



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.Nos.1996 to 2000 of 1991

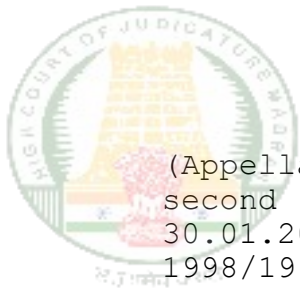
1.N.Dharanipathi
2.Ramakrishnan (Died) ...Appellants/Respondents/Plaintiffs
3.B.Radhika
4.R.Rajeshwari
5.S.Latha
6.R.S.Vikash
7.R.S.Harshini
8.Anitha
9.Shivani ...Appellants in S.A.No.1996/1991

(Appellants 3 to 9 brought on record as LR's of the deceased second appellant viz., G.Ramakrishnan vide order of Court dated 30.01.2020 made in C.M.P.Nos.1926 to 1928/2020, in S.A.No.1996/1991)

1.N.Dharanipathi
2.G.Ramakrishnan (Died) ...Appellants/Respondents/Plaintiffs
3.B.Radhika
4.R.Rajeshwari
5.S.Latha
6.R.S.Vikash
7.R.S.Harshini
8.Anitha
9.Shivani ...Appellants in S.A.No.1997/1991

(Appellants 3 to 9 brought on record as LR's of the deceased second appellant viz., G.Ramakrishnan vide order of Court dated 30.01.2020 made in C.M.P.Nos.1934, 1935, 1937/2020, in S.A.No.1997 /1991)

1.N.Dharanipathi
2.G.Ramakrishnan (Died)
3.B.Radhika
4.R.Rajeshwari
5.S.Latha
6.R.S.Vikash
7.R.S.Harshini
8.Anitha
9.Shivani ...Appellants in S.A.No.1998/1991



(Appellants 3 to 9 brought on record as LR's of the deceased second appellant viz., G.Ramakrishnan vide order of Court dated 30.01.2020 made in C.M.P. Nos. 3766 to 3768/2020 in S.A. No. 1998/1991)

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1.N.Dharanipathi
2.G.Ramakrishnan (Died)
3.B.Radhika
4.R.Rajeshwari
5.S.Latha
6.R.S.Vikash
7.R.S.Harshini
8.Anitha
9.Shivani

...Appellants in S.A.No.1999/1991

(Appellants 3 to 9 brought on record as LR's of the deceased second appellant viz., G.Ramakrishnan vide order of Court dated 30.01.2020 made in C.M.P.Nos.1912 to 1914/2020, in S.A.No.1999/1991)

1.N.Dharanipathi
2.G.Ramakrishnan (Died)
3.B.Radhika
4.R.Rajeshwari
5.S.Latha
6.R.S.Vikash
7.R.S.Harshini
8.Anitha
9.Shivani

...Appellants in S.A.No.2000/1991

(Appellants 3 to 9 brought on record as LR's of the deceased second appellant viz., G.Ramakrishnan vide order of Court dated 30.01.2020 made in C.M.P.Nos.1917, 1918 & 1920/2020, in S.A.No.2000/1991)

Vs.

K.Shanmugam ...Respondent/Appellant/Defendant in S.A.No.1996/1991

L.Damodaran ...Respondent/Appellant/Defendant in S.A.No.1997/1991

1.R.Venugopal (Died) ...1st Respondent/Appellant/Defendant
2.V.Nirmala
3.V.Durairaj ...Respondents in S.A.No.1998/1991

(Respondents 2 and 3 brought on record as LR's of the deceased sole Respondent viz R.Venugopal vide order of this court dated 21/02/2020 made in CMP No: 3807,3809 and 3810/2020 in S.A. No. 1998/1991)



T.R.Pakkir Mohammed

...Respondent/Appellant/Defendant in S.A.No.1999/1991

1.R.Krishnan (Deceased)

