



WEB COPY

S.A.(MD)No.109 of 2010 and

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.109 of 2010 and

M.P.(MD)No.1 of 2010

P.Narayanan

... Appellant / Appellant /
Defendant

Vs.

Alagarsamy (Died)

... Respondent / Respondent /
Plaintiff

2. Saraswathy

3. Jeyalakshmi

4. Nambirajan

5. Rajeshkumar

(Respondents 2 to 5 are *suo motu* impleaded as LR's. of the deceased sole respondent vide Order dated 21.02.2022)

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the fair and decretal order passed by the Sub Court, Srivilliputhur in A.S.No.40 of 2006 dated 20.10.2009, confirming the Judgment and Decree passed by the Additional District Munsif Court, Srivilliputhur in O.S. No.81 of 2002 dated 21.07.2005 and allow this second appeal.

For Appellant : Mr.M.Jothi Basu

For R-2 & R-5 : Mr.P.Palani

For R-3 & R-4 : No appearance.

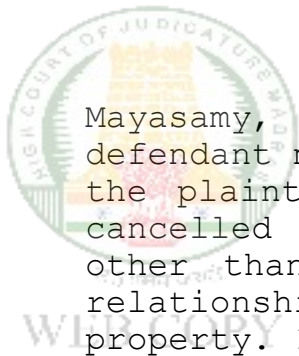
For R-1 : Died

J U D G M E N T

The defendant in O.S.No.81 of 2002 on the file of the Additional District Munsif, Srivilliputhur, is the appellant in this second appeal.

2. The suit was filed by one Alagarsamy for declaration and recovery of possession of the suit property. There is no dispute that the suit property originally belonged to Thiru.Mayan @

<https://hcservices.ecourts.gov.in/hcservices/>



Mayasamy, father of the plaintiff. According to the plaintiff, the defendant managed to obtain a Will dated 25.07.1984 in his name from the plaintiff's father. The said Will marked as Ex.A.1 was later cancelled on 10.01.1990 by Mayan himself. The defendant is none other than the brother's son of Mayan. Taking advantage of the relationship, Narayanan was allowed to be in possession of the property. Following the cancellation of the Will, Narayanan filed a suit against the plaintiff's father and also enforced the decree by filing E.P.No.193 of 1995. Mayan passed away on 03.03.2002. The plaintiff issued notice dated 28.02.2002 calling upon the defendant to hand over possession of the suit property. Since the defendant declined to comply with the demand set out in the notice, the suit came to be laid. The defendant filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed necessary issues. The plaintiff examined himself as P.W.1 and one Solaimalai was examined as P.W.2. Ex.A.1 to Ex.A.5 were marked. The defendant examined himself as D.W.1 and two other witnesses were also examined. Ex.B.1 to Ex.B.7 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 21.07.2005 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.40 of 2006 before the Sub Court, Srivilliputhur. By the impugned judgment and decree dated 20.10.2009, the first appellate Court confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

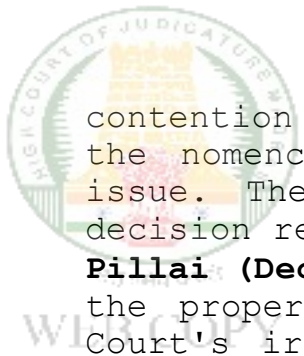
3. Though the second appeal was filed way back in the year 2010, only notice was ordered and it has not been admitted till date. In the meanwhile, the plaintiff Alagarsamy passed away and his legal heirs have come on record as respondents 2 to 5.

4. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to formulate substantial questions of law and admit the second appeal and take it up for disposal later.

5. Per contra, the learned counsel appearing for the legal heirs of the deceased plaintiff submitted that no substantial question of law arises for consideration.

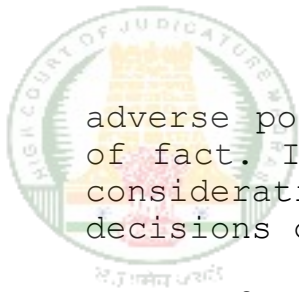
6. I carefully considered the rival contentions and went through the evidence on record.

7. The learned counsel appearing for the appellant first contended that the appellant is in possession of the suit property by virtue of Ex.A.1 dated 25.07.1984 executed by Mayan in his favour. According to the learned counsel appearing for the appellant, Ex.A.1 though styled as a Will, it is actually a document settling the suit property in his favour. According to him, the Courts below misconstrued the contents of Ex.A.1. I do sustain the



contention of the learned counsel appearing for the appellant that the nomenclature of the document cannot be determinative of the issue. The Hon'ble Division Bench of Madras High Court in the decision reported in **(2003) 3 MLJ 229 (Arthur Mary Ammal V. Aruldoss Pillai (Deceased))** held that if the document confers any interest in the property in praesenti so as to take intra vivos and if the Court's irrevocable interest thereby is created in favour of the recipient, then the document should be construed as settlement. If the executant intends to transfer the interest of the property only on the demise of the settlor, then it will have to be considered as a Will. Before deciding whether the document in question is a Will or settlement deed, one has to carefully go through the contents of the document. I went through the contents of Ex.A.1. The document has been styled as a Will. The terms also read as a bequest. The executant of the document, namely, Mayan had clearly stated that legatee, namely, Narayanan will take the property after his demise. Therefore, the Courts below rightly construed that Ex.A.1 is a Will. In any event, the said document has been subsequently revoked by Mayan himself. The revocation of Will was marked as Ex.A.2 dated 10.01.1990.

8. The learned counsel appearing for the appellant submitted that the suit is time barred. The learned counsel relied on the decision reported in **(2011) 8 MLJ 369 (SC) (Khatri Hotels (P) Ltd., and Another V. Union of India)**. It is true that the plaintiff has a duty to file the suit after the cause of action arose as the limitation would start running therefrom. Running of the limitation will not be arrested merely because the plaintiff did not file the suit in time. According to the learned counsel for the appellant, cause of action arose on 10.01.1990 itself when Ex.A.2 cancelling Ex.A.1 was executed. The suit in question was filed only in March 2002. Therefore according to the learned counsel, the suit was clearly time barred. I am not able to accept the said argument. As per Article 65 of the Limitation Act, 1963, for possession of immovable property or any interest therein based on title, limitation would be twelve years. It would start running from the date when the possession of the defendant becomes adverse to the plaintiff. In this case, the plaintiff's father passed away only on 03.03.2002. Only thereafter, the property devolved on the plaintiff. The suit for declaration and recovery of possession was filed on 13.03.2002. If according to the defendant he had already been in adverse possession, the burden lay clearly on him. Merely because the Will executed by Mayan was cancelled, the act of cancellation will not be the date on which the possession of the property became adverse to the title holder. The materials on record are absolutely insufficient to show that the defendant's title became adverse to the plaintiff. The plaintiff's father died only in the year 2002. It is the defendant who has to prove all the ingredients for constituting adverse possession. The Courts below have concurrently come to the conclusion that the defendant did not perfect title by



adverse possession and the suit is within time. This is a question of fact. I do not find any substantial question of law arising for consideration. There is no merit in this second appeal. The decisions of the Courts below are confirmed.

9. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Sub Judge,
Srivilliputhur.
2. The Additional District Munsif,
Srivilliputhur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.Palani, Advocate (SR-16612[F] dated 05/04/2022)

+1 CC to M/s.G.M. LAW OFFICE, Advocate (SR-16526[F] dated 05/04/2022)

S.A. (MD)No.109 of 2010
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