



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.11.2020

Pronounced on: 09.11.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.701 of 2010

1. Ramasamy, aged 55 years (died),
S/o.Doraisamy.
2. Dhanabakkiam (Died),
W/o.Doraisamy
Residing at Ganapathi Kurichi Village,
Tittagudi Taluk,
Cuddalore District.
3. Anjalai,
W/o.Late Ramasamy.
4. Durai,
S/o.Late Ramasamy. ... Appellants/Appellants/Defendants

Both are at Ganapathikurichi Village, Tittagudi Taluk,
Cuddalore District.

(Appellants 3 & 4 brought on learned as Lrs of the deceased 1st
Appellant vide order of Court dated 21.03.2013 made in
MP.No.3/12 in SA.No.701/2010)

/versus/

Govindarasu (died)
S/o.Thangavel.

1. Subramanian, aged 28 years,
S/o.Govindarasu.
2. Suresh, Aged 23 years,
S/o.Govindarasu.
3. Mahesh, aged 20 years,
S/o.Govindarasu.
4. Rukkumani Ammal,
Aged 51 years,
W/o.Govindarasu
All are residing at Ganapathi Kurichi



Village Tittagudi Taluk,
Cuddalore District. ... Respondents/Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of C.P.C, praying against the judgment and decree in A.S.No.92 of 2002 dated 26.04.2004 on the file of the Additional Subordinate Judge, Vridhachalam, thereby confirming the judgment and decree made in O.S.No.347 of 1996 dated 16.08.2001 on the file of the District Munsif-cum-Judicial Magistrate, Tittagudi.

For Appellants : Mr.T.Sai Krishnan

For R1 to R4 : No appearance

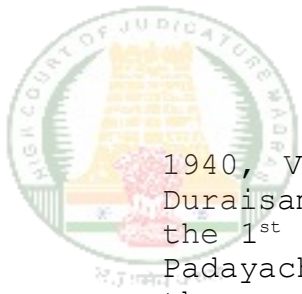
J U D G M E N T

(The case has been heard through video conference)

The appellants are the legal heirs of the deceased defendants 1 & 5 in the original suit. The suit was filed for declaration of title, injunction and if the plaintiffs are disposed from the suit property pending suit, recovery of possession.

2. The case of the plaintiffs in short is that, the land in R.S.No.164/3 at Ganapathykrichi Village, Tittagudi Taluk, is a patta land, in which the suit property is to an extent of 1.68acres. Out of 1.68 acres, 68 cents is the ancestral property of the plaintiffs. On 30.10.1946 under Ex.A.1 the father of the plaintiff purchased 67 cents from one Valliammai. On 07.06.1955, he purchased 33 cents from one Nagammal and Mayilambal. Pending suit, the plaintiff Govindarasu died and his legal heirs were brought of record as plaintiffs 2 to 5. They perused the suit as legal heirs of deceased Govindarasu and on the registered Will alleged to have executed by Govindarasu on 26.02.1991. Suit laid alleging that the defendants are trying to interfere their peaceful possession by setting up a rival claim.

3. The defendants filed written statement, wherein, it is stated that the larger extent of property including the suit property originally owned by Veeramuthu Padayachi S/o.Subaraya Padayachi. The suit extent property was purchased by Doraisamy Padayachi S/o. Karuppa Padayachi. In the year 1927 from out of 1.68cents 67 cents on the western portion, the father of the plaintiff Duraisamy Padayachi S/o.Kulla Padayachi purchased under registered sale deed dated 23.02.1928. The 5th defendant is the wife of Duraisamy Padayachi S/o.Kulla Padayachi. Later, in the year 1939, Veeramuthu Padayachi re-purchased balance one acre from Duraisamy Padayachi S/o.Karuppa Padayachi. In the year



1940, Veeramuthu Padayachi, sold 68 cents through oral sale to Duraisamy Padayachi S/o. Kulla Padayachi, who is the father of the 1st defendant and husband of 5th defendant. Before Veeramuthu Padayachi could execute a sale deed in respect of his portion of the property, he died. Later, from the son and wife of Veeramuthu Padayachi 33 cents of land was purchased by Duraisamy Padayachi S/o.Kulla Padayachi on 14.02.1955. Thus, by tracing title to the entire extent of 1.68 acres of the suit property through Ex.A.3 and Ex.A.4 and oral sale, the defendants laid a claim over the title of the suit property.

