

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2021

Pronounced on : 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.4220 of 2013
and S.A.Nos.1010 of 2010 and 1143 of 2013
& M.P.Nos.1 of 2010 and 1 of 2013

Subramanian

...Petitioner/Appellant
in C.R.P.No.4220 of 2013
and S.A.No.1143 of 2013

Vs

1.Mullai Ammal
2.Murugaiyan
3.Iyammal

...Respondents in
C.R.P.No.4220 of 2013
and S.A.No.1143 of 2013

1.Karuppian
2.Shanmugasundaram

...Appellants in
S.A.No.1010 of 2010

Vs

1.Mullai Ammal
2.Murugaiyan
3.Ayyammal

...Respondents in
S.A.No.1010 of 2010

Prayer in C.R.P.No.4220 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the petition and docket order dated 10.06.2013 passed in I.A.No.53 of 2012 in A.S.No.6 of 2011 on the file of the Subordinate Court, Mannarkudi.

Prayer in S.A.No.1010 of 2013: This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the Sub Court, Mannargudi, in A.S.No.6 of 2009 dated 04.01.2010 and reversing the Judgment and Decree in O.S.No.140 of 2004 dated 28.10.2005 on the file of the District Munsif Court, Valangaiman at Kumbakonam.

Prayer in S.A.No.1143 of 2013: This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the Subordinate Court, Mannargudi, in A.S.No.6 of 2011 dated 10.06.2013 confirming the Judgment and Decree in O.S.No.144 of 2006 dated 31.08.2009 on the file of the District Munsif Court, Valangaiman.

In all the petitions:

For Petitioner : Mr.M.Thamizhavel

For Respondents : Mr.R.Rajarajan for R1 and R2
No appearance for R3.

COMMON JUDGMENT

The Civil Revision Petition is directed to set aside the petition and docket order dated 10.06.2013 passed in I.A.No.53 of 2012 in A.S.No.6 of 2011 on the file of the Subordinate Court, Mannarkudi.

The Second Appeals have been filed,

(i) as against the Judgment and Decree of the Sub Court, Mannargudi, in A.S.No.6 of 2009 dated 04.01.2010 and reversing the Judgment and Decree in O.S.No.140 of 2004 dated 28.10.2005 on the file of the District Munsif Court, Valangaiman at Kumbakonam.

(ii) as against the Judgment and Decree of the Subordinate Court, Mannargudi, in A.S.No.6 of 2011 dated 10.06.2013 confirming the Judgment and Decree in O.S.No.144 of 2006 dated 31.08.2009 on the file of the District Munsif Court, Valangaiman.

2.For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3.In both the Second Appeals the appellants are the defendants in the suits filed by the respondents in O.S.Nos.140 of 2004 and 144 of 2006,

for declaration and recovery of possession in respect of the suit property.

4.Initially, the respondents filed the suit in O.S.No.140 of 2004 as against the appellants in S.A.No.1010 of 2010, in respect of the very same property. The said suit was dismissed and aggrieved by the same, Appeal Suit in A.S.No.6 of 2009 was filed and the same was allowed and the suit filed by the respondents was decreed. When the Appeal Suit was pending, the respondents also filed another suit as against the appellants in S.A.No.1143 of 2013 in O.S.No.144 of 2006 for declaration and recovery of possession in respect of the very same property. The said suit was decreed and the Appeal Suit in A.S.No.6 of 2011 was preferred by the appellant herein was also dismissed.

5.Aggrieved by both the Appeal suits in A.S.Nos.6 of 2009 and 6 of 2011, the present Second Appeals have been filed.

6.The case of the plaintiffs is that the suit property admeasuring 3 cents was originally purchased by one - Kamatchi @ Kamaraj from one - Ranganatha Mudaliar by the registered sale deed dated 27.06.1956. Thereafter, the said Ranganatha Mudaliar died on 05.01.1992. The plaintiffs are the legal heirs of the said Kamatchi @ Kamaraj. While being

so, when the plaintiffs were out of station on 12.10.2003, the defendants entered into their property and constructed a house. Immediately the plaintiffs caused notice on 16.10.2003 and on receipt of the same, the defendants failed to reply. Hence the suit.

7.The defendants filed written statement in both the suits stating that the entire property is ad-measuring 10 cents and they are in possession and enjoyment of the property, for the past 45 years. Initially the defendants constructed tiled house in the year 1985, even before that there was a hut and they are residing there. In fact, the suit property is situated in front of the plaintiffs house and as such they are well aware of the possession and enjoyment of the suit property by the defendants. At any point of time, the plaintiffs or their father- Kamatchi @ Kamaraj were not in possession and enjoyment of the suit property. Therefore, they are claiming adverse possession in respect of the suit property.

