



S.A. No. 762 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

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

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and

C.M.P.No. 21775 of 2018

Kanagarasu (died)

1. Ramachandiran
S/o Kanagarasu

Anjalai (died)

2. P.Sulochana
W/o Pattabiraman

3. M.Rani @ Lakshmi
W/o Marimuthu

4. S.Kumari
W/o Subramanian

5. P.Lalitha
W/o Pazhanimuthu

6. K.Annamalai
S/o Kannagarasu @ Ramasamy

7. Jothi
W/o Ganesan



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8. S.Rajam

W/o Sazhian

9. Jothilakshmi

W/o Krishnamurthy

10. K.Arulraj

S/o Kanagrasu @ Ramasamy

... Appellants

Versus

K.S.Mohandass

S/o Subramaniya Padayachi

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 26.10.2016 made in A.S.No. 4 of 2005 on the file of Addl. Sub-Judge, Pondicherry reversing the judgment and decree dated 20.07.1988 made in O.S.No.898 of 1986 on the file of the III Addl. District Munsif, Pondicherry.

For Appellants : Mr. P.Dineshkumar

For Respondent : Mr.T.M.Naveen



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JUDGMENT

The appellants herein are the defendants in the suit in O.S.No.898 of 1986 on the file of III Addl. District Munsif, Pondicherry and the said suit was filed by the respondent/plaintiff for the relief of declaration to declare that he is the absolute owner of property and directing the defendants to hand over vacant possession of the property after removing the superstructure as described in the plaint schedule.

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

3. The contention of plaintiff is that the suit property is the ancestral property of his father Subramaniya Padayachi, and he was a landlord and he engaged many persons under him to work in the agricultural land. Further, the defendants were allowed to live in the suit property for a period of three years in order to look after the cows and other agricultural work and accordingly, the defendants constructed a



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thatched hut in an extent of about 1 ½ kuzhis (suit property). Thereafter, they have to hand over the possession after removing the superstructure. Accordingly, the defendants are licensees under the plaintiff, but in the year of 1986, the defendants attempted to put up a pucca house in the suit property and also refused to hand over the same. Hence, the suit.

4. The contention of defendants is that they are in absolute possession of the property and the plaintiff and his father never enjoyed the property nor the plaintiff having right over the property as per the settlement deed executed by his father, thereby denied the ownership of plaintiff.

5. Issues were framed before the trial court and the evidences were adduced. On considering both oral and documentary evidence, the trial court dismissed the suit. Against which, the plaintiff preferred first appeal in A.S.No. 4 of 2005 on the file of Addl. Sub-Judge, Pondicherry. The lower appellate judge independently analysed the facts and circumstances and held that the defendants themselves admitted before



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the Settlement Officer, Pondicherry that the patta for the said property stands in the name of plaintiff's father Subramaniya Padayachi and the same was supported by the evidence of P.W.1 and 2. Moreover, as per the Government Certificate Ex.A14, the Deputy Tahsildar issued ownership certificate in favour of the plaintiff. But, the defendants claimed right over the property by taking inconsistent plea of adverse possession as well as absolute ownership, but no document was adduced to prove their claim. Accordingly, the appeal was allowed by declaring the plaintiff is the owner of suit property and directing the defendants to deliver vacant possession after removal of superstructure. Challenging the said findings, the defendants preferred this Second Appeal.

6. Heard both sides.

7. Learned counsel for respondent/plaintiff submitted that from the year of 1986 onwards, the plaintiff is not able to occupy his property and the defendants, who were labours and they were permitted to occupy the property in order to look after the agricultural work and it is only a longevity of possession. So, they are not entitled to claim adverse



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possession nor it requires notice to vacate the premises. To support his contentions, he relied on the authority reported in **2012 (5) SCC 370** in the case of ***Maria Margarida Sequeira Fernandes and others*** vs. ***Erasmio Jack De Sequeira (dead) through LRs.***, wherein the Hon'ble Apex Court held in para 64 and 67 as follows:-

“64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title holder. Further, possession of the past is one thing and the right to remain or continue in future is another thing. It is the latter, which is usually more in controversy than the former, and it is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.

67. In an action for recovery of possession of immovable property or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish



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that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.”

The ratio laid down in the above authority in para 64 and 67 clearly indicates that once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Therefore, on a bare perusal of the records, it would clearly reveals that before the trial court, the plaintiff adduced sufficient documents to show his title over the property, on the other hand, the defendants produced their marriage certificates, voters list and other records, but they have not produced the title deed to prove their title over the property. Admittedly, as per the contention of plaintiff, the defendants 1 and 2 were permitted to occupy the suit property for the period of three years in order to look after cows and



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agricultural work. So, they were already intimated to vacate the premises, but they have refused. Therefore, as discussed above, there is no evidence on the side of defendants to prove their claim over the property, which was rightly appreciated by the lower appellate judge, which needs no interference. Accordingly, this Second Appeal is dismissed as no merits and the findings of the learned lower appellate judge is confirmed and the suit is decreed as prayed for. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

Sub-Judge,
Puducherry.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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