4. Further, it was contended by the defendants that after the death of Duraisamy Padayachi S/o.Kulla Padayachi, his son 1st defendant and wife 5th defendant had taken possession of the property and being enjoying continuously. The father of the plaintiff Thangavel Padayachi sought permission from the 1st defendant and 5th defendant to dig a bore well in the suit property since the bore in the land of 1st defendant's father failed to yield water. Being the young brother of his father, 1st defendant and his mother 5th defendant permitted the father of the 1st plaintiff to dig bore well on an understanding that they will share the expense in the ratio of 1:4. In the year 1959, there was dispute between the plaintiff's family and defendant's family. The records in possession of defendants were taken away by plaintiff's. Hence, criminal complaint was lodged and tried in C.C.No.352 of 1959. Hoping that the records will be returned back by the plaintiff, the 1st and 5th defendant were cultivating the suit property without any let or hindrance. When the 1st defendant left to foreign, 5 years ago, the 1st defendant left the property in possession of the plaintiff. When he returned back, dispute arose between the 1st defendant's family and plaintiff's family.

5. On 05.04.1989, he leased the suit property to one Duraisamy Padayachi S/o.Velayutham Padayachi, for a period of three years. When Duraisamy Padayachi, the lessee was about to harvest, the plaintiff interfered the peaceful harvest. Hence, his lessee Duraisamy Padayachi has filed the suit in O.S.No.409 of 1989 against the plaintiff's and others. The said Duraisamy Padayachi is arrayed as 4th defendant in the suit and his other brothers are the defendants 2 & 3, who are not at all necessary parties for the suit. Suppressing these facts, the present suit is filed. Hence, liable to be dismissed.

6. The suit is filed by the lessee Duraisamy S/o.Velayutham in O.S.No.409 of 1989, relates to same property. On memo by both the parties, joint trial was conducted by the Trial Court, evidence was recorded in the suit O.S.No.409 of 1989, [on the file of District Munsif, Virudhachalam] and renumbered as O.S.No.275 of 1996 [on the file of District



Munsif Court, Tittakudi].

7. The main suit between the parties numbered as O.S.No.163 of 1990 [on the file of District Munsif Court, Tittakudi] was transferred to Virudhachalam District Munsif Court and renumbered as O.S.No.347 of 1996.

8. Before the trial Court, the plaintiff Duraisamy S/o.Velayutham, who is the plaintiff in O.S.No.275 of 1996 was examined as P.W.1 and Singaravelan S/o. Perumal examined as P.W.2. One Ramasamy S/o. Duraisamy Padayachi, who is the defendant in O.S.No.342 of 1996 was examined as P.W.3. 27 Exhibits were marked as Ex.A.1 to Ex.A.27. On behalf of the plaintiff in O.S.No.347 of 1996 one Subramanian S/o. Late Govindarasu, the deceased 1st plaintiff in O.S.No.347 of 1996 was examined as D.W.1 and one Duraisamy S/o.Kannusamy, an independent witness was examined as D.W.2. 13 Exhibits were marked on behalf of the defendants. The Commissioner's report and his sketch were marked as Ex.C.1 & Ex.C.2.

9. For the sake of convenience and for better understanding, the parties are described as Govindarasu family and Ramasamy family. Govindarasu, who is the original plaintiff in O.S.No.347 of 1996 in which, Ramasamy family are the defendants. The other suit in O.S.No.275 of 1996 though prior in time, it is only a prelude for main case which was filed by the lessee under Duraisamy Padayachi family.

10. The sum and substance of the dispute between the parties is in respect of 1.68acres in S.No.164/3. While Govindarasu family claim title and right over the property based on Ex.A.1 dated 30.10.1946 and Ex.A.2 dated 07.06.1955. Both executed in favour of Thangavel Padayachi father of Govindarasu. Contrarily, the Ramasamy family claim right over the property based on a sale dated 23.02.1928 in respect of 67cents purchased from Duraisamy Padayachi S/o.Karuppa Padayachi and 68cents through oral sale from Veeramuthu Padayachi, in the year 1940 and 33cents under sale deed dated 14.02.1955 executed by daughter of Veeramuthu Padayachi. All these purchased were in favour of the father of Ramasamy Padayachi.

11. The Trial Court, on considering the evidence let in by the respective parties, taking note of the sale deed (Ex.B.1) dated 30.10.1946 in respect of 67 cents purchased by Thangavel for deciding title and electricity deposit receipt Ex.B.3 which stood in the name of Govindarasu and his father Thangavel Padayachi, the mortgage deed Ex.P.6 in respect of suit property executed by Thangavel and Govindarasu Padayachi, for possession held that title to the suit property and possession of the suit property had been continuously with Govindarasu family.



