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S.A.No.1124 of 19



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1124 of 1999

- 1.Dr.R.T.Sambandam (Died)
- 2.M.Nagalakshmi
- 3.Chandra
- 4.Anantha Selvi
- 5.Anitha
- 6.T.Velmurgan

... Appellants

[Appellant 3 to 6 brought on record as Lrs of the deceased 1st Appellant vide order of Court dated 04.07.2022 in C.M.P.No.3622/2022 in S.A.No.1124 of 1999]

Vs.

- 1.Janakiraman (Died)
- 2.Pandurangan (Died)
- 3.Prasath (Died)
- 4.Suriyanarayanan (Died)
- 5.Boopathy (Died)
- 6.Jeganathan
- 7.Vijaya Lakshmi
- 8.Padmini
- 9.Mrs. Lakshiprabha
- 10.J.Poornimvathi
- 11.J.Gayathri
- 12.P.Gowri
- 13.P.Hemlatha

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14.P.Venkataraman
15.Prabha
16.Mukunda (Minor)

... Respondents

[R.1, R.2, R.3 & R.4 died R.9. to R.11 and R.12 to R.14 are brought on record as Lrs of the deceased 1st and 3rd Respondent vide order of Court dated 14.09.2022 made in C.M.P.No.14450 to 14452 & 14453 to 14455 of 2018 respectively in SA.N.1124 of 1999.]

[R.14 died, R.12 & R.13 are Lrs of R.14.]

[R.5 died, R.15 & R.16 are Lrs of R.5. vide order of Court dated 09.07.2022 made in C.M.P.No.3626 of 2022 in SA.No.1124 of 1999.]

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree made in A.S.No.99 of 1998 on the file of the Additional Sub Court Myladuthurai, reversing the judgement and decree made in O.S.No.90 of 1988 on the file of the District Munsif at Myladuthurai.

For Appellants	:	Mr.Girish for Mr.Srinath Sridevan
For Respondent	:	Mr.A.Muthukumar [R.6 to R.8]
		R.1, R.3 & R.5 [Died, steps taken]
	:	R.2 & R.4, Died vide memo
		Sr.No.32121/18. [Steps not taken]
	:	R.9 to R.15 [Not ready in notice]
	:	R.16 [Minor] - To appoint Guardian.



JUDGMENT

S.A.No.1124 of 1999 has been filed by the defendants challenging the Judgment and Decree in A.S.No.99 of 1988 passed by the Additional Sub Judge, Myladuthurai reversing the judgment and decree passed in O.S.No.90 of 1988 by the District Munsif, Myladuthurai. For ease of understanding the parties in the above Second Appeal are referred to in the same ranking as before the Trial Court.

Reliefs claimed:-

2. The plaintiffs had filed the above-referred suit for the following reliefs:-

"(a) Directing the 1st defendant or defendants to surrender possession of the suit property to the plaintiffs.

(b) Directing the 1st defendant to pay the damages for use and occupation as claimed in the details of valuation.

(c) Directing the 1st defendant or the defendants to pay future profit for use and occupation till actual delivery of the suit property is given to the plaintiffs.

(d) To direct the defendants to pay the costs of this



suit.

(e) To grant such other and further reliefs which this

Hon'ble Court deems fit under the circumstances of the case."

Description of Suit Property:-

3. The property in question is an extent of 3 cents comprised in R.S.No.313/1 situate at Manalmedu Village, in Mayiladuthurai together with a thatched building about 25 feet east to west and about 55 feet north to south within the following boundaries :-

South	:	by Main Road
North	:	by Plaintiff's property
East	:	by Plaintiff's property
West	:	by Karim's building.

Facts narrated in the plaint:-

4. It is the case of the plaintiffs that the suit property belongs to the plaintiffs. The property in question is classified as a Natham house site and the same had been allotted to the deceased, 1st plaintiff in a family partition made on 15.08.1948 with his brothers and mother in and by which



the suit property was allotted to the share of the 1st plaintiff along with other properties. From the time of the partition, the 1st plaintiff has been in exclusive possession and enjoyment of the property. In and around the year 1972, the 1st plaintiff had put up a thatched building with brick walls in the suit property and the building was assessed as Door No.35 for which the plaintiff had been paying the tax to the Panchayat.

5. The 1st plaintiff and the 1st defendant were very close friends and the 1st plaintiff had orally leased the suit property to the 1st defendant in the year 1972 for running a clinic on a monthly rent of Rs.40/- for a period of one year. The 1st defendant was very regular in the payment of the rents till November 1986 and the plaintiff had also permitted him to obtain an Electricity Service Connection. The 1st plaintiff was also periodically changing the thatched roof of the building. The 1st plaintiff continues to be in possession of the properties around the suit property which is of an extent of 17 cents.

