



AS.No.589 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2021

PRONOUNCED ON : 10.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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(Through Video Conferencing)

1. Uthandi Mudaliar (Deceased)
2. Sumathi @ Nagalakshmi
3. Pucheppavally
4. Tayanayagi
5. Kanjana
6. Vembu @ Sivagamy
7. Praveena
8. Caveryammale
9. Sandirasegarane
10. Manogarane
11. Sadish Kumar
12. Ramesh
13. Ashok Radj

Appellants

Vs

1. Panneer @ Panneerselvam
2. Muthulakshmi
3. Surlinadan
4. Sedhu
5. Ahiroobhathammal
6. Punidavalli
7. Sarozini
8. Kamaladevi
9. Ramadoss Mudaliar
10. Kuzhali
11. Vembu

Respondents



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Prayer:- This Appeal Suit has been filed, Section 96 of CPC, against the judgement and decree, dated 31.08.2007, made in OS.No.94 of 2000, by the Additional District Judge, Puducherry at Karaikal.

For Appellants : Mr.T.Susindran

For Respondents : M/S. SAI-RR1 to 4
RR5 to 11-Dispensed with

JUDGEMENT

1. This Appeal Suit has been filed, against the judgement and decree, dated 31.08.2007, made in OS.No.94 of 2000, by the Additional District Judge, Puducherry at Karaikal.
2. The suit was filed for declaration that the Plaintiffs and the Defendants 6 to 12 are the absolute owners of the suit property and for directing the Defendants 1 to 5 to vacate the suit property and to remove the superstructure put up by the 1st Defendant and to put the Plaintiffs in possession of the same and directing the Defendants 1 to 5 to pay the mesne profits at Rs.300/- p.m. from the date of the plaint till the date of actual delivery of possession of the suit property and for costs.
3. The case of the Plaintiffs before the court below is that originally, the suit property was the ancestral property of the Plaintiffs and the Defendants 6 to 12. By a Partition Deed, dated 14.12.196, the suit property was allotted to the father of the 1st Plaintiff, one Somu Mudaliar @ Somasundara Mudaliar. Out of this property, the equal half share on the Southern side was allotted to the



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said Somu Mudaliar under an oral arrangement, subsequent to the partition between the other co-sharers and the Plaintiffs. The Plaintiffs are in management and enjoyment of the suit property, absolutely in so far as the Southern half portion is concerned. The co-sharers of Somu Mudaliar are entitled to the Northern portion. The 1st Plaintiff is the son of Somu Mudaliar and the 2nd Plaintiff is the only legal heir of one Govindaraj, a deceased son of Somu Mudaliar. The Plaintiffs 3 to 7 are the only legal heirs of the deceased Rajavel, another deceased son of Somu Mudaliar. Apart from the Plaintiffs and the Defendants 6 to 9 being his daughters, the Defendants 10 to 12 are the legal heirs of the deceased daughter of Somu Mudaliar viz. Vijayalakshmi. There is no other legal heirs to the deceased Somu Mudaliar. About 10 years ago, the 1st Defendant was inducted into the portion of the said property in so far as the Southern half portion is concerned and he had put up a temporary thatched house. It was agreed that the 1st Defendant shall vacate the property as and when required by the Plaintiffs. Apart from the Partition Deed, dated 14.12.1962, the Patta and the Tax Assessment of the suit property stand in the name of the 1st Plaintiff's father Somu Mudaliar. The 1st Defendant is a licensee and the other Defendants 2 to 5 have no right to be in possession. While so, the 1st Defendant had filed a suit for permanent injunction, against the 1st Plaintiff and claimed the relief of title to the property by prescription, without admitting the title of the Plaintiffs. The 1st Defendant is liable to pay



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mesne profits to the Plaintiffs at the rate of Rs.300/- per month. In such circumstances, the suit had been filed, seeking reliefs, as stated above.

4. The case of the 2nd Defendant, adopted by the Defendants 3 to 5 is that Uthirapathi Pillai, the 1st Defendant died even before the summon was served in the suit. The name of the 2nd Defendant is not Panneer @ Panneerselvam and he is Selvaraj. The Defendants 4 and 5 are strangers. The Plaintiffs have to prove the partition deed, dated 14.12.1962. The description of property as given in paragraph 1 of the plaint are to be correlated with documents purported to have been executed. The Defendants denied that out of this property, the equal half share on the Southern side was allotted to the said Somu Mudaliar under the oral arrangement subsequent to partition amongst the co-sharers and that the Plaintiffs are in management and enjoyment of the suit property absolutely in so far as Southern portion is concerned. The allegation that the Northern portion is entitled by the co-sharers of Somu Mudaliar is false. For at least over a period of 100 years, 2nd Defendant, his father Uthirapathy and his father Manickam have been residing in the property. The Plaintiffs have not given any particulars about the so called "license". Somu Mudaliar @ Somasundara Mudaliar died much before ten years. The property in question originally belonged to one Uthandi Mudaliar and he had two sons by name Viswalinga Mudaliar and Somu Mudaliar. There were a number of vacant manacuts and were not inhabited. The



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possession started adversely and continued to be so till date by prescription of title by adverse possession. The Plaintiff's grand father, Manickam Poule lived and died in this property. Uthirapathi Pillai also died having lived for 85 years of age and he was born in the suit property on 19.3.1915. The 2nd Defendant also born on 15.04.1948 in the house at the suit property and he had constructed semi permanent structure, reconstructed and repaired the same. Uthirapathy also extended the area originally occupied. Electricity was done to the house in the year 1984 and drinking water pipeline was also done. The 2nd Defendant is a Government servant. In all his service records, his permanent address is shown to be the suit property. The 2nd Defendant and his predecessors have been in possession of the entire extent of 2 Ares 06 Centiares. The suit is bad for non-joinder of necessary parties. Since there is no license or permission, the question of mesne profits does not arise as the property is held by the Defendants 1 to 3 as prescriptive owners. In such circumstances, the suit is liable to be dismissed.

