



S.A.(MD) No.342 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 23.09.2022

Judgment Pronounced on : 30.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.342 of 2012

and

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

1.Arockiasamy @ Nandhu Savariraj (Died) ... Appellant/Appellant/
Defendant

2.Jospina

3.Sahayamary

4.Arputharaj

5.Rani

... Appellants 2 to 5/
LRs of sole appellant

*[Appellants 2 to 5 brought on record as LR's of the deceased
sole appellant vide order dated 05.08.2022 made in C.M.P.
(MD) No.5479 of 2022 in S.A.(MD) No.342 of 2012]*

Vs

T.Dhivyanathan

... Respondent/
Respondent/Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 25.01.2011 made in A.S.No.50 of 2009 on the file of the II Additional Subordinate Court, Thiruchirappalli confirming the judgment and decree dated 29.11.2008 made in O.S.No.1259 of 1998 on



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the file of the District Munsif Court, Thiruchirappalli.

For Appellants : Mr.Vinoth

For Respondent : Mr.H.Lakshmi Shankar

JUDGMENT

The defendant, in O.S.No.1259 of 1998, which was laid for declaration of plaintiff's title and for recovery of possession of the suit property, is the appellant herein. The suit was decreed by the trial Court. The defendant approached the first appellate Court in A.S.No.50 of 2009, but that came to be dismissed. Hence, the present second appeal. For narrative convenience, parties are referred to by their rank before the trial Court.

2. The facts are:

- The suit property is described as a house plus site bearing Door No.27 in T.S.No.56 of Palakkarai Village, Tiruchirapalli Taluk. It measures approximately 750 square feet.



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- According to the plaintiff, the suit property is his ancestral property since the days of his paternal grandfather Arockiam, as can be seen from Ext.A.6, dated 21.03.1973, a notice issued under Section 9 of the Tamil Nadu Survey and Boundaries Act, 1923. This apart, Ext.A.8 and Ext.A.9-Adangal also speak to this fact. After Arockiam, the property devolved on his son Thomas, who left behind him surviving the plaintiff, his brother John Peter and his sister Philominal. According to the plaintiff, in a family partition between him and his siblings, the suit property came to be allotted to him exclusively, and this is spoken to by his sister P.W.2.
- In the suit property, there is a residential building bearing Door No.27 and to prove his continuous possession of the same, the plaintiff relies on Ext.A.11, dated 09.06.1992, proceedings of the Tahsildar granting patta in the name of the plaintiff; Ext.A.12-patta, dated 26.06.1996; and Ext.A.13-patta passbook, dated 26.06.1998. He has also produced Ext.A.14 to Ext.A.24 all of which pertain to either notice demanding property tax or receipt for payment of the property tax (of



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them Ext.A.14 and Ext.A.17 to Ext.A.24 are subsequent to the suit).

- According to the plaintiff, he inducted the defendant as permissive occupant some five years prior to the suit and when the defendant attempted to obtain electricity connection in his name, he objected to the same as could be seen from Ext.A.26 to Ext.A.28 all dated in November, 1997.

3.1. The case of the defendant is that the suit property originally belonged to certain Vyakulam. Vyakulam had three sons viz., Sebastian, Santhiagu @ Innasi and one Anthonisami. The defendant is the son of Santhiagu. While so, with regard to a property to the immediate north of the suit property in Old S.No.1365, Sebastian's daughters and widow executed a release deed in favour of Sebastian's son Sesu (D.W.2) vide Ext.B.1-release deed, dated 28.11.1969. Sebastian's another son Anthonysamy also executed Ext.B.2-release deed dated 30.02.1981 in favour of Sesu. In both these documents, the occupant of the southern property is stated to be the defendant.



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3.2. Refuting that he was ever a permissive occupant of Building No.27, the defendant contends that he has been in continuous possession of this house long prior to the institution of the suit and relies on Ext.B.3, Ext.B.12 to Ext.B.14, Ext.B.18 and Ext.B.35 which are all records pertaining to election commission/voters list that carries his name and they relate to house No.27. This apart, he also has produced Ext.B.4 to Ext.B.9 all of which are documents pertaining to his payment made to the Electricity Department. Ext.B.24, Ext.B.26 and Ext.B.30 are the property tax receipts and Ext.B.11 is a notice served on the defendant's father under Section 9 of the T.N. Survey & Boundaries Act, 1923.

