



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.528 of 2010

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1. D.Chinna Katteshwari

2. N.Duraipandian ... Appellants / Appellants /
Defendants

Vs.

1. M.Perumal Nadalvar (Died)

2. K.Karuppusamy ... Respondents / Respondents /
Plaintiffs

3. Vallinayagam

4. Nattudurai

5. Thangaramu

6. Singaravel ... Respondents 3 to 6/LRs of the Deceased 1st
Respondent

(R-3 to R-6 were *suo motu* impleaded as LR's. of the deceased 1st
respondent vide Order dated 04.03.2022)

Prayer: Second appeal filed under Section 100 of C.P.C.,
against the Judgment and Decree made in A.S.No.19 of 2008 by the
learned Subordinate Judge, Palani, dated 10.12.2009, confirming the
Judgment and Decree made in O.S.No.461 of 2003 by the District
Munsif, Palani, dated 19.12.2007.

For Appellants : Mr.Veera Kathiravan,
Senior Counsel,
for Mr.A.Parthasarathy.

For R-2 to R-6 : Mr.M.P.Senthil

* * *

J U D G M E N T

The defendants in O.S.No.461 of 2003 on the file of the
District Munsif Court, Palani, are the appellants in this second
appeal.

2. The suit was filed for declaration that the suit
properties belong to the plaintiffs and for recovery of possession
from the defendants. The defendants filed written statement



controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the following issues:-

" (1) Whether the plaintiff is entitled for the relief of declaration and recovery of possession in respect of the suit properties?

(2) Whether the plaintiff is entitled for mesne profits as prayed for?

(3) Whether the defendants have perfected title by adverse possession in respect of the suit property?

(4) Whether the CF paid is correct or not?

(5) To what other relief? "

The second plaintiff Perumal Nadalvar examined himself as P.W.1 and one Senjikannan was examined as P.W.2. Ex.A.1 to Ex.A.8 were marked. The second defendant examined himself as D.W.1 and one Ramamurthy was examined as D.W.2 on the side of the defendants. Ex.B.1 series were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 19.12.2007 decreed the suit as prayed for. Aggrieved by the same, the defendants filed A.S.No.19 of 2008 before the Sub Court, Palani. By the impugned judgment and decree dated 10.12.2009, the first Appellate Court confirmed the decision of the trial Court and dismissed the first appeal. Challenging the same, this second appeal came to be filed.

3. The second appeal was admitted on 29.03.2022 on the following substantial questions of law:-

(a) Whether the Courts below misapplied Section 15 of the Hindu Succession Act?

(b) Whether the Courts below failed to note that the plaintiffs have not adduced any evidence to substantiate their claim on the 3rd item of the suit properties?

(c) Whether the appellants had adduced sufficient positive and acceptable evidence to establish that they have perfected title by adverse possession? "

4. The learned Senior counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and dismiss the suit in toto.

5. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

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



7. The learned Senior counsel appearing for the appellants initially contended that the original plaintiff failed to establish her biological relationship with the owner of the suit property. This contention cannot hold water because as rightly pointed out by the learned counsel appearing for the respondents, D.W.1 while in the witness-box had conceded her status.

8. The facts are as follows:-

The suit items are three in number. The case of the plaintiffs is that one Velammal was the original owner of the property. Her husband Sadaiyappan @ Palanisamy Narangiyar pre-deceased her. Velammal died in the year 1998. The original plaintiff Vellaithai was none other than the sister of Sadaiyappan @ Palanisamy Narangiyar. According to the original plaintiff, the suit properties devolved on her. Since the suit properties are in possession and enjoyment of the defendants, she was constrained to file the suit seeking the relief of declaration and recovery of possession. During the pendency of the suit, the first plaintiff passed away and other two plaintiffs have come on record. The first defendant is the niece of Velammal and the second defendant is the husband of the first defendant. The defendants raised very many contentions. The first contention they put forth was that even during the lifetime of Velammal, they had trespassed into the suit property and they were enjoying it adverse to her title and that they had perfected her title by adverse possession. The other contention put forth by them was that Velammal purchased the suit properties with the Seedhana given by her father and that therefore, the original plaintiff being the legal heir of the husband of Velammal cannot have any claim. Yet another contention put forth by the learned Senior counsel is that the third item of the suit property never stood in the name of Velammal and that it stood in the name of one Karupayammal and that therefore, the plaintiffs cannot have any claim.

9. Let me take up the plea of adverse possession first. A person putting forth the plea of adverse possession has to establish the ingredients of adverse possession. In this case, the defendants ought to have proved that even during the life time of Velammal, they have been in hostile possession of the property. Except a faint plea in the written statement, there is absolutely no evidence adduced by the defendants. If even during the life time of Velammal, the defendants had managed to obtain patta for the property, they would definitely have some evidence in support of their claim. The defendants had marked only Ex.B.1 kist receipt for the property from fasli 1395. Ex.B.1 marked by the defendants is in the name of Velammal. Therefore, there is no proof of adverse possession. I therefore answer the third substantial question of law against the appellants.



10. Even if I accept the contention of the learned Senior counsel that the suit properties were purchased by Velammal by utilising her seedhana, it would not make any difference. Section 15 of The Hindu Succession Act sets out the general rules of succession in the case of female Hindus. As per Section 15(1)(a) of the Act, it would devolve on the sons and daughters including the children of any predeceased son or daughter and husband. In this case, Velammal died issueless. Her husband predeceased her. Therefore, Section 15(1)(a) of the Act will not apply. As per Section 15(1)(b) of the Act, the property would devolve only upon the heirs of the husband. It has been conceded by DW1 that Vellaithai was the biological sister of Palanisamy Narangiyar. The learned Senior counsel contends that Section 15(2)(1)(a) of the Act would come into play. Section 15(2)(1)(a) of the Hindu Succession Act is as follows:-

"15(2) Notwithstanding anything contained in sub-section (1)

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father;"

Only if the property was inherited by a female Hindu from her father or mother, it would devolve on the heirs of her father. In this case, there is nothing on record to show that the suit items were inherited by Velammal from her father. Therefore, Section 15(2)(1)(a) of the Act has no application. The Courts below rightly applied Section 15(1)(b) of the Act and sustained the plea of the plaintiffs. The first substantial question of law is answered against the appellants.

11. The learned Senior counsel pointed out that the suit third item as per Ex.A.2 stands in the name of one Karuppayammal. The name of Velammal is mentioned, but one Palanisamy is described as her husband. Velammal in the case on hand was the wife of Sadaiyappan @ Palanisamy Narangiyar. There is nothing on record to show that the suit third item belonged to Velammal. It is true that in the written statement there is no specific pleading in this regard. Yet the plaintiffs have to affirmatively show that the suit property belonged to Velammal, W/o.Sadaiyappan @ Palanisamy Narangiyar. The evidence adduced by the plaintiffs in respect of the suit third item is absolutely insufficient. The Courts below omitted to correctly construe Ex.A.2 as regards the suit third item. Therefore, the second substantial question of law is answered in favour of the appellants. The impugned judgment and decree are modified and the relief of declaration and recovery of possession granted to the plaintiffs is confined to suit first and second item. The suit is dismissed as regards the suit third item.



12. This second appeal is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-III)

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/ /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 Subordinate Judge,
Palani.
2. The District Munsif,
Palani.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-16266[F] dated 04/04/2022)

+1 CC to M/s.A.PARTHASARATHY, Advocate (SR-16148[F] dated 01/04/2022)

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svs(CO)

TR(26.04.2022) 5P 7C