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IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On   | 22.07.2021 |
| Pronounced On | 03.08.2021 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

S.A.No.651 of 2012  
(Through Video Conferencing)

Raja .. Appellant/Appellant/Defendant

vs.

Ayyakannu ... Respondent/Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code, 1908 against the Judgment and Decree dated 03.02.2012 passed in A.S.No.59 of 2006 by the Principal Sub Judge, Tiruvannamalai, by confirming the Judgment and Decree dated 30.03.2005 passed in O.S.No.18 of 2003 by the Additional District Munsif, Tiruvannamalai

For Appellant : Mr.A.K.Kumarasamy, Sr.Counsel  
for Mr.S.Kaithamalai Kumaran

For Respondent : Mr.J.Ramakrishnan

J U D G M E N T

This appeal is directed against the impugned judgement and decree dated 03.02.2012, passed by the Principal Sub Court, Tiruvannamalai in A.S.No.59 of 2006. For the sake of convenience, the ranks of the parties before the trial court shall be referred in this order unless the context requires otherwise.

2. The appellant was the defendant in O.S.No.18 of 2003 before the Additional District Munsif Court, Tiruvannamalai (also referred to as the Trial Court unless the context requires otherwise) which was decreed by the Trial Court.

3. The said suit was filed by the plaintiff (respondent herein) for a declaration of title to the suit schedule property measuring an extent of 3 cents in the northern portion of Re-



Survey.No.105/1B/1 and for a permanent injunction to restrain the defendant (appellant herein) from interfering with the peaceful possession over the same. The said suit was decreed by the Trial Court.

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4. The appellant had filed A.S.No.59 of 2006 against judgement and decree dated 30.3.2005 passed by the Additional District Munsif Court, Tiruvannamalai in O.S.No.18 of 2003.

5. By the impugned judgement and decree dated 03.02.2012, the Principal Sub Court, Tiruvannamalai (hereinafter referred to as the Appellate Court) had dismissed the appeal filed by the appellant(defendant) in A.S.No.59 of 2006.

6. The plaintiff (respondent herein) had filed the above suit on the strength of Ex.A.3 Sale deed dated 7.4.2000. The case of the plaintiff before the Trial Court was that the plaintiff purchased the aforesaid property measuring an extent of 3 cents from one Jothiammal and her son Manickavasagam who are the descendants of the original allottee, Annasamy Nainar to whom 6 cents of land in Re-survey No.105/1B/1 was allotted and Ex.A1 dated 31.7.1974 Patta was issued.

7. The original allottee, Annasamy Nainar died about 25 years back and that the original allottee Annasamy Nainar's daughter Amaravathy Ammal had left the village about 30 years back and that after the death of the original allottee Annasamy Nainar, his granddaughter namely Jothiammal [D/o Amaravathy Ammal along with her husband Kathirvel] were in possession of the land allotted to the said Annasamy Nainar.

8. It was further case of the plaintiff that the said Kathirvel, the husband of Jothiammal was issued with Exs.B1 to B3 Patta vide Patta No. 481 along with three others.

9. It was submitted that after the death of Kathirvel, the plaintiff's vendors Jothiammal [ W/o late. Kathirvel /D/o. Amaravathy Ammal] and Manickavasagam [S/o late. Kathirvel & Jothiammal (one of the vendor) who is the grandson of Amaravathy Ammal and great grandson of the original allottee, Annasamy Nainar] along with his mother, Jothiammal sold an extent of 3 cents on the northern side to the plaintiff vide Ex.A.3 Sale deed dated 7.4.2000.

10. The further case of the plaintiff before the Trial Court was that the plaintiff was in possession of the said property on which he had put up a thatched house.



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11. The defendant (appellant herein) resisted the above suit filed by the plaintiff. It was stated that the defendant had purchased the entire extent of 6 cents of the property way-back in 1985 under a oral sale from Amaravathy Ammal.

