



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2022

Pronounced on : 23.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 2181 of 2004

Rajagopalan (died)

2. R.Gopinathan

3. Kaladevi

4. S.Shanthi ... Plaintiffs/Appellants/Appellants

Vs.

Saminathan Chettiar @ Durairaj (died)

2. Banumathy (died)

3. Muruganandam

4. Kavitha

5. Maheswari

6. Saroja ... Defendants/Appellants/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil



Procedure Code, against the Judgment and Decree dated 08.10.2003 in A.S.No. 55 of 2000 on the file of the Sub Court, Tiruvarur, confirming the Judgment and decree dated 23.09.1998 in O.S.No. 335 of 1996 on the file of the District Munsif Court, Mannargudi.

For Appellants : Mr. D.Shivakumaran

For RR 3 to 6 : Mr. Srinath Sridevan

JUDGMENT

The plaintiff, Rajagopalan, in O.S. No. 335 of 1996 on the file of the District Munsif Court, Mannargudi was the appellant herein.

2. Pending the appeal, he died and his legal representatives had been brought on record as 2nd to 4th appellants.

3. The suit in O.S. No. 335 of 1996 had been filed by the plaintiff, Rajagopalan, terming himself as Joint Family Manager against N. Dorairaj @ Saminathan Chettiar and N. Govindaraju Chettiar @ Sait, seeking a declaration that the plaintiff was the owner of the suit schedule joint family property and a direction against the defendants to hand over



vacant possession and to pay past and future mesne profits for use and for costs of the suit.

4. By judgment dated 23.09.1998, the District Munsif, Mannargudi dismissed the suit.

5. Aggrieved by the said judgment, the plaintiff filed A.S. No. 55 of 2000 before the Sub Court, Thiruvarur. Pending the appeal suit, the 2nd defendant/2nd respondent died and his legal representatives had been brought on record as 3rd to 6th respondents.

6. By judgment dated 08.10.2003, the Sub Judge, Thiruvarur dismissed the appeal suit and confirmed the dismissal of O.S. No. 335 of 1996.

7. The plaintiff then filed the present second appeal. As stated, he died pending the appeal, and his legal representatives had been brought



on record as 2nd to 4th appellants. The 1st respondent/1st defendant also died and his legal representatives had been brought on record as 6th respondent. The 2nd respondent also died, but her legal representatives were already on record as 3rd to 5th respondents.

8. The second appeal had been admitted on the following substantial questions of law :

1. When there is no dispute about the identity of the suit property are the courts below correct in law, in inventing a case for the defendants, by raising a doubt about the identity of the suit property, to decline the grant of decree for declaration and possession ?

2. When the admissions made by the DW1 & DW2 in their evidence, regarding Exs. A11 & A12 clearly establish the genuineness of Ez.A11 and consequently the existence of the landlord and tenant relationship relating between the appellant and respondents, are the courts below correct in accepting the plea of adverse possession set up by the defendant ?



3. When the defendants categorically deny the plaintiff's title to the suit property and set up title in themselves without any documentary proof of ownership and title, are the courts below correct in law in holding that the defendants have a title that by adverse possession ?

4. Can the plea of adverse possession by the defendants be accepted in law when they deny the title of the plaintiff and when the defendants fail to prove hostility of their possession of the suit property as against the plaintiff over and beyond the statutory period ?

O.S. No. 335 of 1996 (District Munsif Court, Mannargudi) :

9. The suit in O.S. No. 335 of 1996 had been filed claiming that the suit property, a tiled house bearing door No. 67 at Koaraiyar Palakarai Street, Needamangalam, Nagapattinam, belonged to the joint family consisting of the plaintiff and his brothers and that the defendants, who were neighbours, and also agnates, had to sell their family property in 1955 and thereafter occupied the suit property on a monthly rent of R.20/-. The rent was periodically enhanced. It was claimed that in 1987, the brother of the plaintiff demanded the defendants to vacate and that



the defendants did agree, on receiving Rs.5,000/-. However, the defendants did not actually vacate the premises, necessitating filing of R.C.O.P. No. 48 of 1988, before the Rent Controller, Mannargudi, which was dismissed holding there was no landlord-tenant relationship. It was stated that the claim of the defendants that they had perfected title by adverse possession is untenable. It was under these circumstances that the suit was filed for declaration of title, seeking vacant possession and mesne profits for use and occupation and for costs of the suit.