12. Ex.A.3, sale deed dated 23.02.1928 though prior in point of time to that of Ex.B.1, the Trial Court rejected the document holding that there is no evidence available to show that Duraisamy Padayachi S/o. Kulla Padayachi was in possession and enjoyment of the property from 1928. The oral evidence of P.W.3 Ramasamy that under Ex.A.3, sale deed his father purchased 67 cents and since then, in enjoyment of that portion of the property not established through evidence. Contrarily, the plaintiff in O.S.No.347 of 1996 had proved and established that after purchased of 67 cents under Ex.A.1 on 30.10.1946 Thangavel Padayachi, had been in possession of the property enjoying it absolutely by getting electricity connection, encumbered by mortgaging the property and in absolute possession.

13. As far as 33 cents is concerned, the Trial Court had compared the admissibility of the rival documents propounded by both the family. Ex.A.4 & Ex.B.2 are in respect of 33cents of land since Ex.A.4 is only a certified copy and no evidence let in to prove the non availability of primary evidence.

14. Rejected the secondary evidence of the defendants, the Courts relied upon Ex.B.2 sale deed in favour of Thangavel Padayachi executed by Nagammal and her daughter Mayilambal. The said Nagammal is the 2nd wife of Veramuthu Padayachi. The other supplementary case instituted by the lessee was dismissed since the Trial Court held that the defendants in O.S.No.347 of 1996, Ramasamy and his mother Dhanabakkiyammal, had not proved their right in the suit property. So the deed of lease in favour of the plaintiff in O.S.No.275 of 1996 has no legs to stand.

15. On appeal, the 1st Appellate Court on re-appreciating the evidence has confirmed the judgment and decree of the Trial Court. This Second Appeal is directed against the concurrent findings of the Courts below.

16. The Learned Counsel appearing for the appellant would strenuously drove the attention of this Court to various exhibits and pleadings and contended that the Courts below erred in rejecting Ex.A.3 and Ex.A.4 which are the documents of earlier point of time. The inability to produce the original of these documents had been explained in the written statement itself. Ex.A.4 dated 14.02.1955 is prior in point of time to that of Ex.B.2 dated 07.06.1955 and there is also no reasonable justification to reject Ex.B.4 executed by only daughter of Veeramuthu namely Valliammai.

17. The Learned Counsel for the appellant would specifically contend that from the evidence and records, it is accepted and proved that originally the property belongs to one



Veeramuthu Padayachi. The Duraisamy Padayachi, father of the 1st appellant purchased 67 cents under Ex.A.3 dated 23.02.1928. Another 68 cents was purchased by Duraisamy through oral sale around the year 1940. Under Ex.A.4, 33 cents of land was purchased from Valliammai. For the entire extent of 1.68cents, the appellant had proved right and title. While so, when the documents are more than 30 years old, no formal proof is required. Sufficient foundation been laid in the written statement itself about the loss of original being taken away by the respondent Govindarasu family in the year 1959 itself. Hence, the certificate copy of the registered sale deed were filed as secondary evidence.

18. The Courts below ought to have been given more credence to the documents prior in point of time rather than accepting the subsequent documents relied by the respondents.

19. To buttress his submission, the mutation revenue records will not create any title and registered documents of sale transaction is reliable and admissible in evidence and not in all cases, it can be rejected as secondary evidence.

20. The Learned Counsel for the appellant would rely upon the following judgments:-

(i). Cement Corporation of India Limited Vs. Purya and others reported in (2004) 8 SCC 270. In the said judgment, the Hon'ble Supreme Court has held as below:-

"18. From the above, it is seen that till the judgment of the three Judge Bench in Land Acquisition Officer & Mandal Revenue Officer vs. V.Narasaiah, the consensus of judicial opinion was that Section 51A was enacted for the limited purpose of enabling a party to produce certified copy of a registered sale transaction in evidence only and for proving the contents of the said document the parties had to lead oral evidence as contemplated in the Evidence Act.