8.In O.S.No.140 of 2004, the plaintiffs have examined as P.W.1 and marked Exs.P1 to P8. On the side of the defendants D.W's.1 to 3 were examined and marked Exs.D1 to D26. The trial Court also marked witness documents as Exs.C1-C3.

9.In O.S.No.144 of 2006, the plaintiffs examined P.W.1 and marked Exs.P1 to P3. On the side of the defendants they examined D.W's.1 and 2 and also marked Exs.D1 to D7. Further Court witness documents were marked as Exs.C1 to C3.

10.On perusal of the evidence and material on record, the trial Court dismissed the suit in O.S.No.140 of 2004 and decreed the suit in O.S.No.144 of 2006. Aggrieved by the same, the defendants filed Appeal Suit in A.S.No.6 of 2011 and the plaintiffs filed Appeal Suit in A.S.No.6 of 2009. Appeal Suit in A.S.No.6 of 2009 was allowed and the suit in O.S.No.140 of 2004 was decreed. The Appeal suit in A.S.No.6 of 2011 filed by the defendants was dismissed. Aggrieved by the Judgment and Decree passed in Appeal Suit A.S.No.6 of 2011, the defendants filed the Second Appeal in S.A.No.1010 of 2010. As against the Judgment and Decree in A.S.No.6 of 2011, the defendants filed the Second Appeal in S.A.No.1143 of 2013.

11.While pending the Appeal Suit in A.S.No.6 of 2011, the defendants filed a petition in I.A.No.53 of 2012 to receive additional documents. The same was dismissed on 10.06.2013 and aggrieved by the

same, the defendants filed the Civil Revision Petition in C.R.No.4220 of 2013. Therefore, defendants prayed for allowing the claim of adverse possession by dismissing the claim of the plaintiffs.

12.The learned counsel for the defendants submitted that the plaintiffs failed to prove their possession and enjoyment of the suit property at any point of time. Further, the entire description of the property is different from the property which is in possession and enjoyment of the defendants. The suit property is ad-measuring only 3 cents, whereas the defendants are in possession and enjoyment of the property ad-measuring 10 cents. The Survey No was mentioned as S.No.171/8 as per the defendant side documents. Whereas, the plaintiffs side documents, which is marked as Ex.P.1 shows that the S.No.171, consists of 3 cents only. He further submitted that both the Courts below failed to consider the long possession and enjoyment of the defendants. Both the Courts below shifted the burden on the defendants, to prove the case of them.

13.Though the defendants claimed adverse possession in respect of the suit property, it is clearly admitted by the plaintiffs that the defendants are in possession and enjoyment of the property for a very long period. In

fact the plaintiffs are residing in front of the suit property and as such they were fully aware of the possession and enjoyment of the suit property by the defendants. The trial Court in O.S.No.140 of 2004, dismissed the claim of the plaintiffs and failed to consider the claim of the defendants for adverse possession.

14.At the time of admitting the Second Appeal in S.A.No.1010 of 2010, this Court framed the following substantial question of law. Which is extracted here:

"1.Whether the trial Court and the Lower Appellate Court are correct in passing the decrees and judgments without impleading one Subramaniam, who is residing in the suit property ?

2.Whether the Lower Appellate Court is correct in passing the decree and Judgment in favour of the respondents without considering the plea of the appellants that the appellants have perfected their title over the suit property by way of adverse possession ?

3.Why the Lower Appellate Court failed to see the oral and documentary evidence produced by the appellants to prove their possession over the suit property while passing the decree and Judgment in favour of

the respondents ?"

15.While admitting the Second Appeal in S.A.No.1143 of 2013, this Court framed the following substantial question of law,

"1.Whether both Trial Court as well as first appellate Court are correct in passing the decrees and Judgments in favour of the respondent in O.S.No.144 of 2006 and in A.S.No.6 of 2011 without considering the plea of res-judicata and adverse possession.

2.Whether first appellate Court is correct in dismissing the I.A.No.53 of 2012 filed under Order 41 Rule 27 of CPC along with A.S.No.6 of 2011.

3.Whether both Courts are correctly discussed legal points i.e., boundaries and extent of suit property, court fee and data of trespass in suit property while passing the decree and Judgment in favour of the respondent."