5. On the pleadings of the parties, the following issues and additional issue were framed by the Trial Court:-

1. Whether the Plaintiffs are entitled for declaration as prayed for?
2. Whether the Plaintiffs are entitled for mesne profits?
3. Whether the Plaintiffs have a right to get vacant possession from the Defendants 1 to 5?

Additional Issue:-



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1. Whether the Defendants have perfected title by adverse possession?
6. On the side of the Plaintiffs, Ex.A1 to Ex.A5 were marked and PW.1 and PW.2 were examined. On the side of the Defendants Ex.B1 to Ex.B31 were marked and DW.1 to DW.4 were examined. Ex.X1 to X13 were marked. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiffs.
7. This Court heard the submissions of the learned counsel on either side.
8. The learned counsel for the Appellants has submitted that the suit property is the ancestral property of the Plaintiffs and the Defendants 6 to 12 and the total extent of the property is 2 ares 6 centiares and out of this property, equal half share on the Southern side was allotted to Somasundara Mudaliar under the oral arrangement subsequent to the partition between the other cosharers. The Plaintiffs are enjoying the suit property absolutely in so far as the Southern half portion is concerned. About 10 years back, the Defendant was inducted into the suit property as a licensee and also he put up a temporary thatched house. The patta and tax assessment of the suit property stand in the name of the Plaintiffs' father, Somu Mudaliar. On the death of Somu Mudaliar, licence granted to him came to an end and they are not entitled to continue the occupation of the suit property. He would further submit that the lower court failed to note that the Appellants have established the title to the suit property by examining the witnesses and by documents. The lower court



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is not justified in holding that the 1st Defendant and his ancestors have occupied the suit property from the year 1915. The lower court failed to appreciate that the property was allotted to the share of the 1st Plaintiff's father, Somu Mudaliar as item 57, under Ex.A1, dated 14.12.1962. The lower court failed to note that the Plaintiffs have become the owners of the Souther portion of the Manaikar property allotted under Ex.A1.

9. The learned counsel for the Respondents would submit that the description of the suit property is not correlated with the documents filed by the Plaintiff and the oral arrangement is not proved by the Plaintiffs. The Defendants are in possession of the entire suit property, measuring 2 ares 6 centiares and this Defendant and his predecessors are residing in the property for a period of more than 100 years. Regarding licence, no particulars were given. The property stated in the plaint is not properly identified and the Plaintiffs have not taken any steps to identify the suit property. The lower court appreciated all the evidence and dismissed the suit and hence, this Appeal Suit is liable to be dismissed.

10. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

11. The contention of the Plaintiffs is that they are the owners of the suit property, which was allotted to his father Somu Mudaliyar by a partition deed, dated 14.12.1962. The Plaintiffs are in management and enjoyment of the suit



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property. The 1st Defendant was inducted into a portion under the licence granted by his father. On the death of Somu Mudaliyar, the licence granted to him came to an end. The Defendants are not entitled to continue the occupation of the portion. The Defendants have no right in the suit property. The claim of prescription is illegal.

12.The Defendants' contention is that they have been in possession of the suit property. The Defendants have not given any particulars about the licence. The Defendants have prescribed title by adverse possession.

13. On a perusal of Ex.A1, it is seen that in item 57, Schedule of property is given, but survey number and extent of the property are not given. The Plaintiffs are claiming title to the suit property on the wrong particulars.

14.In Ex.A1, it is stated that 9வது மேலே வரிசையில் 57-ல் சொல்லிய பொலிக்கன் சந்திலிருக்கும் பேர்பாதி வீடு. The Plaintiffs have not proved what are the properties and what are the items allotted to Viswalinga Mudaliar and Somu Mudaliar, through oral and documentary evidence. It is the duty of the Plaintiffs to prove how they derived title with documents and oral evidence, with proper boundaries and proper extent of the suit property and with correct survey number. But, in this case, the Plaintiffs have miserably failed to prove it. The Plaintiff has stated that there are 16 documents with him, but to prove his contention, not even a single document was filed by him in the court.



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15.From the above discussions, the Plaintiffs have miserably failed to identify the property and to prove how he derived the title. In Ex.A1, extent and survey numbers are not given. No steps were taken by the Plaintiffs to identify the property. So, the lower court appreciated all the oral and documentary evidence and came to the correct conclusion and no interference is required by this Court in this Appeal Suit and hence, it is liable to be dismissed.

16.In fine, this Appeal Suit is dismissed. No costs.

10.03.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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A.A.NAKKIRAN, J.

Srcm

To

1. The Additional District Judge, Puducherry at Karaikal
2. The Record Keeper, VR Section, Madras High Court

Pre-Delivery Judgement in
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