



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.No.898/2017 and CMP.No.22730/2017

[Virtual Mode]

Mathiyalagan .. Appellant/Appellant/Defendant
Vs.
Govindasamy ..Respondent/Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure code, to set aside the judgment and decree dated 21.09.2017 made in AS.No.45/2017 on the file of the Subordinate Court, Jayankondam, in confirming the judgment and decree dated 13.10.2014 made in O.S.No.155/2010 on the file of the District Munsif Court, Jayankondam.

For Appellant : Mr.C.Prabakaran
For Respondent : Mr.S.Mukunth

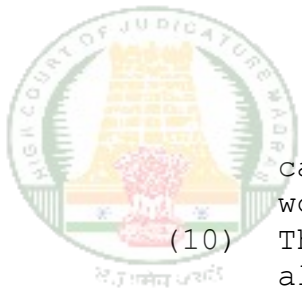
JUDGMENT

- (1) As against the judgment and decree dated 21.09.2017 of the learned Subordinate Judge, Jayankondam in AS.No.45/2017 confirming the judgment and decree dated 13.10.2014 of the learned District Munsif Court, Jayankondam in O.S.No.155/2010, the defendant in the Suit has come forward with the Second Appeal.
- (2) The respondent in this Appeal filed the Suit in O.S.No.155/2010 for declaration of title to the Suit property and for recovery of possession and for cost.
- (3) The Suit property is described in two items. The 1st item is a land measuring an extent of 0.12.3 hectares in Survey No.135/7B and the 2nd item is a property measuring an extent of 0.33.0 hectares in S.No.135/8 in Nayaganai Priyal Village, Udayarpalayam Taluk, Ariyalur.
- (4) It is the case of the respondent in the plaint that the Suit property was originally purchased by one Chokkalingam Chettiar in the year, 1931. It is further stated that after the death of the said Chokkalingam Chettiar, his



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- three sons got the property and the Suit property was later allotted to the share of one Kumarasamy who is the father of plaintiff.
- (5) The plaintiff further pleaded that there was a oral partition between himself and his father in the year 1969 and the Suit property was allotted to the plaintiff towards his share. Though it is admitted that at one point of time the property in S.No.135/7 was in the joint name of plaintiff's father and the father of defendant, the patta was changed pursuant to UDR Scheme giving separate patta for the Suit property 1st item in favour of plaintiff.
- (6) It is specifically stated that the defendant in the Suit has no right and that an attempt was made by the defendant to encroach the Suit property. Though the Suit was originally filed for declaration of title and for consequential injunction, it is the specific case of plaintiff that an interim application filed by the plaintiff in I.A.No.701/2010 during the pendency of the Suit was dismissed and that the defendant encroached the Suit property taking advantage of the situation. Hence the plaint was awarded to seek the prayer for recovery of possession.
- (7) The Suit was contested by the appellant on the ground that the Suit property was purchased by the appellant's father from the plaintiff's father by way of oral sale. It is further stated that the defendant's father was in possession and enjoyment of the Suit property for more than 36 years. It is also stated that the defendant is paying in his name property tax and water tax for the superstructure that was put up in the Suit property.
- (8) The Trial Court after framing necessary issues specifically found that the Suit property belonged to the plaintiff as he has successfully traced his title based on documents. The Trial Court also given a finding that the defendant has not produced any evidence to establish his title. On the plea of adverse possession, the Trial Court found that the defendant has not proved his possession to be adverse as against the plaintiff and that therefore, the plea of adverse possession cannot be accepted.
- (9) Since the defendant had pleaded title on the basis of oral sale, the Trial Court also held that the plea of adverse possession is inconsistent with the plea of title. Ultimately, the Trial Court categorically found that the oral sale pleaded by the defendant was not established and that in the absence of any cogent evidence the Court



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- cannot act on the basis of any oral sale as the oral sale would not confer any title to the immovable property.
- (10) The evidence of defendant during cross examination was also relied upon by the Trial Court ultimately to hold that the case of defendant is nothing but falsehood. The Trial Court therefore decreed the Suit. Aggrieved by the same, the defendant preferred an Appeal in AS.No.45/2017 before the Sub Court, Jayamkondam.
- (11) The Appellate Court also, after framing points for the consideration held that the plaintiff has proved his title and the defendant has failed to prove adverse possession. It is seen that the Appellate Court also considered all the grounds raised by the appellant with reference to facts and applied its mind independently to hold that the defendant has failed to prove neither title nor adverse possession.
- (12) As against the judgment and decree of the Lower Appellate Court in AS.No.45/2017 confirming the judgment and decree of the Trial Court in O.S.No.155/2010 the above Second Appeal is preferred.
- (13) The appellants have raised the following substantial questions of law.
1. Whether the judgment and the decree of the Courts below are the right in decreeing the Suit.
 2. Whether the Courts below are right in holding the plaintiff have proved this case for title based on the revenue records in the absence of any title deeds?
 3. Whether the Courts below right in shifting burden of proof on the defendant?
 4. Whether the finding of the Courts below are right in saying the defendant have enter in to the possession of the Suit property during pendency of the Suit specifically when the defendant have filed Exhibit B.1 and B.2 strengthened with the deposition of P.W.4?
 5. Whether the Courts below are right in negating the plea of oral sale of the defendant which as been established in a manner known to law?
 6. Whether the defendant acquired title on the Suit property based on the possession and enjoyment for the continuous periods of 36 long years and prescriptive



(19) In view of the above conclusions, this Court is of the view that the Second Appeal has no merits. In the result, the Second Appeal is dismissed with cost. Consequently, connected Civil Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Cda

To

1.The Subordinate Judge,
Jayankondam.

2.The District Munsif,
Jayankondam.

Copy To

The Section Officer,
VR Records, High Court,
Chennai.

+1cc to Mr.Sarvabhauman Associates, Advocate SR.No.9477
+1cc to Mr.C.Prabakaran, Advocate SR.No.9665

SA.No.898/2017

AK (CO)
GN (14/03/2022)