16.Per contra, the learned counsel for the plaintiffs contended that the suit property was purchased by one Kamatchi @ Kamaraj, vide registered sale deed dated 27.06.1956. From the date of purchase he was in possession and enjoyment of the same. After constructing a house in the

suit property and after the demise of the said Kamatchi @ Kamaraj, the plaintiffs are being the legal heirs of the said Kamatchi @ Kamaraj, they are in possession and enjoyment of the suit property. The said sale deed was marked as Ex.P.1. While being so, the defendants trespassed into the suit property and put up construction, when the plaintiffs are out of station on 12.10.2003. Immediately, the plaintiffs caused legal notice on 16.10.2003 and on receipt of the same, the defendants did not reply. The Advocate notice was marked as Ex.P.6 and Acknowledgment card was marked as Exs.P.7 and 8. Hence the plaintiffs filed the suit in O.S.No.140 of 2004 as against the defendants 1 and 2, who are father and son. During their cross examination, the D.W.1, viz., the 2nd defendant deposed that the house tax receipts stands in the name of his brother-Subramaniam and other house tax receipts and also patta marked by the defendants are not pertaining to the suit properties. However, the D.W.1 deposed that his brother is in possession and enjoyment of the property. They also claimed adverse possession in respect of the suit property. Further the trial Court dismissed the suit as claimed by the plaintiffs as well as dismissed the claim of the defendants. The plaintiffs claimed in respect of the suit schedule property

comprised in Survey No.171, whereas the patta produced and marked as Ex.D.W.1, is pertaining to the property comprised in Survey No.171/8. The extent also differs from both the property. As per the sale deed ad-measuring 3 cents only comprised in Survey No.171, which is claimed by the plaintiffs. But the extent was mentioned as 10 cents in Survey No.171/8. Therefore, the Appeal Suit was allowed and the suit was decreed in favour of the plaintiffs. Since the D.W.1 deposed that the other brother is in possession and enjoyment of the suit property. Therefore, again the plaintiffs were constrained to file another suit in O.S.No.144 of 2006 as against one Subramaniam, who is none other than the son of the 1st defendant in O.S.No.140 of 2004, in respect of the very same property. The same documents were marked in O.S.No.144 of 2006 and the trial Court rightly declared the property in favour of the plaintiffs and dismissed the claim of the defendants for adverse possession. Therefore, he prayed for dismissal of both the Second Appeals.

17.Heard Mr.M.Thamizhavel, learned counsel appearing for the appellants and Mr.R.Rajarajan, learned counsel appearing for the 1st and 2nd defendants and also perused the materials available on record.

18.The suit property is originally belong to one Kamatchi @ Kamaraj. He purchased the suit property from one Ranganatha Mudaliar, by registered sale deed dated 27.06.1956. After his demise, the plaintiffs being the legal heirs of the said Kamatchi @ Kamaraj, are in possession and enjoyment of the suit property. When the plaintiffs are out of station, the defendants trespassed into the suit property and put up construction. Thereafter they also fraudulently obtained patta dated 17.08.1994. In the 1st suit the D.W.1 deposed that the house tax receipts stands in the name of other brother and he is possession and enjoyment of the suit property. The plaintiffs caused legal notice on 16.10.2003 which were duly received by the defendants. On receipt of the said legal notice, the defendants did not reply for the same. Therefore, the plaintiffs were constrained to file another suit in O.S.No.144 of 2006 as against the other brother in respect of the very same property. Admittedly, the sale deed dated 27.06.1956 is a registered one and on perusal of the documents marked by the defendants, the patta issued in respect of the property comprised in Survey No.171/8, that too for an extent of 10 cents, whereas the plaintiffs claimed in respect of the property comprised in Survey No.171, ad-measuring 3 cents. That apart the

receipts namely the house tax receipt produced by the defendants were also not pertaining to the suit property. Therefore, they failed to prove the adverse possession in respect of the suit property. Further the defendants in O.S.No.144 of 2006 had taken a stand that the 2nd suit is barred by resjudicata and also claimed adverse possession since they are in possession and enjoyment of the suit property for the past 25 years. Therefore, they have to prove their case with evidence and the defendants failed to prove the plea regarding adverse possession by which year onwards they are in possession and enjoyment of the suit property. The sale deed produced by the plaintiffs is ancient one and it is also registered on 27.06.1956. It clearly supports the case of the plaintiffs and proved the case for declaration. Therefore, the Court below rightly decreed the suit filed by the plaintiffs and as such in both the Second Appeals no substantial questions of law involved and both the Second Appeals are liable to be dismissed.

19. Accordingly, the Second Appeals in S.A.Nos.1010 of 2020 and 1143 of 2013 are dismissed. There is no order as to costs.

20. In view of the dismissal of Second Appeal in S.A.No.1143 of 2013, nothing survives in the Civil Revision Petition, to adjudicate the

same.

21.Accordingly, the Civil Revision Petition is dismissed as
infructuous. Consequently connected miscellaneous petitions are closed.

