



S.A.No.634 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.634 of 2020

1.Radha

2.Machagandhi
...Appellants

Vs

1.Selvam

2.Ravi

3.Manikannan

4.Paramathma

... Respondents

Prayer: The appeal is filed under Section 100 of the Code of Civil

Procedure against the Judgement and Decree dated 21.02.2019 made

in A.S.No.44 of 2017 on the file of the II Additional Subordinate

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Judge, Villupuram reversing the Judgement and Decree dated 23.03.2017 made in O.S.No.138 of 2013 on the file of the Additional District Munsif Court, Villupuram.

For Appellants : Mr.C.Munusamy

For Respondents : Mr.N.Suresh
1, 2 & 4

For Respondent 3: No Appearance.

JUDGEMENT

The plaintiffs have challenged the Judgement and Decree passed by the II Additional Subordinate Judge, Villupuram in A.S.No.44 of 2017 in and by which the learned Judge had reversed the Judgement passed by the Additional District Munsif, Villupuram in O.S.No.138 of 2013. The brief facts necessary for disposing of the above Second Appeal is herein below narrated and the parties are referred to in the

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same litigative status as before the Trial Court.

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2. The plaintiffs had filed the above suit seeking declaration of their title to the suit property and for recovery of possession. The suit property is an extent of 22 cents comprised in S.No.100/1 B 1, Nanadu Village, Villupuram. It is the case of the plaintiffs that the defendants 3 and 4 are the sons of the paternal uncle of the 1st plaintiff. The 2nd plaintiff is the mother of the 1st plaintiff. It is their case that the suit property and other properties are their joint family property and they were all living jointly there.

3. It is the case of the plaintiffs that the father of the 1st plaintiff and the husband of the 2nd plaintiff one Sundaravadhanan died leaving behind the plaintiffs as his legal heirs. After his demise, the defendants 3 and 4 failed to maintain the plaintiffs, from out of the income from the joint family property. Therefore, the plaintiffs had

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filed the suit O.S.No.65 of 1986 for partition. A preliminary decree was passed on 03.11.1987 and thereafter final decree was passed on 31.12.1991. Under the final decree the plaintiffs were allotted the 4th item of the suit property.

4. Meanwhile, when the suit was pending, defendants 3 and 4 with an evil intent has sold the property in the year 1989 to one Kannan, who is the father of defendants 1 and 2. When the sale was questioned, defendants 3 and 4 assured the plaintiffs that they would allot some other property in lieu of the property sold by them. The defendants 3 and 4 also assured to take care of the marriage expenses of the 1st plaintiff.

5. In view of the above request, plaintiffs have not taken further action through Court. The suit property was handed over by the plaintiffs to the defendant and the defendant was cultivating the same.

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The share of the income from the said property was also not given to the plaintiffs.

6. The plaintiffs would contend that the sale executed pending the suit is hit by provisions of lis pendens and is not binding on the plaintiffs. Since defendants 3 and 4 have not come forward to fulfil their promises, the plaintiffs have come forward with the suit in question.

7. All the defendants have filed a common written statement in which they would contend that the suit filed is barred by limitation. That apart, defendants 1 and 2 had prescribed title by adverse possession. The plaintiffs who had obtained a decree on 31.12.1991 have not taken any steps to execute the same. Therefore, they sought for dismissal of the suit.



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8. The Trial Court had framed the following issues:

- 1) Whether the plaintiffs are the absolute owner of the suit property?*
- 2) Whether the defendants are liable to handover the suit property to the plaintiffs?*
- 3) Whether the suit is barred by law of limitation?*
- 4) Whether the plaintiffs are entitled to the relief as prayed for?*
- 5) To what other relief for plaintiffs are entitled?*

9. The 1st plaintiff had examined herself as P.W.1 and the 2nd plaintiff as P.W.2. Apart from them, one Kaliyamoorthi and Ganesan were examined as P.W.3 and P.W.4. The plaintiffs have marked Ex.A.1 to Ex.A.6 on their side. The 4th defendant had examined



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himself as D.W.1 and the 1st defendant as D.W.2. The defendants had not marked any documents.

10. Ultimately, the Trial Court had decreed the suit as prayed for.

11. Challenging the same, the defendants had filed an appeal in A.S.No.44 of 2017 on the file of the II Additional Sub Judge, Villupuram. The learned Judge ultimately held that the suit was clearly barred by limitation, since the suit had been filed nearly 21 years after the final decree had been passed. Further, after passing of the final decree, the plaintiffs had filed E.P.No.111 of 1992 only for recovery of the owelty amount, which sum was paid and full satisfaction recorded. The learned Judge also held that the suit filed without seeking to set aside the sale in favour of the defendants 1 and 2 is not maintainable. Ultimately, the appeal was allowed and the

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Judgement and Decree of the Trial Court is set aside.

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12. Aggrieved by the same, the plaintiffs are before this Court.

13. After hearing the submissions made by both the learned counsels, the following Substantial Questions of law emerge:

(a) Whether the Lower Appellate Court is correct in law in holding that the suit is barred by limitation?

