

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.08.2020	PRONOUNCED ON: 19.08.2020
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CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.NO.922 OF 2009

AND

M.P.NO.1 OF 2009

1.Ramasamy
2.Palaniammal
3.Gurusamy
4.Selvan
5.Madheswari

... Appellants/
Appellants/Plaintiffs

/versus/

1. Maran

2. The State of Tamil Nadu,
Rep.by District Collector,
Erode District, Erode.

3. The Tahsildar,
Taluk Office,
Erode.

... Respondents/
Respondents/Defendants

Prayer:

Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 31.03.2003 made in A.S.No.6 of 2002 of the First Additional District Judge/Chief Judicial Magistrate on the (Second Additional District Judge-in-charge) on the file of II-nd Additional District Court, Erode confirming the judgment and decree dated 19.09.2001 made in O.S.No.595 of 1999 of the 1st Additional District Munsif, Erode on the file of the II-nd Additional District Munsif Court, (Full charge Second Additional District Munsif Court) Erode.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.S.Lakshmanasamy for R1
: Mr.N.Manikandan
Spl.GP(CS) for R2 & R3

J U D G M E N T

(The case has been heard through video conference)

The appellants are the plaintiffs in the suit.

2. The suit for declaration, delivery of vacant possession and consequential direction to the revenue authorities to delete the name of the first defendant in respect of the suit property was dismissed by the trial Court . On appeal, the First Appellate Court confirmed the decree and judgment of the trial Court. Against the concurrent finding, the present second appeal is preferred.

3. The case of the appellants herein as stated in their plaint is that they are the descendants of one Palani . The schedule properties are ancestral properties inherited by them through Palani. The said palani died in the year 1950. On his demise, the property devolved upon his son who was also called as Palani. (hereinafter to be referred as junior palani). the said junior palani died in the year 1990. The plaintiffs succeeded his entire estate. They are in joint possession and enjoyment of the a schedule properties. The first defendant is the sister son of junior Palani. On his request, a portion of the suit property was permitted to be occupied by him and same is described as B schedule in the plaint. From the year 1992, the first defendant is in permissive occupation of the B schedule property. When the plaintiff's request the first defendant to vacate the B schedule property he refused to vacate it, claiming title over the property based on a deed dated 17/06/1969 purported to be a sale deed executed by junior Palani in favour of his sister Palaniammal (the mother of the first defendant) and a will dated 05/11/1986 executed by Palaniammal in favour of the first defendant. Based on these two documents, the first defendant has mutated the revenue record and transferred the patta in his name. Property being an ancestral property, the junior palani had no right to alienate against the interest of his minor children. Therefore both the documents are not valid in law. No right flow to the first defendant through these documents. Hence relief of declaration of title, recovery of possession, and mandatory injunction to cancel the patta sought.

4. In the written statement the first defendant denied the averments found in the plaint. According to the defendant, the B schedule property was sold by junior Palani to Palaniammal vide a registered sale deed dated 17/06/1969 for consideration. Thereafter the property is in possession and enjoyment of

Palaniammal and her family. The house tax paid by them since 1969. Later Palaniammal executed a registered will in favour of the first defendant on 05/11/1986, which came into effect on the demise of Palaniammal. In the year 1973 the Patta was transferred in the name of the first defendant.

5. The trial Court framed six issues including issue regarding the validity of sale deed dated 17/06/89 and the will dated 05/11/1986. Plaintiffs relied on 16 documents. The defendant relied on 19 documents. The plea of the plaintiffs that the first defendant was permitted to remain in B schedule property for three months as a permissive occupant was disbelieved by the trial court in view of Ex. B-1 and Ex.B-2, which are the sale deed and will leading to the transfer the Patta in the name of the first defendant in the year 1973. The house tax receipts marked as Ex. B-4, Ex.B-7, Ex.B 10 to Ex.B19, the tax demand notices Ex.B-8 and Ex.B-9. Observing that validity of the sale deed and the possession ought to have challenged within 12 years or within three years of attaining majority of the minor sharer, whereas the present suit filed after 30 years of the alienation is barred by limitation.

6. On appeal before the First Appellate Court the evidence was re-appreciated. The First Appellate Court confirmed the trial Court judgment observing that in the year 1969 for necessity junior Palani has sold the property for consideration and discharged the pronote debt incurred to meet the family expenses. The plaintiffs have not challenged the said alienation within three years on attaining majority. The suit filed after 30 years of the said alienation is not sustainable.

