



S.A. No. 699 of 2013

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 699 of 2013

and

M.P. No.1 of 2013

1. The District Collector,
Office of the District Collector,
Nagapattinam having his
Office at Nagapattinam Town, Taluk and Munsifi.
2. The Tahsildar,
Taluk Office,
Nagapattinam having his Officer at
Nagapattinam Town, Taluk and Munsifi.
3. The Executive Officer,
Thittacherry Town Panchayat,
Having his Office at Thittacherry Post,
Nagapattinam Taluk and Munsifi.

... Appellants

Vs.

1. Pakkiriammal,
W/o. Viswanathan.



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2. Sahul Hameedu,
S/o. Abdul Jabar.

3. Hasantheen
S/o. Abdul Rasheedu.

4. Ansari,
S/o. Sheik Alautheen.

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 04.03.2011 made in A.S.No.23 of 2010 on the file of Court of the Subordinate Judge, Nagapattinam, confirming the Judgment and Decree dated 20.08.2009 made in O.S.No.222 of 2005, on the file of leaned District Munsif's Court, Nagapattinam.

For Appellants : Dr.S.Suriya
Additional Government Pleader

For Respondents : No appearance

JUDGMENT

The appellants herein are the defendants in the suit in O.S.No.222 of 2005 on the file of the District Munsif Court, Nagapattinam filed by



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the 1st plaintiff for the relief of declaration to declare the decree passed in O.S.No.494 of 2000 is fraudulent and invalid under law and also praying for a relief of permanent injunction for an extent of 0.02 ½ cents with house bearing Door No.10C in Survey No.15/8 of Pachanthoppu, Thittacheri Village, Nagapattinam.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The defendants 1 to 3 are the Collector and Revenue Officials contested the case stating that the 1st plaintiff is not having any title over the suit property and the decree obtained in O.S.No.494 of 2000 is also contested by these defendants. Moreover, the suit property belongs to one viz., Sheik Alautheen who executed an Inam Sasanam in favour of Thittacherry Special Panchayat for the purpose of laying a tar road for the welfare of the public. As per the gift deed, the Panchayat is the absolute owner of the suit property, thereby denied the 1st plaintiff's title. The fourth and fifth defendants, who are individuals filed their written



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statements stating that there exist a Village Kacha Road annexing two villages Thittacherry and Kattumangudi and a land belongs to one viz., Sheik Alautheen, who was the then Panchayat President, gifted 24 cents of land through the registered document for the purpose of laying road for the public. In the meanwhile, like 1st plaintiff, others trespassed into the suit property and put up a hut in between the mud road and the Village canal, thereby causing hindrance. Hence, the suit in O.S.No.494 of 2000 was filed to remove the encroachment and the said suit was decreed as prayed for and the 1st plaintiff was also bounded by the said decree as one of the encroachers, thereby denied the 1st plaintiff's claim.

4. Before the trial court, issues were framed and both parties adduced evidence and documents also marked. Considering all the evidence and documents, the trial judge held that the 1st plaintiff has not proved her title over the property, but at the time of filing of the suit, she was in possession of the property and in the decree passed in O.S.No.494 of 2000, the 1st plaintiff is not a party to the proceedings. Hence the said decree did not bind the 1st plaintiff. However, in respect of her possession



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in the property, relief of permanent injunction was granted and in respect of the declaration of title over the property was dismissed.

5. Challenging the said findings, the defendants 1 to 3 and 4 and 5 have separately filed two appeals in A.S.Nos.23 of 2010 and 54 of 2010 on the file of Subordinate Judge, Nagapattinam. The learned appellate Judge had independently analyzed all the facts and evidences and finally held that the suit in O.S.No.494 of 2000, the 1st plaintiff is not a party to the proceeding and the said suit also not filed by the 1st plaintiff in the representative capacity. So, the relief of declaration in respect of the decree passed in O.S.No.494 of 2000 is not granted in favour of the 1st plaintiff. But, in respect of relief of permanent injunction, the lower appellate Judge held that the 1st plaintiff is inconsistent to the plea with regard to title over the property by way of adverse possession and as per the provisions of Kuduyiruppu (Conferment of Ownership) Act 1971. So, the learned appellate Judge did not accept her title in respect of the property. But, on considering the documents like House tax receipt on the date of filing of the suit, the learned appellate judge held that the 1st



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plaintiff is in possession of the property and already a tar road has also been laid, thereby, the suit property is not causing any hindrance to the road and the appeal was dismissed by confirming the trial Court findings.

6. Challenging the said findings, the defendants 1 to 3 who are Government Officials preferred this appeal stating that the lower appellate Judge ought to have considered the fact that in the earlier suit in O.S.No.494 of 2000, one viz., Sheik Alautheen gifted the property to the Panchayat, wherein a tar road was laid out, which includes the suit property. In spite of that, erroneously held that the 1st plaintiff is in possession of the property and granted the injunction, as such is improper and liable to be set aside. Accordingly, this second appeal was admitted on the following questions of law:-

“1. Whether the court erred in holding that the suit is not barred under Section 23 of the Tamil Nadu Kuduyiruppu (Conferment of Ownership) (Conferment of Ownership) Act 1971?