6. The 1st defendant neither paid the rent nor surrender possession as



promised by him, therefore the 1st plaintiff had addressed two letters to him vide letters dated 22.12.1986 and 12.01.1987. Though the said letters were received by the 1st defendant there was no reply to the same. After receiving the said letters and without replying to the same the 1st defendant with the active connivance of the 2nd defendant had obtained certain entries in the revenue records. This activity of the 1st defendant was protested by the 1st plaintiff and after the Panchayat had made inquiries these fraudulent entries were rectified in the revenue records. The 2nd defendant had nothing to do with the suit property and the entire thatched building was being used only as a clinic by the 1st defendant.

7. Thereafter, the 1st plaintiff had issued a legal notice dated 13.04.1987, directing the 1st defendant to quit and hand over possession of the property. The 1st defendant who received this notice sent a reply contending that the 2nd defendant, his sister has an interest in the suit property. Therefore, addressing the 2nd defendant, the plaintiff had once again issued a legal notice on 17.11.1987. Since the defendant had not only denied the title of the plaintiff to the property but had also set up a plea of



adverse possession, the plaintiff was constrained to file this suit for recovery of possession.

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8. The 1st plaintiff pending the suit had died and his legal representatives were impleaded as plaintiffs 2 to 10 in the said suit.

Written statement filed by the 1st defendant.:-

9. The 1st defendant would deny the contention of the plaintiff that the suit property is a Natham House site and contended that the same is a Natham Poramboke. He would also deny the contention that the plaintiff had put up the superstructure in the year 1982. The case of the defendant is that the suit property bears Door No.54/C1 and Door No.35. It is the contention of the 1st defendant that the suit property was a barren land initially and after the defendant had got permission from the then MLA and the President of the Panchayat Board he had put up the construction (Thatched shed). The 1st defendant would contend that from the year 1972, both the defendants are in possession of the property which is divided into two portions. In one portion the 1st defendant is running his clinic and it was opened to public on 17.04.1972 by the then President of the Panchayat



Board. The other portion is occupied by the 2nd defendant, his sister as her residence. Therefore, it is the contention of the 1st defendant that the suit property was not given on rent by the 1st plaintiff. On the contrary, it is the case of the 1st defendant that no rent was paid and the thatched shed was never replaced by the plaintiff and that it was only done by the defendants. He would admit that the 2nd defendant was not the resident of Mappadugai. The 1st defendant would submit that the plaintiff has no right, title or interest to the said property and the suit is filed only with an intent to grab possession of the property. After the amendment, the 1st defendant had filed an additional written statement which more or less contained the same contents. The 1st defendant would further submit that outgoings in respect of the suit property was being paid by him.

Trial Court:-

10. The Trial Court on considering the pleadings on either side had framed the following issues which when translated from the vernacular would reads as follows:-

1. Whether the suit property belongs to the



defendant ?

2. Whether the 1st defendant is a lessee under the plaintiff ?

3. Whether the defendants have prescribed title to the suit property by adverse possession ?

4. Whether the plaintiff is entitled to damages ?

5. To what other reliefs the plaintiff was entitled to ?

The additional issues that were raised were:-

1. Whether the plaintiffs have a right to the suit property ?

2. Whether the plaintiff is entitled to recovery of possession ?

11. Meanwhile, since the patta proceedings were also being parallelly contested, the plaintiffs had filed O.S.No.869 of 1995 for injunction restraining the defendants from putting up any constructions in the suit A schedule property till the disposal of the patta proceedings and to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the plaintiff's B schedule property. The two suits were tried

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together.

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12. The 6th plaintiff had examined himself as P.W.1 and one Kannayan as P.W.2. (The said Kannayan is the elder brother of the deceased 1st plaintiff). Ex.A.1 to Ex.A.79 were marked on the side of the plaintiffs. On the side of the defendants, the 1st defendant had examined himself as D.W.1, the 2nd defendant, M.Nagalakshmi as D.W.2, one Kaliaperumal as D.W.3, Thirumavalavan as D.W.4 and Kaliamoorthy as D.W.5. Ex.B.1 to Ex.B.23 were marked on the side of the defendants and apart from that the Advocate Commissioner's Report and plan were marked as Court Exhibits C.1 and C.2 respectively.

13. Ultimately, the learned Principal District Munsif had dismissed the suit O.S.No.90 of 1988 and decreed the suit O.S.No.869 of 1995 in respect of the B schedule property and dismissed the suit against the A schedule property.

Lower Appellate Court:-

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14. Challenging the judgment and decree in O.S.No.90 of 1988, the plaintiffs had filed A.S.No.99 of 1998 and challenging the judgment and decree in O.S.No.869 of 1995 in so far as it was against them the plaintiffs had filed A.S.No.98 of 1998 and the defendants had filed A.S.No.992 of 1991 against the portion of the judgment which had gone against them. The appeals were also tried together and by a common judgment and decree dated 07.04.1999, the learned Additional Sub Judge, Myladuthurai before whom the appeals were pending had allowed the appeal A.S.No.99 of 1998 filed challenging the judgment and decree in O.S.No.90 of 1988 and also A.S.No.98 of 1998 which was filed challenging that portion of the judgment in O.S.No.869 of 1995 which went against the plaintiffs and dismissed the appeal filed by the defendants challenging the judgment in O.S.No.869 of 1995 in so far as it had decreed the suit in respect of the B schedule property. Challenging the judgment and decree in A.S.No.99 of 1998, the present appeal namely the Second Appeal 1124 of 1999 has been filed. Challenging the judgment and decree in O.S.No.869 of 1995, pursuant to the judgment and decree in A.S.Nos.98 of 1998 and 992 of 1991, the defendants had filed Second Appeal 1806 of 1999. **It appears that Second Appeal 1806 of 1999 was dismissed by judgment dated 04.12.2009.**



High Court:-

15. The above Second Appeal has been admitted on the following substantial questions of law:-

“1. Whether the lower appellate Court can grant a decree for possession in the absence of any prayer for declaration of title when the title is in dispute?