2.Kuppammal

3.Soundararajan

4.Selvakumar

5.Kannammal

6.Savithri

7.Shobana

8.Dhanalakshmi

...Respondents in S.A.No.2000/1991

(RR2 to 8 are brought on record as LR's of the deceased sole respondent vide order of Court dated 04.08.2006 made in C.M.P.Nos.19757 to 19759/2004)

Common Prayer: Second Appeals filed under Section 100 CPC, 1908 against the decree and judgment dated 07.09.1990 passed in A.S. Nos. 68, 69, 70, 71 & 72 of 1990, on the file of the III Additional Sub Court, Coimbatore, reversing the decree and judgment dated 30.09.1989 passed in O.S.Nos.1300, 1538, 1372, 1924 & 1370 of 1980, on the file of the III Additional District Munsif Court, Coimbatore.

In S.A.Nos.1996 to 1999/1991 :

For Appellants : Mr.A.E.Ravichandran

For Respondent(s) : Mr.Haja Mohideen Gisthi

In S.A.No.2000/1991 :

For Appellants : Mr.A.E.Ravichandran

For Respondents : Mr.R.Subramanian

COMMON JUDGMENT

The appellants are the plaintiffs in O.S.Nos.1300, 1538, 1372, 1924 & 1370 of 1980 on the file of the III Additional District Munsif Court, Coimbatore. They filed the suits for recovery of possession of the suit properties described in the respective suits, for payment of arrears of rents and to pay damages for use and occupation.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.



3. The case of the plaintiffs in all the suits is that the first plaintiff purchased the suit properties from one Munusamy through a registered sale deed dated 05.06.1979 (Ex.A1). The defendants were the tenants under the erstwhile owner and the tenancy was oral. The first plaintiff informed the defendants/tenants about his purchase of the suit properties by him and requested them to pay rents to him. Since they defaulted in payment of rents, the first plaintiff terminated the tenancy and issued a notice dated 31.03.1980 to all the tenants (Ex.A4). He also demanded them to pay the rental arrears. The defendants sent a reply dated 21.04.1980 (Ex.A5), which according to the first plaintiff contained false allegations. Hence, the first plaintiff filed the suit. During the pendency of the suit the first plaintiff sold the suit properties in favour of the second plaintiff through a registered sale deed dated 31.01.1981 (Ex.A20) and hence the second plaintiff was impleaded in all the suits.

4. The suit was resisted by the defendants on the following grounds :

- i. The defendants are not aware of the fact that the suit properties were sold in favour of the first plaintiff.
- ii. The suit properties are Government lands.
- iii. The defendants and their predecessors in possession put up superstructure over the suit properties and perfected their title by adverse possession and prescription.
- iv. The plaintiff's suit for recovery of possession is not maintainable in the absence of a declaration of title to the suit properties.

5. The trial Court after framing necessary issues and after full contest decreed the suit in favour of the plaintiffs vide its decree and judgment dated 30.09.1989 on the following grounds :

- i. The sale deeds in favour of the first plaintiff clearly shows that he purchased the suit properties from Munusami.
- ii. The suit properties were sold by one Ramu Ammal in favour of one Vennal Naidu through a registered sale deed dated 22.04.1963 (Ex.A16) and Vennal Naidu executed a Will in favour of his son Mohan and grandsons.
- iii. After the death of Vennal Naidu the Will was not given effect to and a partition was effected in family and the suit properties fell to the share of Munusamy / the vendor of the first plaintiff.
- iv. The plaintiffs are in possession and enjoyment of the suit properties by paying tax as is seen from Ex.A2, Ex.A3, Ex.A19, Ex.A13, Ex.A14, Ex.A21 to Ex.A25.
- v. In the earlier suit filed by Vennal Naidu in



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O.S.No.786/1973 before the Sub Court, Coimbatore, it was admitted that the defendants 2 to 4 are the tenants of the suit properties and that they took the suit properties on lease from Ramu Ammal, the original owner.

