



S.A.(MD).No.725 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 02.08.2022

JUDGMENT PRONOUNCED ON : 10.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD).No.725 of 2009

and

MP(MD).No.1 of 2011 and

M.P(MD).No.1 of 2012

S.Arunachalam (died)

---/Respondent/Defendant

2.A.Ragini

3.M.Jaya

4.A.Geetha

5.A.Nagarajan

6.A.Suyambukani

7.A.Jothy

8.A.Manju

....Appellants (Legal heirs of deceased sole
Appellant)

(Appellants 2 to 8 are brought on record as legal heirs of the deceased sole
appellant vide Court order dated 13.07.2022)



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Vs

C.Shanthakumar

....Respondent/Appellant
/Plaintiff

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgement and decree dated 06.04.2009 made in A.S.No.83 of 2008 on the file of the II Additional Subordinate Court, Nagercoil reversing the judgement and decree dated 28.04.2008 made in O.S.No.565 of 2006 on the file of the Principal District Munsif Court, Nagercoil.

For Appellants : Mr.S.Rajasekar
For Mr.T.Lajapathi Roy

For Respondent : Mr.C.Godwin

JUDGMENT

The defendant is the appellant.

2.The plaintiff had filed O.S.No.565 of 2006 before the Principal District Munsif Court, Nagercoil for declaration of title, recovery of possession and permanent injunction not to alter the physical features of the property. The suit was dismissed by the trial Court. The plaintiff had filed A.S.No.83 of 2008 before the II Additional Subordinate Judge, Nagercoil.



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The learned Subordinate Judge was pleased to allow the appeal and decreed the suit. As against the same, the present second appeal has been filed by the defendant.

3.The plaintiff had contended that the suit schedule property originally belonged to his father V.Chidambara Nadarajan. His father has executed a registered Will deed on 17.11.1989 under Exhibit A1 in favour of the plaintiff. After his death, the plaintiff became the owner of the property. The plaintiff has further contended that the suit schedule property and the properties surrounding the suit schedule property were Coconut yielding lands. To keep the coconut and other agricultural equipments, this plaintiff's father has constructed a shed in the suit schedule property. The defendant and his father acted as care takers of the surrounding properties. The plaintiff's father has permitted the defendant and his father to reside in the said shed so that they can look after the thoppu. With the permission of the plaintiff, the defendants have also obtained electricity service connection to the schedule mentioned property.



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4.The plaintiff had further contended that when the defendant was attempting to put up construction in the schedule mentioned property, he was forced to lodge a police complaint and thereafter, the attempt of the defendant had stopped. Though the plaintiff has requested the defendant to surrender the possession, he had evaded. Hence, the plaintiff had issued a legal notice on 11.09.2006 under Exhibit A3. Though the said notice was received by the defendant under Exhibit A4, there was no reply from the defendant. Hence, the present suit.

5.The defendant had contended that his father late.Pandaram had constructed the shed in the schedule mentioned property about 100 years back. The electricity service connection stand in the name of the defendant. After the death of the defendant's father, the assessment has been changed in the name of the defendant. He had also disputed the fact that the defendant and his father were permitted to reside in the suit schedule property by the plaintiff's father. He has further contended that the plaintiff had owned 9.5 ares of property in Survey No.465/1 and the entire extent was sold away by the defendant. Hence, the plaintiff do not have any other property in suit



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survey number. The defendant had further contended that even assuming that if the plaintiff has got any title or right over the schedule mentioned property, it has been lost by long adverse possession of the defendant.

6.The trial Court after going through the oral and documentary evidence, came to the conclusion that there is no pleading in the plaint that the defendant and his father were placed in permissive occupation by the plaintiff's father. Though the plaintiff has claimed that he is paying the property tax, no document has been produced on the side of the plaintiff. On the other hand, the defendant has produced various property tax receipts under Exhibits B1 and B2 and also electricity bills under Exhibit B3 to establish his possession over the suit schedule property. The document filed on the side of the defendant will clearly establish that they are in possession of more than the statutory period. The trial Court further found that the door number of house property in the schedule has been mentioned as 33/66 . However, Exhibit A1 will refer to door number namely 33/98. Since door number mentioned in Exhibit A1 does not tally with the property tax receipts. the plaintiff has not established his title over the suit schedule property.



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7.The trial Court further found that Exhibit A2 property tax receipt has been obtained after issuance of legal notice under Exhibit A3. Hence, the trial Court arrived at a conclusion that the plaintiff has not established his title and dismissed the suit.