(b) Whether defendants 1 to 2 have prescribed title to the property by reason of the plaintiffs not having taken steps to execute the decree within 12 years from the date of the final decree (31.12.1991).

14. Mr.C.Munusamy, learned counsel appearing for the



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appellants / plaintiffs would submit that the plaintiffs have not proceeded to execute the decree for seeking possession of the 4th item of the property since the defendants 3 and 4 had promised that they would allot the property in lieu of the 4th item of the property in the name of plaintiffs. However, this assurance has been observed in the breach. The learned counsel for the appellants would submit that the 4th defendant has admitted the same in his evidence as D.W.1. The learned counsel would submit that the suit property had been sold by defendants 3 and 4 in favour of defendants 1 and 2 when the suit was pending and therefore the sale is hit by lis pendens. The learned counsel would therefore contend that in the light of the assurance given by the defendants 3 and 4, the question of limitation cannot be pressed into service.

15. Per contra, Mr.N.Suresh, learned counsel appearing on behalf of the respondents 1, 2 and 4 would submit that the final decree

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had been passed on 31.12.1991. After the passing of the final decree, the plaintiffs have filed execution petition in E.P.No.111 of 1992. Pending the same, there was a compromise and the plaintiffs had been paid the owelty amount, after which they had recorded full satisfaction. Since the plaintiffs had recorded full satisfaction of the decree, the present suit is not maintainable. Further, the final decree had been passed in the year 1991. However, no steps have been taken by the plaintiffs to execute the final decree by seeking recovery of the 4th item of the property. The present suit has been filed in the year 2013 nearly 22 years after the final decree.

16. That apart, the learned counsel for the respondents would contend that since the defendants had asserted their right to the property, the plaintiffs ought to have taken steps to recover possession within the period of 12 years. However, the plaintiffs had failed to do so and have come forward to file the suit only in the year 2013, that

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too after recording full satisfaction in the execution petition filed by them in the year 1992.

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17. Heard the learned counsels on the either side.

18. The cause of action for filing the above suit is the decree in the suit O.S.No.65 of 1986. The preliminary decree had been passed on 03.11.1987 which has not been challenged by the defendants. Thereafter, the final decree proceedings had been initiated and the final decree was passed on 31.12.1991, in and by which plaintiffs were allotted the 4th item of the property as also owelty with reference to certain other items of the property.

19. The execution petition was filed and the defendants had paid certain sums of money to plaintiffs and they had received the same

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and endorsed full satisfaction of the decree in O.S.No.65 of 1986.

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Having so endorsed, plaintiffs have come forward to file the present suit for the relief stated thereunder, 22 years after the final decree.

The plaintiffs have not chosen to execute the decree obtained by them but has filed an independent suit. The respondents have filed a written statement objecting to the claim of the plaintiffs on two grounds:

(a) It is barred by limitation; and

(b) The defendants 3 and 4 have prescribed title through adverse possession.

20. Admittedly, the final decree had been passed on 31.12.1991. After the passing of the final decree, execution proceedings had also been initiated and full satisfaction recorded which implies that the decree has been satisfied. For 22 years, the plaintiffs have not taken



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any steps to obtain possession of the property. The defendants have asserted an independent right to the suit property openly with the knowledge of the plaintiffs. Further, the plaintiffs in the very plaint has implied that they were ready to give up their interest in the suit property sold to defendants 1 and 2 and were ready to allot some other property. This only shows that the plaintiffs had accepted the right of defendants 1 and 2 to the property in question. The instant suit has been filed 22 years after final decree. Therefore, the substantial question of law No.1, namely, limitation is answered against the plaintiffs.

21. The learned counsel for the defendants had relied upon the Judgement of the Hon'ble Supreme Court reported in *AIR 2000 SC 212 – Ajit Chopra Vs. Sadhu Ram and others*, wherein, the issue involved was similar to the instant suit. The Hon'ble Supreme Court



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was considering the suit eviction which had been dismissed, as against which the landlord had come by way of an appeal to the Appellate Authority. The said appeal was allowed on 30.09.1957. Pending the appeal, the property was purchased on 18.06.1957. Thereafter, the tenant had filed a revision before the High Court on 02.01.1958, contending that he was not a tenant and seeking stay of dispossession. The order of stay was granted till 15.01.1958. Ultimately, the revision was dismissed by the High Court on 19.09.1958 holding that the respondent was a tenant and the tenant was granted three months time to vacate premises. However, the eviction order was not executed for quite a while and thereafter the suit was filed by the plaintiff for recovery and for damages on 05.08.1970. The Hon'ble Supreme Court had contended that the adverse possession had started ticking from 19.09.1958, which is the date on which the revision filed by the tenant has been dismissed. Therefore, the Learned Judges held that the respondent had perfected

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title by adverse possession.
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22. The instant case is also on the same lines and the ratio laid therein applies on all fours to the instant case. Therefore, the Substantial Question of Law No.2 is also answered against the plaintiff.

23. In the result, the Second Appeal stands dismissed. No costs.

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Index : Yes/No
Speaking order/non-speaking order

To,

1.The II Additional Subordinate Judge,
Villupuram.

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2.The Additional District Munsif Court,
Villupuram.

P.T.ASHA, J.,

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