12. It was submitted that the said Amaravathy Ammal is the daughter of the original allottee, Annasamy Nainar and that Ex.B-4 Patta No.263 dated 14.4.1989 was issued by the Tiruvannamalai Tahsildar to the defendant and that the defendant was in possession of the suit schedule property along with the property in the southern portion.

13. It was further the case of the defendant that the defendant was in possession of the entire extent of 6 cents of land on which the defendant had put up a concrete house and 2 tiled huts and therefore Ex.A3-Sale Deed dated 7.4.2000 in favour of the plaintiff was bad and therefore the suit was liable to be dismissed.

14. It was further case of the defendant that his vendor Amaravathy Ammal was still alive and that there were other legal heirs of the said Amaravathy Ammal, [the daughter of the original allottee Annasamy Nainar] and therefore the suit filed by the plaintiff on the strength of Ex.A.3 Sale Deed dated 7.4.2000 executed by the daughter Jothiammal and the grandson of Amaravathy Ammal was liable to be dismissed.

15. The Trial Court decreed the suit by holding that the defendant had failed to prove the sale in the year 1985 by any document and/or that the defendant's vendor Amaravathy Ammal was alive.

16. The Trial Court further noted that, though Exs.B1 to 3 pattas No.3 were filed by the defendant, they were in the name of three persons, namely Kathirvel, Marimuthu and Chinna Pillai and therefore the defence of the defendant was liable to be rejected.

17. The Trial Court has also noted that Ex.A.4 - Kist receipt dated 22.4.2000 was in the name of the plaintiff and or in Ex.B4 Patta dated 14.04.1989 though in the name of the defendant, it was not clear on what basis it was issued to the defendant.

18. Thus, the Trial Court decreed the suit in favour of the plaintiff by holding that the plaintiff was indeed the title



holder of the suit schedule property to an extent of 3 cents together the house and the plaintiff was in possession of the same.

19. Aggrieved with the same, the defendant (appellant herein) filed A.S.No.59 of 2006 which came to be dismissed vide impugned judgement and decree dated 03.02.2012.

20. The Appellate Court dismissed the appeal filed by the defendant (appellant herein) on the ground that even though the defendant had marked Ex.B.9 Gift deed dated 20.11.2009 allegedly executed by his vendor Amaravathy Ammal in favour of her grandson Manickavasagam [vendor and the son of Jothiammal, the other vendor of the plaintiff], the defendant has not proved execution of any sale by the said Amaravathy Ammal in his favour and there was no legal basis on which Ex.B-4 patta dated 14.4.1989 could have been issued in favour of the defendant in absence of any sale deed.

21. The Appellate Court also found fault with the defendant for not having examined his vendor namely Amaravathy Ammal. Aggrieved by the judgment and decree of the Trial Court, the defendant is in appeal before this Court.

22. This case ought to have been either admitted on the date it was listed for admission if there was any substantial question of law or in the alternative dismissed by holding that there was no substantial questions of law on the said date.

23. However, as was the practice of this Court, notice of admission was ordered on the respondent and therefore no substantial questions of law has been framed till date.

24. This appeal is now listed for final hearing without it being admitted. The respondent is present through a counsel. Both the counsels expressed their willingness to conduct the case. With their consent, this appeal was taken up for final disposal.

25. Having heard the learned counsel for the appellant (defendant) and the learned counsel for the respondent (plaintiff) and after considering the factual matrix, the question that arises for consideration in this appeal is whether the judgment and decree passed by the Appellate Court affirming the judgment and decree of the Trial Court and thereby rejecting the appeal of the appellant is to be interfered with at this stage or not?



26. The substantial questions of law that arises for consideration in this appeal is whether the Appellate Court erred in dismissing the appeal filed by the appellant (defendant) ignoring the plausible defence set up by the appellant (defendant) that on the date of execution of Ex.A.3 Sale Deed dated 7.4.2000 by the plaintiff's vendors Jothiammal and Manickavasagam in favour of the respondent (plaintiff) was valid.

