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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.687 of 2020

Mrs.Malar Rani

...Appellant/Plaintiff

Versus

1.S.Ravi
2.Mrs.G.Suseelarani
3.Mrs.Sridevi

...Respondents/Defendants

Second Appeal filed under Section 100 of Civil Procedure Code, Article 227 of the Constitution of India pleased, to set aside the Judgment and Decree made in A.S.No.31 of 2019 dated 01.07.2020 on the file of the Principal District Judge, Coimbatore confirming the Judgment and Decree in O.S.No.1242 of 2013 dated 10.12.2018 on the file of the I Additional Subordinate Judge of Coimbatore and thereby decreed the suit as prayed for.

For Appellant : Mr.S.N.Subramani

J U D G M E N T

This Second Appeal has been filed against the Judgment and Decree made in A.S.No.31 of 2019 dated 01.07.2020 on the file of the Principal District Judge, Coimbatore confirming the Judgment and Decree in O.S.No.1242 of 2013 dated 10.12.2018 on the file of the I Additional Subordinate Judge of Coimbatore and thereby decreed the suit as prayed for.

2.The learned counsel appearing for the appellant submitted that she has filed the suit for adverse possession and to set aside the sale deed and sale agreement dated 13.12.2012 vide Document No.2051 of 2012 and 7762 of 2012 respectively.

3.According to the appellant, it was an oral agreement for sale. By virtue of the oral agreement the first defendant has paid a sum of Rs,1,50,000/- in three different dates. From



the year 1999 the appellant is in enjoyment of the property and they have paid all the kist, tax receipts and also obtained the patta as well as the Adangal for her possession from 1999 to till date.

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4.The plaintiff has filed the suit for declaring the plaintiff is the absolute owner, by adverse possession of suit property in SF No.602 to an extent of 1.57 acres of land at Keelchitrai Chavadi village and declaring sale deed and sale agreement dated 13.12.2021 in favour of the second and third defendants. In fact it was sold to the plaintiff and that is the reason why she is in possession and enjoyment of the property. In this regard, DW1 admitted in the cross examination stating that the plaintiff is in the possession during the year 1999. By referring the said averment he contended that DW1 had categorically admitted that the plaintiff is in the possession since 1999 and this aspect was not considered by both the courts below. In spite of the admission of DW1 and the possession of the plaintiff and in support of the contention, the plaintiff has produced several documents like patta, chitta, adangal and tax receipt before the courts below and the courts below dismissed the suit.

5.Therefore, the learned counsel appearing for the appellant has suggested the following Substantial Question of Law as stated in the grounds of appeal:

'a) Whether the Lower courts erred in appreciating the oral and documentary evidence of the plaintiff and dismissed the suit?

b)Whether the lower courts erred in believing the defendants evidence?

c)Whether the Judgment and Decree of the Lower courts are valid in law?

d)Whether the Lower courts failed to consider the appellant's adverse possession in the suit schedule property from September 1999?

e)Whether the Lower courts erred in considering that the first respondent deliberately lodged false complaint with respect to the two parent documents and got non traceable certificate from the police?

f)Whether the lower courts failed to consider the adverse possession proved by the appellant as per the Hon'ble Supreme Court laid down the five conditions in (2013)5MLJpage 620?



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g)Whether the lower courts failed to consider the 1 respondent's written statement, in which he mentioned that the 1st respondent handed over the parental documents to the appellant?

h)Whether the lower courts failed to consider that the different stands taken by the 1st respondent with respect to the parental documents?

i)Whether the lower courts erroneously consider with respect to the possession of the appellant during 1999, eventhough the 1st respondent accepted the same in his cross examination?

j)Whether the lower courts failed to consider the patta, chitta, adangal, tax receipts with respect to the suit schedule properties stands in the appellant's name and proved his possession from the year 1999?''

6.It is an admitted fact that the plaintiff is the cousin sister of the first defendant and he purchased an extent of 65 cents in S.No.602, 33 cents in S.No.590 and 1 acre 2 cents in S.No.601 and half right in the well in S.No.590, from the first defendant and his mother as per Ex.A3, sale deed dated 26.02.1999.

7.The first defendant sold an extent of 57 cents in S.F.No.602 (part of item No.1) to the second defendant as per Ex.A18 sale deed dated 13.12.2012.

8.The first defendant entered into a registered sale agreement with the third defendant on 13.12.2012 in respect of an extent of 1 acre out of an extent of 1.57 cents in item No.1 of the suit property together with right in Well in S.No.590 as per Ex.A19 registered sale agreement dated 13.12.2012.

9.Now the issue to be decided, is as to whether the courts below failed to consider the above aspects in a proper perspective?

10.This Court heard the learned counsel appearing for the appellants and perused the documents filed by the plaintiff. Upon perusal, the plaintiff has filed the adangal, for the year 2001 to 2003 and thereafter 2013. The plaintiff has not filed any adangal for the year 2000, 2004 to 2012. This aspect was well considered by the trial court as well as the appellate



court and also referred the kist receipt and it appears that the kist receipt was not paid continuously and the plaintiff has produced the patta issued on 22.08.2013. The patta discloses that the suit 1st item of the property is in the joint possession of the plaintiff and the first defendant. The conclusion of the courts below is that the plaintiff has not established her case as adverse possession and she has not produced any documents for the continuous possession from the year 1999 to 2013 and dismissed the suit.

11. Under these circumstances, I do not find any irregularity or infirmity in the Judgment and the decree passed by the courts below and this court does not find any substantial question of law as suggested by the learned counsel for the appellant that arises for consideration and there is no merit in this second appeal. Hence, this Second Appeal deserves to be dismissed.

12. In view of the above the second appeal stands dismissed. No costs.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Principal District Judge,
Coimbatore.

2. The I Additional Subordinate Judge,
Coimbatore.

+1 CC to Mr. S. N. Subramaniyan, Advocate sr 8672.

S.A.No.687 of 2020

CNR (CO)
SP (09/12/2021)