19. A careful perusal of the judgment in Special Deputy Collector & Anr. vs. Kurra Sambasiva Rao & Ors. case and other cases which fall in line with the said view discloses that they proceeded on the basis that prior to the insertion of Section 51A in the LA Act, the Evidence Act did not permit the production of a certified copy of



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the registered sale transaction in evidence. Therefore, by the insertion of Section 51A the legislature merely enabled a party to get over that problem. Thereafter, according to the said judgments, the party concerned had to prove the contents of the document by adducing oral evidence separately to prove the contents of the document.

20. The above view of the Court in *Special Deputy Collector & Anr. vs. Kurra Sambasiva Rao & Ors.* case, in our opinion, is not the correct position in law. Even prior to the insertion of Section 51A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in the judgment in *Land Acquisition Officer & Mandal Revenue Officer vs. V.Narasaiah* case wherein the court relying on Sections 64 and 65(f) of the Evidence Act read with Section 57(5) of the Registration Act held that production of a certified copy of a registered sale document in evidence was permissible in law even prior to insertion of Section 51A in the LA Act. We are in agreement with the said view expressed by this Court in *Land Acquisition Officer & Mandal Revenue Officer vs. V.Narasaiah*."

(ii). *Bhimabai Mahadeo Kambekar (dead) through Legal representative Vs. Arthur Import and Export Company and others* reported in (2019) 3 SCC 191. In the said judgment, the Hon'ble Supreme Court has held as below:-

"5. The law on the question of mutation in the revenue records pertaining to any land and what is its legal value while deciding the rights of the parties is fairly well settled by a series of decisions of this Court.

6. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in



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whose favour mutation is ordered to pay the land revenue in question. (See Sawarni (Smt.) vs. Inder Kaur, (1996) 6 SCC 223, Balwant Singh & Anr. Vs. Daulat Singh (dead) by L.Rs. & Ors., (1997) 7 SCC 137 and Narasamma & Ors. vs. State of Karnataka & Ors.,"

21. The analysis of the evidence and the impugned judgment of the Courts below, the basic facts concurrently held by the Courts below is that, property held by Veeramuthu Padayachi, had been sold in parts under various sale deeds. The appellants herein rely upon Ex.A.3 dated 23.02.1928 for the extent of 67 cents of the property and Ex.A.4 dated 14.02.1955 for the extent of 33 cents of the property. No doubt, these two documents are prior to Ex.B.1 and Ex.B.3. For the remaining extent of land, around 67 cents, the appellants' case is that they have orally purchased it from Veeramuthu Padayachi around the year 1940. Whereas, the case of the respondent is that, 68 cents of land in S.No.164/3 is their ancestral property.

22. In the said circumstances, the Courts below have resorted to the other attendant circumstances and evidence. The appellant case is that, they permitted their respondents to a dig borewell and get electrify connection in the name of plaintiff's father. This has occurred several years ago and there is no evidence to show that the plaintiff's father is enjoying the borewell in the suit property only on permission. Contrarily, there is adequate evidence to show that it had been in exclusive possession and enjoyment of the plaintiff's family. In this connection, the patta and kist receipts, mortgaged deed, cutting order issued by Aruna sugars had gain significances and probabilised the case of the plaintiffs. The appellants manifestly claim over the suit property only in the year 1989 by creating lessee agreement with one Duraisamy S/o.Velayudham during the month of May 1989.

23. The case of the appellant is that, the suit property in parts was purchased by the grandfather of the present 1st appellant between the year 1928 to 1955 and since then, they are in possession and enjoyment of the same. The dispute arose during the year 1959, immediately after the death of Duraisamy Padayachi, the father of 1st appellant. However they reconciled and enjoying the property. If so, majority of the documents relied by the appellants are after 1989. Between 1955 to 1999, there is no clear evidence to show that the property was in possession or enjoyment of the appellants. Contrarily, the evidence let in by the respondents herein clearly shows that Ex.B.1 and Ex.B.2 are the documents were



acted upon and the suit property in entirety being effectively enjoyed by them. Both the Courts, on facts, has held against the appellant not merely based on the Revenue documents or by rejecting the secondary evidence namely Ex.A.4.

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24. The preponderance of probability established by the respondent/plaintiff proves the continuous enjoyment of the property based on Ex.B.1 and Ex.B.2 the title documents from 1955. As a result, this Court finds no substantial questions of law available for formulation. Accordingly, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Additional Subordinate Judge,
Vridhachalam

2.The District Munsif-cum-Judicial Magistrate,
Tittagudi.

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

+lcc to Mr.T.Saikrishnan, Advocate, S.R.No.36515

S.A.No.701 of 2010

MP(CO)
CB(24/08/2021)