789 of 1998: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 21.02.1991 in A.S.No.50 of 1989 on the file of the Court of the Subordinate Judge, Mayiladuthurai, confirming the judgment and decree in O.S.No.302 of 1982 on the file of District Munsif Court, Sirkali, dated 30.12.1988.

For Appellants : Mr.G.Ethirajulu
in all Appeals

For R1, R4 to R9 : Mr.S.Sounthar,
in S.A.No.1066 of 1992

For R2 & R3 : died
in S.A.No.1066 of 1992

For R2 : Mr.S.Sounthar
in S.A.No.787 of 1998

For R1 : died
in S.A.No.787 of 1998

For R3 : No appearance
in S.A.No.787 of 1998

For R1 & R3 : Mr.S.Sounthar
in S.A.No.788 of 1998

For R4 & R5 : died
in S.A.No.788 of 1998

For R2 & R6 : No appearance
in S.A.No.788 of 1998

For respondent : Mr.S.Sounthar
in S.A.No.789 of 1998.



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For Sole Respondent : No appearance
in S.A.No.1233 of 1993

For R3 to R5 : Not ready notice
in S.A.No.1234 of 1993

For R3 to R6 : Not ready notice
in S.A.No.1235 of 1993

COMMON JUDGMENT

(The case has been heard through video conference)

These second appeals are arising out of seven different suits filed by the plaintiffs against the defendants challenging the concurrent finding of the Courts below in the common judgment. The facts and cause of action are one of the same. The appellants being the common party in all the appeals, common judgement is rendered.

2.The relief sought in the suits is declaration of title and mandatory injunction to remove the super structure put up by the defendants and hand over the vacant possession.

3.In the plaint, it is averred that, the suit schedule property originally belonged to one Gurusamy. During his life time, he executed a Will dated 18.03.1969 in favour of the plaintiffs. On 05.01.1971 Gurusamy died. From that day, the Will came into force. The defendants are the tenants under Gurusamy. After the death of Gurusamy, the defendants accepted the right of the plaintiffs, but they were not paying rent to the plaintiffs. Hence, eviction proceeding was initiated before the Rent Control Tribunal. Since the title of the plaintiffs was denied by the defendants and the landlord- tenant jural relationship was under cloud, the Rent Control proceeding initiated by the plaintiffs were dismissed. Therefore, the suits for declaration of title and vacant possession filed.

4.The defendants filed their written statement denying the plaintiffs right over the suit land. Gurusamy, who has executed the alleged Will in respect of the suit property, had any right over the suit property. The defendants are in occupation of the suit land, after constructing huts at their costs. They are paying house tax and enjoying the property as their own for the past more than 30 years,. They never attorned any tenancy in favour of the plaintiffs or in favour of Gurusamy. The documents relied by the plaintiffs are fabricated



documents created by the second plaintiff in connivance with others.

5. On perusing the pleadings and the written statement filed by the respective defendants, the relevant issues were framed by the trial Court as below:

(1) Whether the plaintiffs have title over the suit property?

(2) Whether the Will dated 18.03.1969 is valid and genuine?

(3) Whether the plaintiffs under the superstructure?

(4) Whether the tenancy agreement between the parties is true?

(5) Whether the defendants have perfected the title by prescription?

(6) What is the exact extent of the land in possession of the defendants?

(7) Whether the Court fee paid is correct?

(8) Whether the plaintiffs are entitled for the relief of declaration and recovery of possession?

6. Before the trial Court, on behalf of the plaintiffs 3 witnesses were examined and 59 documents were marked. On behalf of the defendants, in all the suits, common evidence was rendered by one Michael-DW-1 and 14 exhibits were marked.

7. The trial Court, after considering the evidence, traced Narayana Pandithar as the initial owner of the property and it falls under re-survey No.280/2 measuring 0.67 cents. Being the ancestral property after the demise of Narayana Pandithar, in the year 1939, Singaram and Gurusamy, who are the sons of Narayana Pandithar had divided the property among themselves. On 07.07.1953, the suit was brought for auction through Court. One Annathae was the successful bidder and she purchased the suit property and taken possession of the same. She, under Ex.A6, dated 08.08.1959, sold the property to Gurusamy. The plaintiffs claim the property through the Will of Gurusamy.