- vi. The suit properties are not Government lands as alleged by the defendants.
- vii. The first plaintiff has given a proper notice under Section 106 of the Transfer of Property Act.
- viii. The defendants plea that they have perfected their title by adverse possession and prescription has not been proved.

6. Aggrieved over the same, the defendants filed appeals in A.S. Nos.68, 69, 70, 71 & 72 of 1990, before III Additional Sub Court, Coimbatore. The III Additional Sub Judge allowed the appeals vide his decree and judgment dated 07.09.1990 on the following grounds :

- i. Though a sale deed was executed by Ramu Ammal in favour of Vennal Naidu, the possession of the suit properties was not handed over to the latter.
- ii. The earlier suit in O.S.No.786 of 1973 shows that the defendants are the tenants.
- iii. The defendants have not also perfected their title by adverse possession and prescription by adducing acceptable evidence.
- iv. However the defendants are not tenants under the first plaintiff or his vendor Munusamy.
- v. Even in the partition arrangement dated 22.03.1976 (Ex.A17), there is a mention about a Will dated 15.09.1972 executed by Vennal Naidu and P.W.1 (the first plaintiff) had deposed that as per the Will one Mohan was given life estate and thereafter the properties should devolve upon his sons absolutely.
- vi. Though Mohan was party to partition arrangement (Ex.A17) his sons were not shown parties to the same.
- vii. The legal heirs of Vennal Naidu have no right to cancel the Will.
- viii. The plaintiffs have not filed a suit for declaration of their title in the suit property especially when the defendants have questioned the same.
- ix. The vendor of the first plaintiff does not have any right to sell the suit properties in favour of the first plaintiff.
- x. Hence the plaintiffs are not entitled for any decree as prayed for by them.

7. Now the second appeals are filed by the plaintiffs on the following substantial question of law :

- i. Whether on facts and materials on record, the appellants



are entitled to the relief of possession based on title as pleaded by them and that the lower appellate court was right in reversing the judgment and decree of the trial court ?

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8. Mr.A.E.Ravichandran, learned counsel appearing for the appellants contended that when the defendants have only stated that they do not have any knowledge about the sale deed in favour of the first plaintiff and the first plaintiff has also filed his parent documents, the first appellate Court was wrong in going into the title of the plaintiffs. Moreover, the defendants had admitted that they were tenants in the earlier suit filed by Vennal Naidu and the first plaintiff had purchased the suit properties from one of the legal heirs of Vennal Naidu. It is also his contention that as per family arrangement the suit properties fell into the share of the vendor of the first plaintiff and the first plaintiff had also issued a proper notice of termination of tenancy to the defendants under Section 106 of Transfer of Property Act. Though the first appellate Court found that the defendants were tenants in the suit properties and have not perfected their title by adverse possession and prescription it has gone into the Will executed by Vennal Naidu which was not even marked and was not given effect to by the legal heirs. Neither Mohan nor his sons filed any suit against the father of the first plaintiff or his vendor Munusamy and thus the findings rendered by the first appellate Court are totally wrong.

9. Per contra, Mr.Haja Mohideen Gisthi, learned counsel appearing for the respondents contended that when there is a cloud over the suit properties, the plaintiffs should have sought for the relief of declaration of title and the suit for recovery of possession alone is not sufficient. He would further contend that the legal heirs of Vennal Naidu have no right to cancel the Will executed by Vennal Naidu and therefore, Munusamy, the vendor of the first plaintiff does not have any valid title to sell the suit properties in favour of the latter. According to him, the first appellate Court after considering all these aspects rightly dismissed the suits filed by the plaintiffs.

