



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.57 of 2009

and

M.P. (MD)No.1 of 2009

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S.Kamalam (died) ... Appellant/Respondent/Plaintiff

2.S.Dhanapal

3.S.Indra

4.S.Hari Balakrishnan

5.V.Mahalakshmi

6.Madhu Bala

... Appellants

(A2 to A6 are brought on record as Lrs of the deceased sole appellant vide order dated 08.01.2021 made in C.M.P.(MD)No.6994, 7004, 7005 and 7006 of 2020)

-Vs-

1.V.Valliammai

2.K.Nachiappan (Died)

3.Amutha

4.Vijaya

5.Geethanjali

6.Rajeswari

7.Padmapriya

... Respondents/Appellants/Defendants

(R3 to R7 are brought on record as Lrs of the deceased R2 vide order dated 08.01.2021 made in C.M.P.(MD)Nos.6994, 7004, 7005 & 7006 of 2020)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment passed in A.S.No.11 of 2008, dated 21.10.2008 on the file of the Sub Court, Devakkottai reversing the judgment and decree passed in O.S.No.362 of 2004, dated 12.03.2008 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi.

For Appellants	: Mr.S.Manikandan for Mr.R.Sundar Srinivasan
For R1	: Mr.AL.Gandhimathi
For R2	: Died
For R3 to R5	: tapal returned
For R6 & R7	: No appearance

JUDGMENT

The plaintiff in O.S.No.362 of 2004 on the file of the Principal District Munsif, Karaikudi, is the appellant in this second appeal.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The suit was one for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property. The first defendant is the daughter of the second defendant. The suit was decreed on 12.03.2008. Aggrieved by the same, the defendants filed A.S.No.11 of 2008 before the sub court, Devakkottai. The first appellate court by the impugned judgment and decree dated 21.10.2008 reversed the decision of the trial court and dismissed the suit by allowing the appeal. Challenging the same, this second appeal came to be filed.

3.The second appeal was admitted on the following substantial questions of law:-

"(I) Whether the first appellate court was justified in reversing the decision of the trial court by holding that the plaintiff failed to seek declaration of title?.

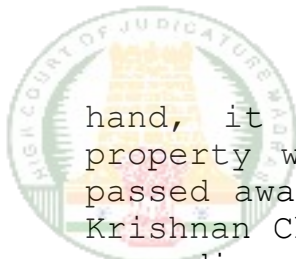
(II) Whether the judgment of the first appellate court is vitiated for having ignored the admission made by the defendants' witnesses as regards the possession of the plaintiff over the suit property?"

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and took me through the testimony of the witnesses and also the evidence on record and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial court.

5.Per contra, the learned counsel appearing for the defendants / respondents submitted that the impugned judgment and decree do not warrant interference.

6.I carefully considered the rival contentions and went through the evidence on record. The case of the plaintiff is that the suit property is a vacant site together with buildings and that it belonged to the plaintiff's husband Srinivasan. The building was assessed in his name by the local body. He passed away in the year 1973 and thereafter, the assessment was changed in the name of the plaintiff and the plaintiff has been remitting the property tax ever since. The plaintiff has been in settled possession of the suit property. According to the plaintiff, the defendants are utter strangers and they do not have title or possession over the suit property. Since they staked claim over the suit property and threatened to interfere with the plaintiff's possession and enjoyment, the plaintiff was constrained to institute the said suit.

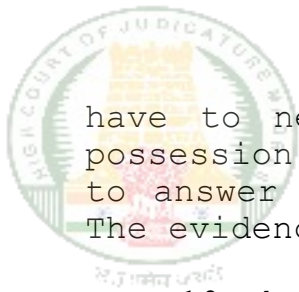
7.The defendants filed written statement controverting the plaintiff averments. According to the defendants, the suit property