8. Earlier, Gurusamy filed a suit in O.S.No.97 of 1969 for possession of the suit property. Pending suit, Gurusamy died. His three sons, who are plaintiffs in the present batch of suits were impleaded and possession was also recorded pursuant to the decree passed in O.S.No.97 of 1969. In another suit in O.S.No.52 of 1978 Ex.A11-Will of Gurusamy was tested and held



to be proved.

9. The Trial Court, on considering the Genealogy and the way in which the property had devolved, held that, the plaintiffs have proved the Will Ex.A11. However, on considering the other documents such as Exs.A2 and A3 held that the total extent of the property in S.No.280/2 is 0.67 cents. Out of which, 0.20 cents is with one Sambandham. 0.47 cents shared between Singaram and Gurusamy. The property of Singaram and Sambandham to the extent of 0.47 cents alone were brought for Court auction in E.P.No.82 of 1954 in C.S.No.35 of 1948. In the Court auction, Annathae had purchased only 20 cents and she sold the same to Gurusamy under Ex.A6 dated 08.08.1959. The Trial Court, therefore, held that Gurusamy along with 0.20 cents purchased from Annathae plus 0.23 ½ cents which he got under the Will of Gurusamy, have title only for 0.43 ½ cents. Therefore, suit for declaration of title in respect of entire 0.67 cents not sustainable.

10. Referring to the suit in S.No.97/1969 filed by Gurusamy, where it is alleged that Sambandham the neighbour land owner forcibly encroached upon 0.23 ½ cents on the eastern portion though the said suit was decided in favour of the plaintiffs, none of the defendants in the present suit were party in the said suit. Therefore, the trial Court held that the said suit is a collusive suit. The 0.20 cents which is the subject matter of the previous suit alleged to be on the eastern side owned by Sambandham and this 0.20 cents is not the portion of share allotted to Singaram.

11. The trial Court, on perusing the Court auction sale document Ex.A4 in which it is mentioned that the property sold under auction is in S.No.280/7 measuring 0.21 cents and in S.No.280/6 measuring 0.3 cents. While so, there is no adequate evidence to show, how Gurusamy acquired from Singaram the title over 0.23 ½ cents land located on the west. Doubting that the land on which the defendants have put up their construction, is not the property of Gurusamy exclusively. Part of the land in occupation of these seven defendants appears to be the land of Singaram. Since the legal heirs of the Singaram are not party in the suit, the Court held that the plaintiffs have no cause of action and title over the property.

12. Regarding the attornment of tenancy, recording the discrepancy in the evidence regarding commencement of tenancy and the rent paid by the defendants and the claim of the plaintiffs that the huts were constructed by Gurusamy in the



year 1969, the trial Court held that the documents filed by the defendants indicate that they were residing in the area called Esaniathoppu, where the suit land is located. The plaintiffs claim that the defendants are under them as tenants since 1960 but the alleged rent receipts is only from 02.03.1977 and those receipts were proved to be not obtained voluntarily. For the said reasons, the trial Court held that the rental receipts are all fabricated documents. Neither the plaintiffs nor Gurusamy have objected the occupation of the defendants in the suit land between 1960 and 1969. When the Sirkazhi Municipality started collecting the house tax from the defendants, they never objected. Therefore, the defendants have perfected title by prescription. They were strangers to the plaintiffs and not permissive occupants. On appeal, the first appellate Court, after re-appreciating the evidence, has confirmed the judgment and decree of the trial Court.

13.The learned counsel appearing for the appellants would submit that the Courts below have over looked the Court auction sale and has confused itself regarding the location of the property. When the plaintiffs are able to clearly establish that 0.67 cents of land from Gurusamy came into their possession through the partition between Singaram and Gurusamy on 18.04.1939. Sambandam had already relinquished his right in favour of Singaram and Gurusamy as early as 07.09.1937. By virtue of the partition deed and the sale deed of Annathae the entire 0.67 cents of land has come to Gurusamy and he has bequeathed the property in favour of the plaintiffs under the Will Ex.A11. While accepting the Will as genuine, the Court below ought not to have rejected the extent of land mentioned in the Will.