10. It is seen from the counter affidavit (Ex.A30) filed by the defendants in the earlier suit that they admitted that they are the tenants of the suit properties. When they say that they have perfected their title by adverse possession and prescription they also say that the vacant site of suit properties belong to the Government. They did not adduce any documentary evidence to show that the suit properties belong to the Government. When they accepted that they are the tenants in the suit properties there is no question of prescribing title by



adverse possession. It is not also stated in the written statement as to when their title became adverse to the owner of the suit properties. Therefore, both the Courts below were right on their findings with the above aspects.

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11. However, the first appellate Court had gone into alleged Will executed by Vennal Naidu in favour of one Mohan and his sons. Pertinent it is to point out the Will was not even marked as a document. The Will was not given effect to even by the legal heirs of late Vennal Naidu and the family arrangement (EX.A17) shows that the suit properties were allotted to the share of the vendor of the first plaintiff. The defendants are rank outsiders as far as the family of the vendor of the first plaintiff. They have not claimed any title to the suit properties by way of a document. On the contrary, they did not pay rents to the first plaintiff and had stated that they have perfected their title by way of adverse possession and prescription. As already observed there is no pleading in the written statement as to when their possession became adverse to the real owners. They have not also adduced any evidence to show their long, open and continuous possession over the suit properties. The defendants who examined themselves also admitted that they are not paying any tax for the suit properties. On the other hand, the plaintiffs have produced sufficient evidence to show that they are the owners of the suit properties. The sale deed dated 22.04.1963 executed by Ramu Ammal in favour of Vennal Naidu was marked as Ex.A16. This document shows that possession of the properties sold in favour of Vennal Naidu were handed over on the date of sale. Though Vennal Naidu executed a Will it was not given effect to by all the legal heirs of Vennal Naidu and a family arrangement was executed on 27.03.1976 (Ex.A17) and the suit properties fell to the share of Munusamy the vendor of the first plaintiff and the first plaintiff's sale deed dated 05.06.1979 was marked as Ex.A1. During the pendency of the suit the first plaintiff sold the suit properties in favour of the second plaintiff through a registered sale dated 31.01.1981 (Ex.A20). The first plaintiff had issued a valid notice dated 31.03.1980 (Ex.A4) of termination of tenancy to the defendants under Section 106 of Transfer of Property Act. The defendants admitted they did not pay rents to the first plaintiff. Hence, the decree in favour of the plaintiffs should have been upheld by the first appellate Court. The first appellate Court therefore was wrong in reversing the findings of the trial Court. The defendants clearly misled the first appellate Court by harping on the aspect of whether the title of the plaintiff is genuine when they themselves were only tenants (as admitted by them) and had no business to go into the genesis of the title of the plaintiffs.

12. It is settled law that suit for recovery of possession



can be filed when there is no dispute over the title of the plaintiff. The defendants only say that they were not aware of the sale in favour of the first plaintiff and perfected title by adverse possession for which they did not adduce any evidence. As rightly pointed out by the learned counsel for the appellants the respondents cannot question the internal arrangements made in the family of the vendor of the first plaintiff. In view of the reasons stated by me, the substantial question of law is answered in favour of the appellants.

13. In the result,

- i. the second appeals are allowed. No costs.
- ii. the decree and judgment dated 07.09.1990 passed in A.S. Nos. 68, 69, 70, 71 & 72 of 1990, on the file of the III Additional Sub Court, Coimbatore, is set aside.
- iii. the decree and judgment dated 30.09.1989 passed in O.S. Nos. 1300, 1538, 1372, 1924 & 1370 of 1980, on the file of the III Additional District Munsif Court, Coimbatore, is upheld.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

mtl

To

1. The III Additional Sub Court,
Coimbatore.
2. The III Additional District Munsif Court,
Coimbatore.
3. The Section Officer,
VR Section,
High Court,
Madras.

+5ccs to Mr. A. E. Ravichandran, Advocate Sr. No. 18379 to 18383

+1cc to Mr. S. Haja Mohideen Gisthi, Advocate Sr. No. 18468

S.A. Nos. 1996 to 2000 of 1991

VBM(CO)
RN(06/04/2022)