8.The First Appellate Court after independent analysis of oral and documentary evidence, arrived at a finding that there is no dispute with regard to the identity or the location of the suit schedule property between the parties. The defendant has produced the house tax receipts from the year 1995 onwards. The present suit has been filed in the year 2006 and hence, the contention of the defendant that they have acquired title by adverse possession is not legally sustainable. The First Appellate Court further found that the house tax receipt produced on the side of the defendant will also indicate that the Door Number is 33/98 in some years and 33/66 in some other years. Hence, it cannot be said that the plaintiff has not established his title to suit schedule property.

9.The First Appellate Court further found that the defendant has neither set up title himself nor in third party. The defendant has not



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specifically mentioned the date from which the possession became adverse to the title of the plaintiff. Unless the defendant admits title of the plaintiff, they cannot claim adverse possession. On the above findings, the Appellate Court reversed the judgement and decree of the trial Court and decreed the suit as prayed.

10.The second appeal has been admitted on the following substantial questions of law.

“1.Whether the lower appellate Court is right in reversing the well considered judgement of the trial Court?

2.Whether the lower appellate Court is right in casting the burden of proof on the appellant/defendant particularly, when the burden of proving the case rests entirely on the shoulders of the plaintiff/respondent?”

11. The plaintiff has claimed title over 2.08 cents of land in Resurvey No.465/1 along with a building having door number 33/66. The plaintiff has relied upon Exhibit A1 registered sale deed dated 17.11.1989 to claim title to the suit schedule property. The title of the plaintiff has not been specifically disputed in the written statement. Exhibit A1 Will has also



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not been disputed in the written statement. The only contention of the defendant is that his father has put up construction 100 years back and they are residing in the suit schedule property after getting electricity connection and paying property tax. Hence, the sum and substance of the defence of the defendant is that they have acquired title by adverse possession.

12.A perusal of Paragraph No.6 of the written statement clearly indicate that the defendant has admitted that the plaintiff had got title over 9.5 ares in suit survey number. According to the defendant, the plaintiff has sold away the entire property in the suit survey number. Once the defendant admits the title of the plaintiff for the suit survey number, the burden is upon the defendant to establish that the plaintiff has sold away the entire extent in the suit survey number. However, in the present case, the defendant neither let in oral evidence nor documentary evidence to establish that the plaintiff has sold away the entire extent in the suit survey number. In fact, a suggestion has been put to PW1 in the cross examination that he has sold away the entire extent in the suit survey number for which he has answered that he has sold away some portion of the suit survey numbers except the



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suit schedule property. Hence, it is clear that the plaintiff by way of Exhibit A1 and the admission of title in the written statement has established his title over the suit schedule property.

13.Exhibit A1 will disclose that the door number is 33/98. The learned counsel for the appellants has strenuously contended that what was bequeathed under Exhibit A1 is completely different from the suit schedule property. A perusal of Exhibit B1 and B2, property tax receipts filed on the side of the defendant would indicate that for some years, the defendant has also paid property tax only for Door No.33/98. Thereafter, the defendant has paid the property tax for Door No.33/66. Hence, it is clear that the old Door is No.33/98 and the New Door Number is 33/66 which is referred in the schedule of property.

14.The defendant had attempted to protect his possession by way of claiming adverse possession. The defendant had neither pleaded title on him nor placed title on the 3rd party. Unless the defendant admits the title of the plaintiff, the question of defendant claiming adverse possession as against the plaintiff would not arise. The defendant has also not stated from which date onwards he claims his possession to be adverse to that of the



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plaintiff. A perusal of Exhibits B1 and B2 property tax will clearly indicate that they are from the year 1995 onwards. The suit has been filed in the year 2006 much within a period of 12 years. Hence, the contention of the defendant that he has acquired title by adverse possession is not legally sustainable.

15. The trial Court after appreciating the documents filed on the side of the plaintiff and the defendant, arrived at an erroneous finding that the plaintiff has not established his title. On the other hand, the First Appellate Court after careful analysis of Exhibits A1, B1 and B2, has arrived at a finding that the plaintiff has established his title over the suit schedule property.

16. In view of the above said discussion, all the substantial questions of law are answered as against the appellant. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10.08.2022

Index : Yes / No
Internet : Yes / No
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To

1.The II Additional Subordinate Judge,
Nagercoil

2.The Principal District Munsif,
Nagercoil

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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