4.1. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1. and he also examined his sister as P.W.2. The defendant examined himself as D.W.1 and had examined D.W.2, his uncle and D.W.3, his tenant. While the plaintiff had produced Ext.A.1 to Ext.A.36, the defendant for his part had produced Ext.B.1 to Ext.B.35, and most of these documents have already been introduced in the facts-narration above.



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4.2. On appreciating the evidence, the trial Court chose to decree the suit.

It's line of reasoning is that:

- The plaintiff has produced Ext.A.6 to Ext.A.13 to show that either the property was in the possession of his grandfather or in his own name. Indeed the entire property covered under Sy.No.1366 belonged to him and that the Government has issued a proceedings vide Ext.A.11 dated 09.06.1992 based on which it has also issued Ext.A.12-patta. Ext.A.13 is the patta passbook pertaining to the property. The plaintiff has also proved his possession vide Ext.A.4-property tax demand notice dated 26.09.1996, some two years prior to the institution of the suit. He also produced property tax receipts Ext.A.15 and Ext.A.16 which covered the period from 1996 to 1997, and he has also produced property tax receipts Ext.A.14 and Ext.A.17 to Ext.A.24 all of which are subsequent to the suit.

- So far as the defendant's case is concerned, though he claims title to the suit property and right over the house bearing Door No.27, but the documents he had produced show two door numbers as 27/1 and 27/2



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and this is not adequately explained. In particular, the defendant has produced Ext.B.4, a receipt issued by the then TNEB for receipt of deposit amount for obtaining electricity connection in which the door number is mentioned as 20 which is later seen corrected to 27 and this is not adequately explained.

- While in Ext.B.1 and Ext.B.2, the southern owner is shown to be the defendant, the defendant has not produced any document since 1969 the year in which Ext.B.1 came to be made. At the end of the day, they are third party documents.
- So far as Ext.B.11 goes, it is a notice issued to the defendant's father under Section 9 of the T.N. Survey & Boundaries Act, 1923 about the time when Ext.A.6 was issued to the plaintiff's grandfather, Arockiasami. There the door number is mentioned as 35 and the defendant as D.W.1 himself admits it in evidence. It has also considered it unnecessary to consider the testimony of D.W.2, the transferee under Exts.B-1 and B-2, as there were litigations between



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D.W.2 and the plaintiff herein since 1982 when D.W.2 along with his brother laid O.S.No.2784 of 1982 and thereafter, he had instituted another suit in O.S.No.721 of 1999.

- The defendant had produced Ext.B.22 to Ext.B.24 which all are counterfoil challans pertaining to remittance made to the Treasury for survey charges for S.No.1369 and they did not relate to the suit property in S.No.1366.
- The defendant cannot plea adverse possession since it runs counter to his core plea based on title.

5. When the matter reached the first appellate Court, it concurred with the trial court and arrived at an identical conclusion. Hence, the second appeal at the instance of the defendant. The appeal was admitted for considering the following substantial question of law:

“Whether, in law the Courts below are right in decreeing the suit for recovery of possession based on the patta issued, just prior to the suit?”



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6. The learned counsel for the defendant/appellant herein made the following submissions:

- The plaintiff claims title from his ancestors, but there is hardly any document produced that which belonged to his ancestors. The plaintiff has twin burden of establishing: (a) his title and (b) that the defendant was in permissive possession of the house bearing Door No.27 from about 1993. Indeed in his plaint, he has pleaded that the defendant was inducted as a permissive occupant some five years prior to the suit. When the burden is heavily on the plaintiff to establish the same, the Courts below have found certain holes in the defendant's case to grant the relief for the plaintiff. The plaintiff at no time was able to establish that the defendant had been inducted as a permissive occupant of House No.27.

- Both in Ext.B.1 and Ext.B.2 which though are documents within the family of the defendant's uncle Sebastian, yet they show that the southern owner of the property transacted in those documents is that



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of the defendant. Though the executants of those documents were not examined, the defendant has examined D.W.2 in whose favour these documents were executed, and he too has spoken to this fact. He also relied on various exhibits referred to in paragraph 3.2 above to show that the defendant has been in continuous possession of the property. If Ext.A.6 is noticed, it shows T.Sy.No:56 is correlated only to part of Old S.No.1366 and not to the whole of it. An identical notice for Old S.No.1366 pt. was issued to the defendant's father vide Ext.B.11.

