



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.01.2022

PRONOUNCED ON : 02.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.249 of 2010

Sakkubai (deceased)

1.K.Anbalagan

2.K.Natarajan

3.Kavitha

4.K.Karunanithi

... 1 to 4 Appellants /Legal heirs  
of the deceased Sakkubai

[Cause title accepted vide order dated 03.01.2006 made in  
C.M.P.No.18182 of 2005 in S.A SR No.88767 of 2003]

versus

Rajakumari

... Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 19.01.2000 made in A.S.No.198 of 1993 on the file of the learned Subordinate Judge, Ariyalur, reversing the judgment and decree dated 23.12.1992 made in O.S.No.233 of 1990 on the file of the learned District Munsif, Jayankondam.

For Appellants : Mr.C.Vediappan  
for Mr.S.Mani

For Respondent : No Appearance

J U D G M E N T

This Second Appeal is focused as against the judgment and decree dated 19.01.2000 passed in A.S.No.198 of 1993 by the learned Subordinate Judge, Ariyalur, reversing the judgment and decree dated 23.12.1992 in O.S.No.233 of 1990 passed by the learned District Munsif, Jayankondam.

2.The suit is for declaration, declaring that the plaintiff is the absolute owner of the suit schedule property and for



permanent injunction, restraining the defendants in interfering with the plaintiff's peaceful possession of the suit property.

3. For the sake of convenience, hereinafter the parties are referred to, as per their litigative status before the trial Court.

4. The laconic averments made in the plaint, are as follows:

[i] The suit schedule property measuring an extent of 0.04½ cents is a portion of the land situated on the eastern side of 76 cents comprised in Survey No.309/7 originally belongs to one Samy Naidu. He purchased the said property in the year 1957 from one Mottaiah Padayachi. Afterwards, on 15.04.1978, he sold out the said property to the plaintiff. Ever since from the date of purchase, the plaintiff is in the possession and enjoyment of the suit schedule property. For the suit schedule property, patta in Serial No.276 stands in the name of the plaintiff's husband. On the eastern side of plaintiff's property, the defendants are having the land in Survey No.309/9.

[ii] Originally, the land owned by the plaintiff is in the form of 2 feet height than the defendants' land. In between the plaintiff and the defendants land, number of country trees are existed. Those trees are maintained by the plaintiff. Now, the defendants are attempted to encroach the property owned by the plaintiff. On 15.07.1990, the defendants cut down the trees found in the border line.

[iii] The property measuring an extent of 0.04½ cents was marked in the plaint plan as EBCF. The entire land owned by the plaintiff was shown as ABCD. Now, the defendants cut down the trees found in BC area. In respect to the suit property, the defendants perfected the title by adverse possession also. Hence, it would be necessary to declare that the plaintiff is the absolute owner of the suit schedule property and also it is necessary to restrain the defendants in interfering with the plaintiff's peaceful possession. Hence, the suit.

5. The case of the first defendant, as averred in the written statement, is as follows:

[i] The EBCF portion shown in the plaint plan and the adjoining land situated on the eastern side, measuring an extent of 1 acre 36 cents belongs to this defendant. In the year 1966 itself, the first defendant and his brothers sold out the same to the second defendant. The first defendant is not a necessary



party for the present suit. The plaintiff is liable to pay the compensatory costs to the first defendant.

6.The case of the second defendant, as averred in the written statement, is as follows:

[i] On 08.05.1966, the property measuring an extent of 1 acre 36 cents in Survey No.309/9 has been purchased by this defendant from the first defendant and his brothers. Ever since from the date of purchase, this defendant is in the possession and enjoyment of Survey No.309/9. There is no fence in the portion shown as BC in the plaint plan. In order to avoid the damages, the boundary has been raised to the tune of 2 feet. The said arrangement was made before the date on which the plaintiff has purchased her land.

[ii] The country trees found in the boundary line belongs to the second defendant. After due measurement, the Surveyor informed the plaintiff that the suit schedule property is not belongs to him. There is no necessity for this defendant in cutting down the trees found in the boundary. EF land is the boundary line, which separated the property owned by the plaintiff and the defendants. Now, the plaintiff has filed the present suit with false claim. Hence, the suit filed by the plaintiff is liable to be dismissed.

7.From the above averments, the learned District Munsif, Jayankondam, framed necessary issues and tried the suit. On the side of the plaintiff, P.W.1 and P.W.2 were examined and marked 5 exhibits as Ex.A.1 to Ex.A.5. Similarly, on the side of the defendant, D.W.1 was examined and marked 4 exhibits as Ex.B.1 to Ex.B.4. Apart from those documents, the report and plan submitted by the learned Advocate Commissioner dated 18.09.1990 were marked as Ex.C.1 and Ex.C.2.