27. It is the specific case of the appellant (defendant) that the appellant's (defendant's) vendor Amaravathy Ammal, the daughter of original allottee was alive and that she had executed Ex.B.9 Gift Deed dated 20.11.2009 in favour of Manickavasagam, one of the vendor of the respondent (plaintiff).

28. Both the Trial Court and the Appellate Court have held that neither the appellant had proved that there was a valid sale in 1985 by the said Amaravathy Ammal in favour of the appellant nor the appellant had produced her as a witness.

29. I have considered the arguments advanced by the learned counsel for the appellant (defendant) and the respondent (plaintiff). I have also pondered over the above question of law in the factual background of the case.

30. No valid sale of the suit schedule property including the balance 3 cents on the southern side of the property by the said Amaravathy Ammal in the year 1985 can be inferred infavour of the appellant (defendant). There is neither proper execution of a sale deed nor a registration under the provisions of the Registration Act. Merely based on Ex.B-4 Patta dated 14.4.1989 itself will not confer any title over the suit schedule property.

31. Thus, the appellant failed to prove a valid title over the suit schedule property which was conveyed in favour of the plaintiff/ respondent by the family members and the descendants of original allottee Annasamy Nainar vide Ex.A3 dated 7.4.2000. To that extent the decision of both the Trial Court appellate Court cannot be faulted.

32. Further, Exs.B1 to B3 Pattas produced by the appellant (defendant) also indicate that these Pattas were issued in the name of Kathirvel, Chinnapillai and Marimuthu and not in the name of his vendor Amaravathy Ammal. Kathirvel is the husband of Jothiammal. Jothiammal is one of the Co-vendor of the 3 cents of land in favour of the respondent(plaintiff).



33. These vendors of the respondent (plaintiff) are members of the original allottee Arumuga Nainar to whom the land was allotted. They are the daughter and the grandson of the said Amaravathy Ammal. The appellant (defendant) traces title from the said Amaravathy Ammal.

34. The fact that Ex.B9 Gift deed dated 20..11.2009 was executed by Amaravathy Ammal and the fact that the appellant has obtained Ex.B4 patta may be an indication that the appellant(defendant) may have been in possession of the suit schedule property over which he claims to have put up a concrete house and thatched hut. If the appellant had put up such construction, he would have obtained electricity connections from the Tamil Nadu Electricity Board. However, these documents were not produced by him.

35. Both the Trial Court and the appellate Court have not given a clear finding as to who was in possession of the suit schedule property. However, it was not incompetent for the appellant to plead and prove that he was in hostile possession of the suit schedule property both as a sword and a shield. The appellant/defendant has also neither pleaded nor proved adverse possession.

36. In Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453 : 2019 SCC OnLine SC 975, the Hon'ble Supreme Court held that a suit for declaring title based on adverse position was also maintainable. It held as follows:

62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a



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possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted

by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

37. If on the date of execution of Ex.A-3 Sale Deed dated 7.4.2000, the said Amaravathy Ammal, the daughter of original patta holder in Ex.A1 was alive, respondent (Plaintiff's) vendors were incompetent to contract the sale in Ex.A-3 Sale Deed dated 7.4.2000.

38. To that extent, the said sale is liable to be declared as null and void as only the legal heir of late Aruguma Nainar namely Amaravaty Ammal alone could have executed the sale deed if they were alive.

39. Since the appellant has neither pleaded adverse possession nor proved the same by proper evidence, the substantial question of law is answered against the appellant as far as the possession of the suit schedule property is concerned. Therefore, the appeal is liable to be dismissed.

40. Accordingly, the second appeal stands dismissed.  
No costs.

Sd/-

Assistant Registrar(JJ Act)

// True Copy //

Sub Assistant Registrar



kkd

To

1.The Principal Subordinate Judge,  
Tiruvannamalai.

2.The Additional District Munsif,  
Tiruvannamalai.

+1cc to Mr.J.Ramakrishnan, Advocate SR.No.38221

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.37827

S.A.No.651 of 2012

CP(CO)  
CB(22/11/2021)