2. Whether the learned Judge justified to grant permanent



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injunction against the Appellants when the court declined to grant the relief of declaration of suit property?

3. Whether the learned Judge erred by allowing the inconsistent plea of claiming under Tamil Nadu Kuduyiruppu (Conferment of Ownership) (Conferment of Ownership) Act 1971 and perfected the title be adverse possession?”

7. Fact reveals that the 1st plaintiff contended that more than 40 years she was in possession and enjoyment of the suit property and also her livelihood is an agricultural work, thereby she is entitled for the benefits under Tamil Nadu Kuduyiruppu (Conferment of Ownership) Act 1971 and thereby the suit property belonged to her. Besides more than 12 years, she was in enjoyment of the property, thereby by way of adverse possession also, she perfected title over the property. Door No.3 is assigned to this property and her Aadhar card, Ration card, and Electricity connection were also given to the address of the 1st plaintiff



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and she produced the documents to that effect. She has not caused any hindrance neither to the public nor to any individual. But, the defendants unlawfully claimed right over the property stating that one Sheik Alautheen gifted properties including the suit property in favour of the Panchayat and also based upon a decree passed in O.S.No.494 of 2000 they attempted to cause interference, hence the suit.

8. The Revenue Officials, who are the defendants 1 to 3 denied the 1st plaintiff's claim stating that she has not perfected title neither by adverse possession nor by the provisions of Kuduyiruppu (Conferment of Ownership) Act 1971. Moreover, she is an encroacher, causing hindrance to use the village road. Hence, earlier suit in O.S.No.494 of 2000 was filed by the 4th and 5th defendants to remove the encroachers and also obtained a decree. While they attempted to execute the decree, the 1st plaintiff and other encroachers caused unlawful hindrance and filed the present suit. The individuals 4 to 6 also contended that property was gifted to the Panchayat to lay down the road and the 1st plaintiff unnecessarily caused interference and the earlier decree passed in



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O.S.No.494 of 2000 would also bind her.

9. As rightly pointed out by the plaintiff's counsel that the 1st plaintiff is not a party in earlier suit in O.S.No.494 of 2000. When she is not a party, she is not bounded by the decree and same was appreciated by the courts below. The lower appellate Judge also pointed out that the plaintiffs in the suit O.S.No.494 of 2000 did not file the said suit in the representative capacity and the plaintiffs also not individually included her property as one of the suit property. Hence, the declaratory relief in respect of O.S.No.494 of 2000 as such is not maintainable and the findings rendered by the courts below to that effect is justifiable one which needs no interference.

10. But the contention of the 1st plaintiff is that more than 40 years, she is in possession and enjoyment of the property by putting up hut and the Door No.10C is assigned and to prove her possession, she produced House Tax receipt, Electricity consumption charge receipt before the trial court, which were marked as Ex. A2 to A12 and Ration card, voter list



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also marked as Ex. A13 and A14. It would reveal that from 1988 onwards, she is in enjoyment of the said property and at the time of filing of the suit in the year 2005, she was in enjoyment of the house. So considering her possession, the courts below held that she is in possession of the suit property. But, the 1st plaintiff claimed right over the property based on Kuduyiruppu (Conferment of Ownership) Act 1971, as well as by adverse possession. But, she has not produced any documents to show her prolonged possession. So, with regard to her title over the suit property, courts below did not accept her case. However, her possession alone is accepted and gave liberty to the Revenue Officials to evict her under due process of law. Therefore, when the 1st plaintiff had not adduced any evidence with regard to title over the property, there is no necessity for the court to give the findings under Tamil Nadu Kuduyiruppu (Conferment of Ownership) Act 1971. Thus she has not conferred title based on this Act. Accordingly, issue No.1 is answered.

11. With regard to issue No.2, though she has not proved her title over the suit property, but her possession is alone proved on the date of

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the filing of this suit. Hence, the courts below correctly granted permanent injunction, which needs no interference. Accordingly, issue No.2 is answered.

12. With regard to issue No.3, the courts below have not accepted the title of the 1st plaintiff either by adverse possession or by provisions of Tamil Nadu Kuduyiruppu (Conferment of Ownership) Act 1971 and her inconsistent pleas were not appreciated by the courts below, which needs no interference. Accordingly, issue No.3 is answered.

13. At the time of argument, the learned Government Pleader admits that road was already laid down and the residence belonging to the 1st plaintiff is adjacent to the road side and at present, there is no hindrance for the public to use the said road. If at all, in future, if the property covered under the Gift Deed needed, the authorities are at liberty to evict her under due process of law, till then the order of the permanent injunction granted in her favour would be in force. Accordingly, the findings rendered by the courts below is confirmed. The



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suit is decreed in respect of the permanent injunction in favour of the 1st plaintiff in respect of the suit property and also the liberty is granted to the defendants 1 to 3 to evict the 1st plaintiff under due process of law. Until then the injunction granted in favour of 1st plaintiff shall be in force. Thus, the questions of law are answered. Accordingly, this Second Appeal is dismissed as no merits. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.09.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. The Sub-Judge,
Coimbatore.
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Office of the District Collector,
Nagapattinam having his
Office at Nagapattinam Town, Taluk and Munsifi.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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