16.02.2021

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Index:Yes/No

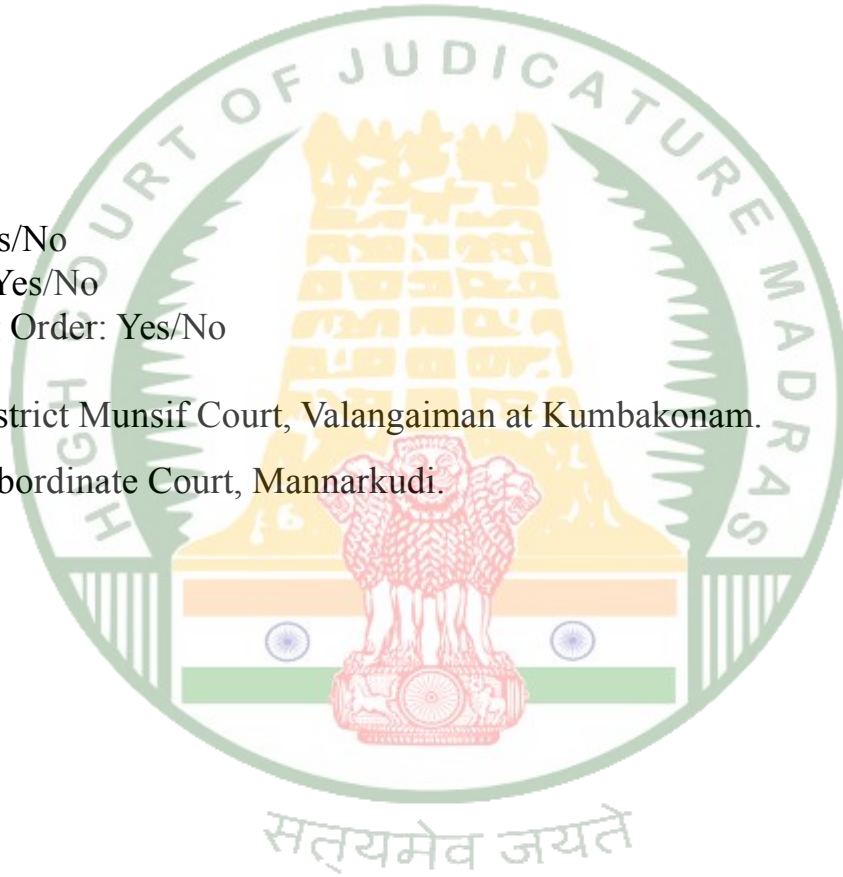
Internet:Yes/No

Speaking Order: Yes/No

To

1.The District Munsif Court, Valangaiman at Kumbakonam.

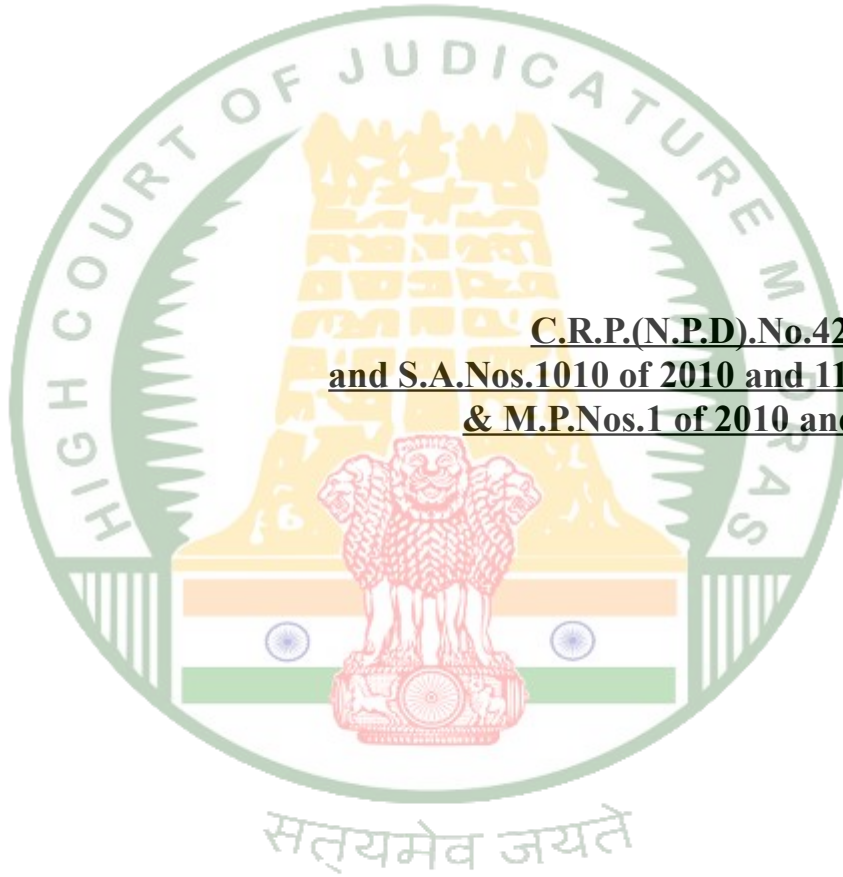
2.The Subordinate Court, Mannarkudi.



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G.K.ILANTHIRAIYAN.J,
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