14. For all the defendants in seven suits, they have examined only one common witness by name Michael the defendant in O.S.No.298/1982. He has spoken about the facts which happened even before his birth. He has improved the case of the defendants through oral evidence, without any pleadings. The petition for evicting the tenants was initiated in the year 1979. Since the Rent Control Tribunal felt that there is a dispute regarding the title, those proceedings were dismissed. Therefore, the suits for declaration has been filed. The defendants, after attorning of tenancy in favour of the plaintiffs, recognised them as land lords, they are estopped from questioning the title of the plaintiffs.

15.The learned counsel also submitted that the defendants are menial workers in Sirkazhi Panchayat now Municipality. Since



the landlords wanted to evict them, the Executive Officer of the then Sirkazhi Panchayat wrote a letter to Gurusamy to sell around 0.70 ½ cents land to sirkazhi panchayat for accommodating them. The Courts below has not properly appreciated Ex.A7 dated 17.10.1960, which proves the title of Gurusamy for the entire extent of 70 ½ cents of land and the same has been recognised by the then Sirkazhi Panchayat.

16.The learned counsel, after reading the deposition of DW1-Michael, submitted that the defendants attempt through DW1 that they entered upon the land of the plaintiffs only on the instructions of the then President of the Sirkazhi Panchayat Mr.S.N.Pillai and the content of Ex.A7 proves the case of the plaintiffs. Contrary to the facts, Michael DW1 feigns ignorance about the owner of property in order to take advantage of adverse possession. When the defendants were permitted to occupy for rent, the denial of landlords title subsequently is estopped as per Section 116 of Indian Evidence Act.

17.Mr.S.Sounther, the learned counsel appearing for the respondents submitted that the Courts below have properly appreciated the evidence and held that, the evidence before the Court clearly proves that the defendants have occupied the suit property even prior to the suit in O.S.No.97 of 1969 between Sambandam and Gurusamy. The contention of the plaintiffs that the entire 0.67 cents in S.No.280/2 had devolved upon Gurusamy by way of the partition deed and purchase from Annathae has been proved to be false, since the sale certificate is only in respect of the land in 280/7, but by subsequent collusive suit the survey number has been corrected as S.No.280/2 to show as if the 20 cents land purchased under Court auction is within S.No.280/2. Further, the appellate Court had also pointed out that in S.No.280/7 Gurusamy had 0.21 cents of land and he is paying the kist and the same is shown in his patta. While so, for the sake of evicting the defendants the subsequent suit in O.S.No.97 of 1969 filed to alter the number in the sale certificate and Gurusamy has falsely contended that he has no property in 280/7. Without impleading the defendants, who are in occupation of the suit property, the decree was passed in O.S.No.97 of 1969 in the year 1975. The recording of delivery of possession is only a paper delivery.

18.Therefore, the counsel for the respondents submitted that when the plaintiffs predecessor in title Gurusamy had only 43 ½ cents in the entire extent of land in S.No.280/2 and having failed to prove that the area in which the defendants occupy falls within the said 43 ½ cents, the relief of mandatory



injunction cannot be granted.

19. At the time of admission, this Court has formulated the following Substantial Questions of Law to decide these appeals:-

S.A.No.1066 of 1993

(i) Whether the courts below erred in holding that the defendants have acquired title by prescription in the absence of any legal evidence thereof and merely relying on Exs.A1 to A14?

S.A.Nos.1233 to 1235 of 1993:

(i) Whether the Lower Court erred in law in holding that the plaintiffs have not established their title, overlooking the fact that the documents A2 to A8., viz. partition deed, the sale certificate issued by court, taking of possession by Gurusamy and the offer of the panchayat for purchase of the land will conclusively establish the title of the plaintiffs to the suit property?