2. Whether the plaintiff's suit can be decreed on the basis of self-serving documents of title, especially in the face of categorical findings of the Revenue Authorities that the assignment in respect of the property is with the defendant and also possession? “

16. Pending the appeal, the 1st appellant herein had passed away and his legal representatives were brought on record. Similarly, the 1st, 3rd and 5th respondents herein had passed away and their legal representatives were brought on record.



17. Heard the learned counsel on either side.

Discussion:-

18. From the judgments of the Courts below it is clear that the subject matter of the two appeals namely two suits namely AS.Nos.99 of 1998 (OS.No.90 of 1988) and A.S.Nos 98 of 1988 and 992 of 1991 (O.S.No.869 of 1995) relate to the same suit property and by a common judgment and decree dated 07.04.1999, the right of the plaintiffs to the suit property has been upheld and consequently, the injunction sought for by the plaintiff in the connected suit has also been decreed in respect of the entire property. As against which two Second Appeals had been filed. The connected Second Appeal 1806 of 1999 has been disposed of on merits confirming the right of the plaintiff to the suit property.

19. The issue which is now before this Court arises from out of the judgment in the suit for recovery of possession filed by the plaintiff. The plaintiff traces his title to the suit property to Ex.A.1, deed dated 12.08.1933 which is the document under which his mother had got the suit property exchanged in her name. Thereafter, the property has been partitioned between the plaintiff's mother his brother Kannaiya Naidu and himself in



which the suit property has been allotted both in the name of the plaintiff as well as his brother Kannaiya Naidu. The said Kannaiya Naidu has been allotted an extent of 7 cents in the middle and the plaintiff has been allotted 8 cents on the east and 2 cents on the west i.e; on either side of the portion allotted to his brother Kannaiya Naidu. It is in this 8 cents on the east that the 1st plaintiff had orally leased out 3 cents to the 1st defendant. The 1st defendant in his oral evidence had admitted the title of the 1st plaintiff to the property. The defendants have come forward with a contention that the suit properties are Natham Poramboke and would rely on Ex.B.22 and B.23. A perusal of the Ex.B.22 would clearly show that even as per the records the property in question is a Natham house site and not a Natham Poramboke as pleaded.

20. The lower Appellate Court had taken into consideration the fact that the 1st defendant who claimed to be in possession of the property since 1972 has not let in any evidence to show that he is paying any charges/taxes to the Revenue Authorities. Further, the 3 cents is situate in the middle of the property allotted to the 1st plaintiff and in all the lease agreements that had been entered into in respect of the adjoining properties, the 1st



defendant had himself signed as a witness which is evident from a perusal of Ex.A.66 to A.71. In fact, in Ex.A.71 the western boundary of that property has been shown as the 1st respondent's clinic. A perusal of Ex.A.71 would indicate that the property on the east has been described as a thatched building in which R.T.Sambandam (the 1st defendant) is running his Homeopathy Clinic. This lease deed is dated 01.09.1981. It is unconceivable as to how a small extent of 3 cents alone would be a Natham Poramboke when the other properties surrounding it are described as Natham house site. The defendants claimed their right to the property on the basis of permission said to have been given by the President of the Panchayat and the then local MLA which according to him is his document of title.

21. The lower Appellate Court had in detail examined the evidence threadbare to come to the conclusion that the suit property which is a Natham house site belongs to the plaintiffs. The defendants who pleaded an independent title have failed to prove their title to the property. That apart, since they have taken the plea of adverse possession there is presumption of the defendants having accepted the title of the plaintiffs to the suit property.



The failure to plead for declaration is not fatal to the case of the plaintiffs, since the defendants had admitted the title of the plaintiff to the suit property and the plaintiff by filing Ex.A.1 and Ex.A.2 established his title to the suit property.

22. In addition to the above factors the connected appeal has been dismissed and taking note of the fact that both the suits arise in respect of the same property and parties, this Second Appeal has to be dismissed and the Judgment and decree of the lower Appellate Court be confirmed. In fine, the Second Appeals is dismissed and the two substantial questions of law are answered in favour of the plaintiff. No costs. Consequently, the connected Miscellaneous Petition is closed, if any.

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Index : Yes/No
Internet : Yes/No
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To

- 1.The Additional Sub Court, Myladuthurai.
- 2.The District Munsif at Myladuthurai.



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P.T. ASHA, J,

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