Reliance was placed on the ratio in ***Deivanai Ammal (Died) & others Vs Periasamy @ Sambagounder & Others*** [2010-1-L.W.439], ***Union of India & others Vs Vasavi Cooperative Housing Society Limited & others*** [(2014) 2 SCC 269], ***Kuruvamani & Others Vs A.Muthu & others*** [2014 (4) CTC 653]; and ***P.R.Dhanalakshmiammal (Died) through her General Power of Attorney & another Vs Lazar Nadar & others*** [2021 (6) CTC 188].



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7. Per contra, the learned counsel for the plaintiff/respondent herein argued that:

- The positive case of the defendant is that the suit property originally belonged to his paternal grandfather Vyakulam and also pleads about an oral partition between his father and his brother and also subsequent oral partition between him and his siblings. There is hardly any material to show that Vyakulam had ever owned any property. Turning to other aspects, the learned counsel adopted the line of reasoning of the trial Court. He also added that D.W.1 and D.W.2 all have admitted that the entire property in S.No.1366 originally belonged to the Government, even though they initially contended that it belonged to St.Antony's Church, and inasmuch as the Government has issued Ext.A.12-patta to the plaintiff after Ext.A.11 proceedings for the same, the title of the plaintiff cannot be dislodged, unless the defendant can show a better title to the property. Admittedly, the defendant has not challenged it.



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➤ The defendant had produced a document dated in 1988 to show his possession prior to 1993, but the same is not authenticated. Secondly, as found by the trial Court, it shows the door numbers as 27/1 and 27/2, whereas there is nothing produced to show the possession of Door No.27.

➤ Since the defendant has pleaded title to the property, he cannot sustain any plea of adverse possession and as long as possession is not legitimate, the plaintiff is entitled to have recovery of possession of the property. This apart, even if the plea of adverse possession were to be reckoned, the earliest document that the plaintiff has produced to show possession is of the year 1988 and the suit is laid well within 12 years in 1998.

Reliance was placed by the learned counsel on the dictum in ***V.A.Amiappa Nainar died Vs V.Annamalai Chettiar (died)*** [(1971) 84 LW 691], ***Subbiah & another Vs Amaravathy & others*** [(2004) 0 AIR (Mad) 156], ***Saroop Singh Vs Banto & others*** [(2005) 8 SCC 330], and ***Kannappan & others***



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8. This Court finds there is considerable merit in the submissions of the plaintiff/respondent. To start with, the property is admitted to be the property of the Government, and the fact that the Govt. has granted Ext.A-12 patta to the suit property to the plaintiff cannot be ignored. And, if the defendant is aggrieved by Ext.A11, then he ought to have challenged it. He however, did not. He claims title under his paternal grandfather Vyakulam. But on the face of it, it has to fail, since the admitted owner of the property is Government.

9. The issue then shifts to defendant's possession. Here again the defendant is caught on the wrong foot, since he has pleaded prescription of title by adverse possession alongside his plea based on his own title. Both these pleadings cannot co-exist and they will have the effect of destroying each other. The defendant ought to elect, and he had opted for asserting title to the property as a descendant of his paternal grandfather, and as indicated above he has failed.



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10. But has he ever been in possession of the house bearing door No:27. Here, his conduct is dubious. It involves unexplained correction to the door number in Ext.B-4 by inserting the door number and also in Ext.B-27 and B-28 school admission register entries. And, the defendant admits that in Ext.B-11 notice issued to his grandfather, the door No: is mentioned as 35. It is obvious that the defendant is not in occupation of the house bearing door No:27 in his own right, but he is still in occupation. The plaintiff says that the defendant is in permissive occupation, but in what capacity? When the defendant is in occupation of the house in question not based on his title, then he must explain the legal basis of his occupation. He having spoiled his option to plea adverse possession, and with his attempt to support his possession based on his own title, this Court does not find any legitimacy to his possession, and hence it has to believe the version of the plaintiff.

11. It would now mean that this Court necessarily will have to trek along the lane as was travelled by the courts below. Accordingly, this court finds no merit in the appeal and the same is dismissed with costs, and the decree of



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the first appellate court in A.S.No.50 of 2009 is confirmed. Consequently, connected miscellaneous petition is closed.

30.09.2022

Index : Yes/No

Internet: Yes

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To

- 1.The II Additional Subordinate Judge,
Thiruchirappalli.
- 2.The District Munsif,
Thiruchirappalli.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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Pre-delivery Judgment made in
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