(ii). Whether the Lower Court erred in holding that the defendants have acquired title by prescription in the absence of any legal evidence there and merely relying upon Ex.A.1 to Ex.A.14 which are inadmissible evidence without the production of the original records?

S.A.Nos.787 to 789 of 1998:

(i) Whether the Lower Court erred in law in holding that the plaintiffs have not established their title, overlooking the fact that the documents A2 to A8., viz. partition deed, the sale certificate issued by court, taking of possession by Gurusamy and the offer of the panchayat for purchase of the land will conclusively establish the title of the plaintiffs to the suit property?

(ii) Whether the Lower Court erred in holding that the defendants have acquired title by prescription in the absence of any legal evidence there and merely relying upon Ex.A.1 to Ex.A.14 which are inadmissible evidence without the production of the original records?



20.The Courts below, after going through the evidence and records had based its decision on three factors. Gurusamy predecessor in title had only 0.43 ½ cents of land in the said survey number (0.23½ cent from partition and 0.20 cents by purchase from Annathae in the auction sale). The description of the suit property upon which the defendants occupy is not clear and they failed to prove that the defendants are occupying within 0.43 ½ cents of land. The plaintiffs failed to prove that the defendants attornment of tenancy in favour of Gurusamy or in favour of Dhapalan in the year 1969 is true. Contrarily, DW1 evidence that certain signatures and thumb impression were obtained by Dhanapalan promising to get patta for them held to be true by the Courts below.

21.The evidence placed before the Court proved that even prior to 1969, some of the defendants have occupied the suit premises and constructed huts and residing. The plaintiffs have not come with clean hands with true facts. By fabrication documents they attempted to evict the defendants. Since the defendants have proved their occupation for more than 12 years open, continuous and hostile through true owner, the Courts below have dismissed the suits.

22.On considering the evidence and the discussion of the Courts below, this Court finds that on facts, there is no error in the judgments of the Courts below. The plaintiffs Documents Ex.A7 indicates that even prior to 1960 the menial servants of Sirkazhi panchayat had occupied the land held by Gurusamy. The Sirkazhai Panchayat wanted to negotiate with Gurusamy to rehabilitate the menial servants in the said land. Never the defendants directly had any contact with Gurusamy or recognised his title. The plaintiffs and their predecessor in title ought to have persuaded the offer given by Sirkazhi panchayat vide letter dated 17.10.1960 Ex.A7 or atleast should have filed the suit for recovery of possession immediately or atleast in the present suit, they should have impleaded Sirkazhi panchayat and should have held them responsible for allowing the defendants to occupy the suit land and for collecting house tax from them.

23.Having failed to place the entire records and facts before the Court with clean hand and mind, the plaintiffs are bound to loose their case for suppression of fact and for falsehood. The Courts below have pointed out the suppression and falsehood and have rightly dismissed the suits.



24.Regarding prescription of title by the defendants, the Substantial Questions of Law has to be held in favour of the defendants, since they have proved their possession in the suit land prior to 1960. The documents relied by the plaintiffs to prove that the defendants recognised them as the landlord and paid rent found to be fabricated documents and there was no jural relationship of landlord and tenant between the parties at any point of time. Therefore, the principle of estoppel under Section 116 of the Indian Evidence Act will not apply to the facts of the present case.

25.Though the title to the extent of 0.43 ½ cents held to be with the appellants but they never been in possession of the property in which the respondents are in occupation of the suit property open, continuous and hostile. Further, the appellants have failed to establish the area in occupation of the respondents fall within the 0.43 ½ cents of land their title held to be proved. Contrarily, it is proved that the respondents are in occupation. Accordingly, the Substantial Questions of Law are answered in favour of the respondents/defendants.

26.In the result, these second appeals are dismissed. No order as to costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To:-

1.The Subordinate Judge,
Mayiladuthurai.

2.The District Munsif Court, Sirkali.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.



+1cc to Mr.S.Sounthar, Advocate SR.No.41071

S.A.Nos.1066 of 1992, 1233 to 1235 of 1993,
787 to 789 of 1998

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VG I(CO)

CB(16/12/2021)