



S.A.No.116 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 07.03.2022

PRONOUNCING ORDERS ON : 09.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.116 of 2012
and M.P.No.1 of 2012

Mrs.Shenbagavalli

..Plaintiff/1st Respondent/Appellant

..Vs..

1.Mr.Nagooran
Respondent

..1st Defendant/1st Appellant/1st

2.The Sub Registrar
No.02, Sub Registrar Office
Thiruppapuliya
Cuddalore.
respondent

..2nd Defendant/2nd respondent/2nd

Prayer: Second Appeal filed Under Section 100 r/w Order 42, Rule 1 of C.P.C., as against the decree and judgment dated 27.09.2011 in A.S.No.95 of 2010 on the file of the 1st Additional Subordinate Judge, Cuddalore reversing and setting aside the findings rendered in the Decree and judgment dated



S.A.No.116 of 2012

06.10.2010 in OS.No.377 of 2010, on the file of the Principal District Munsif,
Cuddalore.

For Appellant : Mr.D.Muthukumar

For Respondents : Mr.A.Palaniappan
for R1

Government Advocate
Mrs.Inthumathi
for R2

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2. The case of the plaintiff is that the suit property originally belonged to one Annamalai, the father of the 1st defendant. The mother in law of the plaintiff filed a suit against Annamalai in O.S. No. 1226 of 1978 for recovery of money under a promissory note. The suit was decreed and the amount was not paid by the said Annamalai as per the decree. Hence, E.P. No. 219 of 1986 was filed for execution of the decree. The suit property was attached and it was sold in a public auction held on 15.12.1986 and it was purchased by the plaintiff. The judgment debtor moved an application to set aside the auction sale and it was also dismissed. Thereafter, sale confirmation certificate was issued in favour of the plaintiff. Thereafter, the plaintiff filed an application in



S.A.No.116 of 2012

E.A. No. 1818 of 1987 for delivery of possession and the Amin took possession of the property and delivery was effected on 5.11.1987. To substantiate all these proceedings, Exhibits A1 to A7 were marked.

3.The further case of the plaintiff is that the 1st defendant who is the son of Annamalai attempted to interfere with the possession and enjoyment of the property by taking advantage of the patta standing in the name of his father. The plaintiff therefore filed a suit seeking for the relief of declaration of title to the suit property and for permanent injunction restraining the 1st defendant from interfering with the possession and enjoyment of the suit property. The suit property is a vacant land measuring an extent of 1.21 cents.

4.The 1st defendant filed a written statement. The case of the 1st defendant is that the suit property was never in possession and enjoyment of the plaintiff. The further case of the 1st defendant is that his father Annamalai executed a Settlement Deed in his favour on 6.4.1983 (Ex.B1) and the possession was also handed over to the 1st defendant. The revenue records were also transferred in the name of the 1st defendant. The 1st defendant also



S.A.No.116 of 2012

raised an alternative defence of adverse possession on the ground that he is in continuous possession and enjoyment from the year 1983 onwards and thereby, he has a prescriptive title over the suit property. The 1st defendant has therefore sought for the dismissal of the suit.

5.The Trial Court on considering the facts and circumstances of the case and the oral and documentary evidence, held that the plaintiff has proved her case and decreed the suit as prayed for. Aggrieved by the same, the 1st defendant filed an appeal in A.S. No. 95 of 2010 before the Additional Sub-Court No.1, Cuddalore and the Appellate Court by a Judgment and Decree dated 27.9.2011 allowed the appeal and set aside the Judgment and Decree of the Trial Court. Aggrieved by the same, the plaintiff has filed the Second Appeal before this Court.