7. The learned counsel appearing for the appellant would submit that the Courts below have misdirected itself by relying upon Ex.B-1 and Ex.B-2 which are self serving documents. In the absence of oral or documentary evidence, the Courts below ought to have rejected the defence laid by the first defendant. Pointing out that Ex.B-2 being a will, it should have been proved in the manner prescribed under section 63 of the Indian Succession Act and section 68 of the Indian Evidence Act. Whereas, in this case Ex.B-2 not proved in the manner prescribed under the law. The counsel also submitted that the act of the father contrary to the interests of the minor children can be questioned at any time.

8. The learned counsel for the first respondent submitted that, the property was sold to meet out the family expenses and

same has been reflected in the Ex.B-1. The will Ex.B-2 is the subsequent document to show how the first defendant succeeded the property from Palaniammal, the title holder of the property. The will was relied for collateral purpose. The possession and enjoyment of the property uninterrupted from 1969 as owner of the property and not as permissive occupant from 1992 as pleaded by the plaintiff, had been proved by the defendant through sufficient documentary evidence. There is no question of law involved in this appeal to interfere against the concurrent finding on facts and law.

9. Heard the learned counsels appearing for the appellant's and the respondent.

10. The Courts below out rightly rejected the case of the plaintiffs based on the documents which clearly indicates that in the year 1969, the B schedule property was sold by the plaintiffs father in favour of the first defendant mother for consideration, in accordance with law and same was not questioned by the executants or his descendants for 30 years. The will in respect of the property and transfer of Patta, payment of house tax for the property and enjoyment without any interruption are the consequence events which fortifies the first defendant case regarding the title of the property. The plaintiffs have failed to prove that the property was allowed to be occupied by the first defendant in the year 1992. Contrarily, the defendant has established his right and title over the property since 1969 positively through cogent evidence. Therefore, the finding of the Courts below is perfectly in consonance with facts and law. The second appeal is deserve to be dismissed.

11. In the result, the second appeal is dismissed with costs. Consequently, the connected civil miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Judge/
Chief Judicial Magistrate,
(Second Additional District Judge-incharge),
II-nd Additional District Court, Erode.
2. The First Additional District Munsif Court,
(Full charge II-nd Additional District Munsif Court),
II-nd Additional District Munsif, Erode.

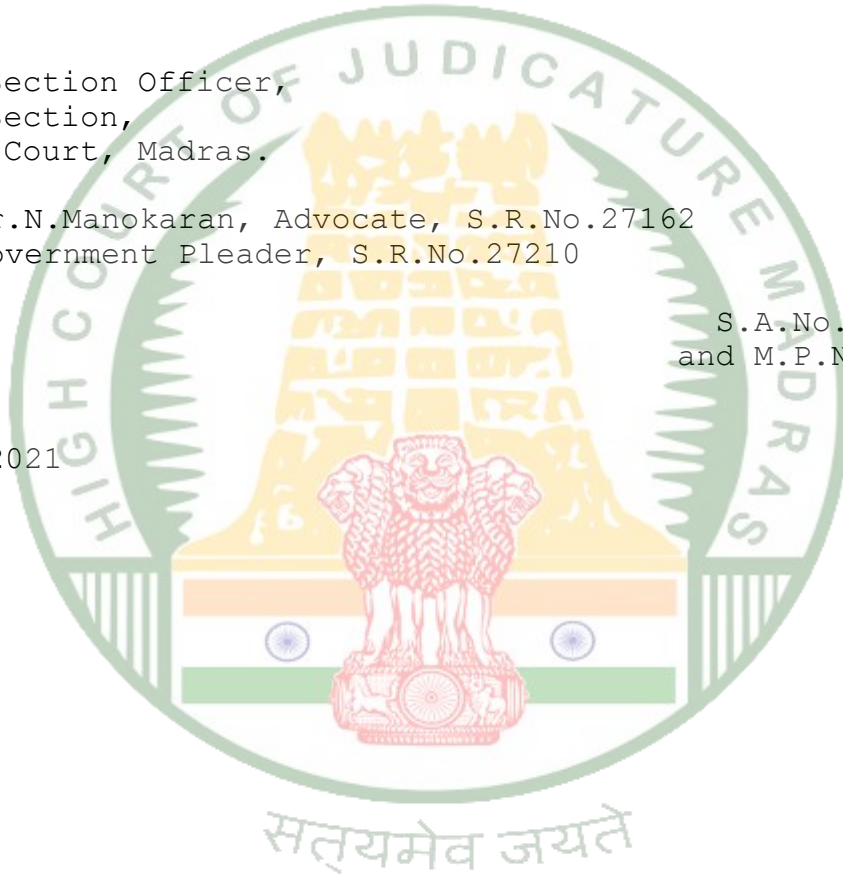
Copy To

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.27162
+1cc to Government Pleader, S.R.No.27210

S.A.No.922 of 2009
and M.P.No.1 of 2009

SS (CO)
CS/06/05/2021



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