



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.303 of 2010

WEB COPY

Karuppasamy

... Appellant / Appellant /
Defendant

-Vs-

1.Sundaram
2.Kali (died)
3.Muthammal (died)
4.Seethalakshmi

... Respondents / Respondents /
Plaintiff 2 to 5

(R3 died and R1, R2 & R4 are
recorded as Lrs of the deceased
R3 Memo USR No.2442 dated
13.08.2013 vide order dated
19.02.2013)

5.Avvaiyar
6.Velmurugan
7.Samuthirakani
8.Ramalakshmi

... Respondents

(Respondents 5 to 8 are brought
on record as Lrs of the
deceased 2nd respondent vide
order dated 11.02.2022 made in
C.M.P.(MD)No.1755 to 1757 of
2020)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree made in A.S.No.14 of 2005 on the file of the Sub Court, Sankarankoil dated 23.11.2006 confirming the judgment and decree made in O.S.No.64 of 2004 on the file of the Principal District Munsif Court, Sankarankoil, dated 08.04.2004.

For Appellant : Mr.A.Arumugam
for M/s.Ajmal Associates

For R1, R4 & R5 : No appearance



JUDGMENT

The defendant in O.S.No.64 of 2004 on the file of the Principal District Munsif Court, Sankarankoil is the appellant in this second appeal.

2. The respondents herein filed the said suit for permanent injunction restraining the appellant herein from interfering with their possession and enjoyment of the suit property. The suit was decreed and the appeal filed by the appellant herein in A.S.No.14 of 2005 on the file of the Sub Court, Sankarankoil was also dismissed. Challenging the same, this second appeal came to be filed. This second appeal was admitted on 06.04.2010 on the following substantial questions of law:-

"1.Having upheld the appellant's title to the suit property whether the courts below misdirected itself in law in concluding that the respondents have prescribed title by the adverse possession since 1977 in the absence of any pleading as to the date of entry and the date in which the plaintiff prescribed the title by adverse possession and whether such possession is adverse to the knowledge of real owner?

2. Whether the courts below erred in law in casting the burden of proof of title of the suit property on the appellant / defendant especially it is admitted by the respondents / plaintiffs that the suit property originally belonged to the father of the appellant / defendant?"

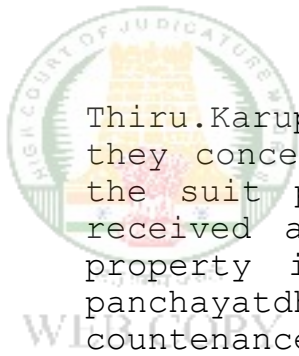
On the last occasion, the additional substantial question of law was also framed.

"Whether the respondent could have maintained the suit for injunction simpliciter without seeking the relief of declaration of title?"

3. During the pendency of the appeal, R2 & R3 passed away. The legal heirs were *suo motu* impleaded as respondents. While R5 & R8 have been served, R6 & R7 refused to receive the notice. Thiru.Ramesh @ Ramiah had entered appearance for R1 to R4. But he reported 'no instructions' on the last occasion. The names of the 1st respondent and 4th respondent were already printed in the cause list. Today also, there is representation on their behalf. They have been set exparte.

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 answer the substantial questions of law in his favour and set aside the impugned judgment and decree and dismiss the suit.

5. Since there is no representation on the side of the respondents, I independently examined the entire record. The plaintiff is admitted that the suit property belongs to



Thiru.Karuppiyah Devar / father of the appellant herein. Further, they concede that following his demise, the appellant was enjoying the suit property. They would however claim that the appellant received a sum of Rs.1400/- from them and orally sold the suit property in their favour in June 1977 in the presence of the panchayatdhars. Obviously, such a transaction cannot be countenanced. Any immovable property valued beyond Rs.100/- can be conveyed only through a registered instrument. Therefore, the courts below rightly negated the claim of the oral sale put forth by the plaintiffs. However, the courts below came to the conclusion that the plaintiffs have perfected their title by adverse possession. However, it is too well settled that a person claiming adverse possession is obliged to establish the same. Though in the plaint, it has been averred that right from 1977, the plaintiffs have been in open and uninterrupted possession, the evidence does not measure up to the same. In any event, when the defendant had seriously questioned the plaintiff's title, the plaintiffs were obliged to amend the plaint and seek the relief of declaration. Of-course, even on the strength of adverse possession, the right of declaration can be sought. But in this case, the plaintiffs have failed to do so. Therefore, as held by the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs and others (2008) 4 SCC 594**, the suit was clearly not maintainable. The courts below failed to take note of this elementary aspect. Of-course, the appellant himself would concede that the plaintiffs are in possession of the suit property. According to the appellant, since for a while, he was away from India, he had permitted the plaintiffs to be in possession of the suit property. Since the appellant himself admitted that the plaintiffs are in possession of the suit property, the plaintiffs only can be given the relief of permanent injunction that they cannot be dispossessed except by due process of law. In this case, the courts below had also cast the entire burden on him to prove the adverse possession of the plaintiffs.

6. The substantial questions of law are answered in favour of the appellant. The impugned judgment and decree passed by the courts below are modified. The plaintiffs are granted the relief of permanent injunction that they shall not be dispossessed except by due process of law. The second appeal is partly allowed. No cost.

Sd/-

Assistant Registrar(CS.III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

- 1.The Sub Court, Sankarankoil.
- 2.The Principal District Munsif Court, Sankarankoil.

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Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Judgment made in
S.A. (MD) No. 303 of 2010
21.04.2022

SA(06.06.2022) 4P 4C