6. The Second Appeal was admitted and the following substantial questions of law were framed:

a)Whether the lower Appellate Court went wrong in disregarding the delivery of possession that was recorded in the



S.A.No.116 of 2012

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earlier proceedings after the completion of the court auction sale and whether it is contrary to the presumption as provided under Section 114(e) of the Indian Evidence Act, 1872?

b)Whether the lower Appellate Court was right in rejecting the evidence tendered by the Court staff to substantiate the delivery of possession effected during the execution proceedings and thereby disregarded the presumption under Section 114(e) of the Indian Evidence Act, 1872 that was substantiated through the evidence of PW4?

c)Whether the lower Appellate Court had given proper reasons while reversing the judgment of the trial Court as mandated under Order 41 Rule 31 of C.P.C.?

d)) Whether the findings of the lower Appellate Court can be termed as perverse due to improper appreciation of the oral and documentary evidence that was available on record?

7. Heard Mr.D.Muthukumar, learned counsel for the appellant, Mr.A.Palaniappan, learned counsel for the 1st respondent and Mrs.Inthumathi, learned Government Advocate for the 2nd respondent. This Court also carefully perused the materials available on record and the findings of both the Courts below.

8.It is an admitted case that the suit property originally belonged to the



S.A.No.116 of 2012

WEB COPY

father of the 1st defendant. It is also admitted that he suffered a decree and the suit property was brought for sale in execution of the decree. The plaintiff is claiming right and title over the property by virtue of the sale certificate executed in her favour and the delivery that was effected by the Court Amin as could be seen from Ex.A7. The 1st defendant is claiming his right through a Settlement Deed executed by Annamalai through Ex.B1 on 6.4.1983. The 1st defendant is claiming to be in possession and enjoyment of property on the basis of the patta transferred in his name for the suit property in the year 2002 and other documents relied upon him to prove his possession.

9.The Trial Court placed heavy reliance upon the delivery certificate through which the Court Amin effected delivery and was recorded by the Execution Court. The Trial Court also took into consideration the fact that the father of the 1st defendant challenged the sale in E.A.No.277 of 1987 and the same was also dismissed by the Execution Court. The Trial Court placed reliance upon Section 114 of the Indian Evidence Act, 1872 and held that all judicial and official acts shall have to be presumed to have been rightly and regularly done. While considering the plea of adverse possession, the Trial



S.A.No.116 of 2012

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Court held that the 1st defendant was claiming ownership over the property and therefore, he cannot raise the plea of adverse possession.

10. The Lower Appellate Court took into consideration the oral evidence of PW1 and PW2 and came to a conclusion that the suit property was never taken possession by the plaintiff. The Lower Appellate Court also took into consideration the evidence of the Court Amin examined as PW4 and came to a conclusion that the property was not taken possession in the presence of the Village Administrative Officer or Thalayari and only a paper delivery was effected. The Lower Appellate Court also took into consideration the fact that the plaintiff did not file any documents to prove her possession over the suit property. Accordingly, the appeal was allowed.

11. This Court will now take up the third substantial question of law for consideration. When the Appellate Court reverses the findings of the Trial Court, a duty has been cast on the Appellate Court to spell out the reason and discuss the point as to why it is disagreeing with the findings of the Trial Court. This is a mandate that is imposed on the Appellate Court under Order XLI Rule 31 of C.P.C. The law on this issue is well settled and useful reference



S.A.No.116 of 2012

can be made to the latest judgment of the Hon'ble Supreme Court in **K. Karupparaj v. M. Ganesan** reported in **2022 1 CTC 674**.

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12.A careful reading of the judgment of the Lower Appellate Court shows that not even in a single place, the Lower Appellate Court has discussed the findings of the Trial Court and stated as to why it is disagreeing with the findings of the Trial Court. Therefore, the judgment and decree of the Lower Appellate Court is liable to be interfered on this ground alone. The third substantial question of law is answered accordingly.

13.This Court will now take up the 1st and 2nd substantial questions of law for consideration. In the present case, the suit property was attached and it was brought for auction sale and the sale certificate was issued in favour of the plaintiff. Therefore, the plaintiff is claiming title over the suit property by virtue of the sale certificate. Insofar as the possession of the property is concerned, the property is more or less a vacant property. Even according to the 1st defendant, there is one cashew tree and a cemetery in the suit property. An attempt was made by the father of the 1st defendant to set aside the sale by filing E.A.No. 277 of 1987 and this application was dismissed. Subsequently, a



S.A.No.116 of 2012

WEB COPY

Court Amin was appointed and he effected delivery on 5.11.1987 and it was also recorded by the concerned Execution Court. If really the 1st defendant was in possession and enjoyment of the suit property, he should have objected to the delivery of possession at the appropriate time by filing an application under Order XXI Rule 35 of C.P.C. Admittedly, this has not been done by the 1st defendant.