8.Having considered the materials placed before him, the learned District Munsif, Jayankondam, by judgment and decree dated 23.12.1992, came to the conclusion that the plaintiff is entitled to the relief of declaration and injunction in respect to 76 cents comprised in Survey No.309/7, in respect to other prayer, the suit was dismissed. In the appeal preferred by the plaintiff in A.S.No.198 of 1993, the learned Subordinate Judge, Ariyalur, partly allowed the appeal and granted the relief of declaration and injunction.

9.Feeing aggrieved over the findings arrived at by the lower appellate Court, the appellants / defendants, are before this Court with the present Second Appeal. The Second Appeal was



admitted on file, after formulating the following substantial question of law;

"Whether the respondent has prescribed title by adverse possession ?"

WEB COPY

10. Heard Mr.C.Vediappan, learned counsel for Mr.S.Mani appearing for the appellants and also perused the materials available on record.

11. On 22.12.2021, when this Appeal was taken up for hearing, due to the reason that the respondent has not appeared and entered appearance for the past 10 years, this Court directed to issue notice to her. On receipt of the said notice, the respondent has not entered appearance. Hence, this Court directed the Registry to print the name of the respondent in the cause list and then only, heard the arguments of the learned counsel for the appellants. In otherwise, the respondent's side arguments, is suo motu closed.

12. Now, on considering the submission made by the learned counsel for the appellants with the relevant records, it is not in dispute that the property measuring an extent of 76 cents in Survey No.309/7 of Endal Village, is the absolute property of the plaintiff. It is also not in dispute that the property measuring an extent of 1 acre 36 cents in Survey No.309/9, is the absolute property of the defendants, also Survey No.309/9 was situated on the east of Survey No.309/7.

13. Here is the case, both parties admitted that there was a ridge from North to South in between the lands belongs to the plaintiff and the defendants. In the ridge, number of country trees are existed. It is also admitted on either side that the land in Survey No.309/7 owned by the plaintiff is the elevated land than the land owned by the defendants.

14. It is the case of the plaintiff that he perfected the title over the property marked as EBCF in the plaint plan. On the other hand, the same was denied by the defendants. In this occasion, the trial Court after concluding the suit, granted the relief of declaration and injunction only in respect to 76 cents, which has been purchased by the plaintiff vide Ex.A.2 Sale Deed dated 15.04.1978. The First Appellate Court in the appeal preferred by the plaintiff held that the plaintiff is perfected the title over the suit EBCF portion and thereby, she is entitled the relief of declaration for the said area also.



(i) the date of possession,  
(ii) the possession was known to the public,  
(iii) the nature of the possession,  
(iv) the continuity of the possession,  
(v) the portion of the possession."

18. Secondly, either in the evidence given by the plaintiff or in the document relied on by her, she has not stated about the date on which she occupied the suit EBCF portion. In her cross examination, she specifically gave evidence as from the date of purchase onwards i.e. 15.04.1978, there was a problem between herself and the defendants. Further, she gave evidence as in the ridge she only sowed the seeds and raised the trees. Though she has stated as above, in her cross examination she admitted that the trees found in the ridge is having the age of 25 years. So the said evidence given by the plaintiff would go to show that she claimed the EBCF portion as her own property. More than that, in order to show her possession, she has not produced the copy of Adangal, which is document to show the



possession. Accordingly, the possession and continuity of possession also not proved by the plaintiff.

19. More than that, she has not stated the duration of her hostile possession. Therefore, in the absence of any necessary ingredients for proving the adverse possession, claiming EBCF property as she entitled to the same, is not sustainable. In this occasion, it is the specific evidence given by the first defendant as D.W.1 that the property owned by him was situated in the low lying area. The said evidence is sufficient to accept the case of the defendants that they have not claimed over the suit EBCF portion. Therefore, in the absence of any evidence in respect to the owner of EBCF property, it cannot be said that the plaintiff has proved her case. The lower Appellate Court, without considering the same approved the case of the plaintiff and granted a decree for EBCF portion.

20. In fact, the Courts below, without understanding the real issue having by the plaintiff and the defendants confused over the facts of the case and awarded a decree as above.

21. As rightly pointed out by the learned counsel for the appellants that, without seeing the necessary ingredients required for proving the adverse possession, the first Appellate Court granted a decree, which is erroneous one. Being the reason that the plaintiff has purchased the property to an extent of 76 cents, she is entitled to the relief of declaration and injunction only in respect to those property. In otherwise, it is open to her to file a fresh suit for demarcation. Accordingly, the substantial question of law, is answered as above.

22. In fine, this Second Appeal is allowed. The judgment and decree rendered by the trial Court, is restored. However, there is no order as to costs.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR sri

To

1. The Subordinate Judge,  
Ariyalur.



2.The District Munsif,  
Jayankondam.

Copy to

The Section Officer,  
VR Section,  
High Court, Madras.

+1cc to M/s.C.S.Associates, Advocates Sr.6539

S.A. No.249 of 2010

mg[co]  
srg 22/03/2022