10. In their written statement, the defendants denied the averments that they came into possession of the suit property in 1955 on selling their family property. They denied that they had agreed to vacate, when demanded in 1987. They denied the undertaking said to have been given. They claimed that they have been in occupation forever, and further claimed that they had denied the title of the brother of the plaintiff in a reply to a notice issued in 1976. They claimed that the Rent Controller found there was no landlord-tenant relationship. They claimed to have perfected title by adverse possession for well over the statutory period, hostile to the plaintiff. They claimed that the suit should be dismissed.



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11. The District Munsif, Mannargudi framed the following issues for trial :

“1. Whether the plaintiff was entitled for the relief of declaration of title ?

2. Whether the plaintiff was entitled for recovery of possession ?

3. To what other relief is the plaintiff entitled to ?

12. During trial, the power of attorney of the plaintiff was examined as P.W.1. Two further witnesses were examined as P.W.2 and P.W.3. The 1st and 2nd defendants examined themselves as D.W.1 and D.W.2. They also examined one further witness as D.W.3.

13. The plaintiffs had marked Exs. A1 to A26. Exs. A1 to A3 were claimed to be the title deeds of the suit property. Exs. A6 and A9 were the notice and reply exchanged in 1976. Ex. A11 was said to be the undertaking given in 1987 by the defendants to vacate the suit property. Exs. A14 and A5 were again notices exchanged in 1988. Ex. A16 was the



order in R.C.O.P. No. 48 of 1988. Exs. A17 to A24 were house tax receipts.

14. The defendants marked Exs. B1 to B27. Exs. B3 and B7 to B23 were tax receipts for business and Exs. B24 to B27 were license receipts.

15. In his discussion, the District Munsif found that the schedule given in Exs. A1 to A3 did not correlate with the suit property as described in the schedule to the plaint. The door number was not given in those documents. It was also observed that in both the replies given to the two notices issued in 1976 and in 1988, the defendants had denied the title of the plaintiff, and had claimed perfection of title by adverse possession. It was also found that the order of the Rent Controller was to the disadvantage of the plaintiff. It was also specifically held that there was a variance in the signature in Ex. A11 and the District Munsif refused to accept Ex. A11 as a genuine document. Holding the issues against the plaintiff, the suit was dismissed.



A.S. No. 55 of 2000 (Sub Court, Thiruvarur) :

16. The plaintiff then filed the above appeal suit. The Sub Judge, on re-appreciation of the evidence on record, concurred with the findings on facts as held by the District Munsif. The Sub Judge also observed that the defendants had consistently denied the title of the plaintiff, and had also claimed title by adverse possession. It was also held that the description of the suit property did not correlate with the documents filed by the plaintiff. It was also held that the documents filed by the defendants reflected continuous possession, and it was held that such possession was hostile to the interest of the plaintiff. The finding on Ex. A11 was also confirmed. In the result, the appeal suit was dismissed.

S.A. No. 2181 of 2014 :

17. The plaintiff then filed the present second appeal.



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18. Heard arguments advanced by Mr. D. Shivakumaran, learned Counsel for the appellants and Mr. Srinath Sridevan, learned Counsel for the respondents. Written arguments were also filed by both sides.

19. The parties shall be referred as plaintiff and defendants. The legal representatives of the plaintiff are the appellants. The legal representatives of the defendants are the respondents.

20. The 1st substantial question of law is with respect to the finding on the identity of the suit property and whether the District Munsif and the Sub Judge had over reached themselves into entering in a discussion doubting the identity of the property as stated in the plaint *vis-à-vis* Exs. A1 to A3.

21. It must be stated that in a suit for declaration of title, it is imperative that the plaintiff comes to court with the correct description of the property and further produces documents to establish title to that property. Both the courts below found that in Exs. A1 to A3, the door



number had not been given to correlate the schedule of the property given in the documents with the property for which declaration was sought.