14.It is under these circumstances, Section 114 Illustration (e) of the Indian Evidence Act, 1872 gains a lot of significance. The rule embodied in this illustration simply means that all judicial and official acts are presumed to have been rightly and regularly done. There is a general disposition in the Court of justice to uphold official, judicial and other acts, rather than to render them inoperative. The presumption is founded in the principle that the officer entrusted with an official duty must be presumed to have discharged his duties in a proper and definite manner. In the present case, the evidence of the Court Amin who was examined as PW4 shows that the delivery was effected in a proper manner. This witness specifically states that he also obtained signature at the time of taking possession from the village Thalayari and this receipt was also filed before the Execution Court. The same was taken on file by the



S.A.No.116 of 2012

Execution Court and the delivery was recorded. Thus, the official act of the Court Amin has been proved to have been done and it should be presumed that it was regularly done.

15. In the present case, the 1st defendant wants to rebut this presumption by virtue of the settlement deed executed in his favour by his father (judgment debtor) and the revenue records mutated in his name. Once the judgment debtor has lost title over the property and the auction sale has become final and the delivery has also been recorded by the Execution Court, the materials relied upon by the 1st defendant pales into insignificance. This issue has been properly dealt with by the Trial Court and unfortunately, the Lower Appellate Court did not even discuss the scope of Section 114 of the Evidence Act, 1872. The findings of the Lower Appellate Court is liable to be interfered on this ground also. The 1st and 2nd substantial questions of law are answered accordingly.

16. The 1st defendant has raised yet another plea of adverse possession. This plea is totally unsustainable. The 1st defendant cannot be allowed to take this plea once he starts claiming an exclusive ownership over the suit property.



S.A.No.116 of 2012

This issue has been properly considered by the Trial Court. In the present case, the possession has to follow title considering the nature of the suit property and this Court has already held that the title to the suit property vests with the plaintiff by virtue of the sale certificate issued by a Competent Court. Therefore, the possession of the plaintiff will also go along with her title. The findings of the Lower Appellate Court is found to be perverse and it is not in line with the evidence available on record. The 4th substantial question of law is answered accordingly.

17.The learned counsel for the 1st defendant relied upon the following judgments to substantiate his submissions:

- a) *Nazir Mohamed Vs. J. Kamala and Others* reported in 2020 (6) CTC 320 (SC).
- b) *K. Ramalingam and others v. K.N. Krishna Reddi and another* reported in AIR 1974 MADRAS 325.
- c) *Balakrishnan v. MalaiyandiKonar* reported in AIR 2006 SC 1458.
- d) *A. Gnanambal Vs. Periyasamy* reported in 2010 (6) CTC 117.

In the considered view of this Court, none of these judgments will apply to the facts of the present case and it does not in anyway help the case of the 1st defendant.

18.In the result, all the substantial questions of law are held against the



S.A.No.116 of 2012

1st respondent/1st defendant and the judgment and decree of the Lower
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Appellate Court warrants the interference of this Court. In view of the same, the Judgment and Decree of the Appellate Court is hereby set aside and the Judgement and Decree of the Trial Court is restored and the suit is decreed as prayed for in favour of the plaintiff/ appellant.

19. Accordingly, the Second Appeal is allowed. Considering the facts and circumstances of the case, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

09.03.2022

Internet: Yes

Index: Yes

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S.A.No.116 of 2012

To

1. 1st Additional Subordinate Judge, Cuddalore.
2. Principal District Munsif, Cuddalore.
3. The Section Officer
V.R.Section, High Court, Madras.

N.ANAND VENKATESH,J.
KP



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S.A.No.116 of 2012

Pre-Delivery Judgment in
Second Appeal No.116 of 2012

09.03.2022

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