hand, it belonged to one Narayanan Chettiar who purchased the property way back in the year 1933. The said Narayanan Chettiar passed away on 23.01.1967 leaving behind his son Krishnan Chettiar. Krishnan Chettiar also passed away on 06.04.1973. The dispute arose regarding the properties of Krishnan Chettiar and that they were the subject matter of O.S.No.113 of 1994 on the file of the Sub Court, Devakottai. The second defendant Nachiappan was the adopted son of Krishnan Chettiar and he was a party to the said suit and he succeeded therein. According to the second defendant, in the compromise memo filed in A.S.No.47 of 1994 filed against the judgment and decree made in O.S.No.113 of 1994, he had been described as adopted son of Krishnan Chettiar. The second defendant had executed Ex.B8-settlement deed dated 19.03.2004 settling the suit property in favour of the first defendant/his daughter. Based on the same, patta was also changed in the name of the first defendant vide Ex.B10, dated 19.11.2004.

8.The stand of the defendants is that the suit property is in the possession of the defendants and another daughter of the second defendant by name Padmapriya. The plaintiff had examined herself as P.W.1 and one Ramuthai as P.W.2. Ex.A1 to Ex.A39 were marked. The defendants examined themselves as D.W.1 and D.W.2. Ex.B1 to Ex.B11 were marked. As already noted, while the trial Court decreed the suit, the appellate Court reversed the same. The suit is only for injunction. Therefore, the possession alone will be determinative. The learned counsel for the respondents relying on the decision reported in **(2008) 4 SCC 594 (Anathula Sudhakar Vs. P.Buchi Reddy)** submitted that since the plaintiff's title has been seriously challenged and she had also traced her title through her husband, she ought to have filed a suit for declaration and permanent injunction and filing a suit simpliciter for permanent injunction was clearly not maintainable.

9.After going through the evidence on record, it is seen that the plaintiff has filed a number of documents dating back to 1973 to show her possession of the suit property. Of-course, the learned counsel for the respondents would contend that the suit property measures a larger extent and that only in a small portion, there is a thatched building and that the documents filed by the plaintiff relate only to the thatched building. It may be so. But the fact remains that both the defendants in their testimonies have admitted that on the suit property, there is a building. It is further admitted that Ex.B8-settlement deed describes the suit property only as a vacant site. Thus, the recitals of Ex.B8-settlement deed are falsified by the admission of the defendants themselves. The defendants have conceded that on the suit property there is a building. It has been assessed to property tax. It is also enjoying an electricity connection. It is also in the name of the plaintiff. The property tax is assessed only in the name of the plaintiff. Earlier, it was assessed in the name of the plaintiff's husband Krishnan. When that is the position right from 1973, I



have to necessarily hold that the plaintiff has been in settled possession of the suit property. Of-course, the plaintiff is unable to answer as to how her husband got title over the suit property. The evidence on either side as regards the title is rather sketchy.

10.The learned counsel appearing for the respondents would place considerable reliance on the report and plan submitted by the advocate commissioner. It is well settled that the issue of possession cannot be decided based on the report of an advocate commissioner. The first appellate court erred in ignoring the admissions made by the defendants' witnesses. The first defendant was examined as D.W.1. Her father / second defendant who is the author of Ex.B8-settlement deed was examined as D.W.2. Both of them conceded that the plaintiff is in possession of the building that is very much standing on the suit property. When the defendants themselves have conceded that the plaintiff is in possession of the suit building, the first appellate court could not have brushed it aside. Ignoring the admission made by the defendants in favour of the plaintiff renders the impugned judgment perverse. The substantial questions of law are answered in favour of the appellant. Since no satisfactory evidence has been adduced on either side regarding title, the findings rendered in this regard are vacated. The plaintiff is entitled to an injunction against the defendants that she shall not be dispossessed except by due process of law. The impugned judgment and decree passed by the first appellate court is set aside. The second appeal is allowed on these terms. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Sub Judge,
Devakkottai.

2.The Principal District Munsif cum Judicial Magistrate,
Karaikudi.

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The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)



S.A.(MD)No.57 of 2009

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-27807[F] dated 01/09/2021)

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate (SR-27708[F] dated 31/08/2021)

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