22. In *Union of India (UOI) and ors. vs Vasavi Co-op. Housing Society Ltd., and Ors.*, (2014 2 SCC 269 : AIR 2014 SC 937, the Hon'ble Supreme Court held as follows :

*“14. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in **Maaran Mar Basselios Catholicos vs Thukalan Paulo Avira** reported in **MANU/SC/0181/1958 : AIR 1959 AC 31** observed that “in a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title.” In **Nagar Palika, Jind vs Jagat Singh, Advocate**, **MANU/SC/0260/1995 : (1995) 3 SCC 426**, this Court held as under :*

“The onus to prove title to the property in question was on the Plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a



*finding on the claim of title to the suit land made on behalf of the Plaintiff. **The court is bound to enquire or investigate that question first before going into any other question that may arise.***”

*“15. The legal position, therefore is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. **We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff’s own title, Plaintiff must be non-suited.**”*

(Emphasis Supplied)

23. It is thus seen that the burden is always on the plaintiff to prove title over the suit schedule property by **adducing sufficient evidence**. Evidence produced in the instant case has been held to be insufficient. I therefore hold that both the District Munsif and the Sub Judge were correct in examining **that question first before going into**



any other question that may arise. The 1st substantial question of law is answered to the disadvantage of the plaintiff.

24. The 2nd, 3rd and 4th substantial questions hover around the claim of the defendants to have perfected title by adverse possession.

25. Concurrent findings affirming that claim have been returned by both the District Munsif and the Sub Judge. Even according to the plaintiff, the defendants have been in possession from 1955. The defendants, in their replies in Exs. A9 and A15 had denied and disputed the title of the plaintiff. They claimed to have been in possession openly and hostile to the plaintiff. They claimed that they had perfected their title by adverse possession. They claimed that they were owners of the suit property. The Rent Controller, in his order, Ex. A6, in R.C.O.P. No. 48 of 1988 also clearly observed that the defendants claimed title and that there was no landlord-tenant relationship and had dismissed the said petition. The plaintiff did not file any appeal questioning that finding. Both the Courts have also returned an adverse finding with respect to genuinity of



Ex. A.11. Thus concurrent findings on the facts presented as evidence, overwhelmingly prove that the plaintiff had not only proved title, but that the defendants have been in possession hostile to the interest of the plaintiff for well over the statutory period, and have thus perfected title.

26. In *Karnataka Board of Wakf v. Union of India* (2004) 10

SCC 779, it was held in para 785 as follows :

“11. ... Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.”

(Emphasis Supplied)

27. In the instant case, both the District Munsif and the Sub Judge had found as a fact that the defendants had perfected their title by adverse possession. They have admittedly been in possession from 1955 onwards,



openly and hostile to the interest of the plaintiff.

28. In *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan*, (1999) 6 SCC 343, it was held as follows by the Hon'ble Supreme Court :

“12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

*“13. In **Ramanuja Naidu v. V. Kanniah Naidu** [(1996) 3 SCC 392] this Court held:*

“It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High



Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.”

“14. In *Navaneethammal v. Arjuna Chetty* [(1996) 6 SCC 166] this Court held:

“Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.”

“15. And again in *Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N.* [(1997) 4 SCC 484] this Court held:



“The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible.”

29. It is thus seen that it would be extremely imprudent on the part of this Court to differ with the concurrent findings of fact, which have not been proved to be either perverse or based on no evidence. As held by the Hon’ble Supreme Court, ***“even assuming that another view is possible on a reappraisal of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.”***

30. I would therefore answer the 2nd to 4th substantial questions of law Ex. A11 had been rejected correctly, that the Courts below were correct in holding that the defendants have perfected title by adverse possession, which possession was hostile and beyond the statutory period.

31. In the result, the only conclusion that could be reached in this



second appeal is that it has to suffer an order of dismissal.

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32. In the result :

1. The second appeal is dismissed with costs.

2. The judgment and decree dated 23.09.1998 in O.S. No. 335 of 1996 (District Munsif Court, Mannargudi) and dated 08.10.2003 in A.S. No. 55 of 2000 (Sub Court, Thiruvarur) are both confirmed and upheld.

3. Connected Miscellaneous Petition, if any is closed.

23.08.2022

Index :Yes/No

Internet:Yes/No

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To

1. District Munsif Court, Mannargudi.

2. Sub Court, Tiruvarur.

C.V.KARTHIKEYAN, J.

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**Pre-Delivery Judgment made in
S.A.No. 2181 of 2004**

23.08.2022