



S.A(MD).No.64 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 08.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A(MD).No.64 of 2012

and

M.P(MD).Nos.1 and 2 of 2012

1.J.Uma
2.S.Suresh
3.A.Mohammed Mohaideen

.... Appellants/Appellants/
Defendants

Vs.

Haja Ammal @ Hathija Beevi (died) Respondent/Respondent/Plaintiff
2.Peer Mohammed
3.Mohammed Hakkim
4.Habirahman
5.Imaran Kahan ... Respondents
(R2 to R5 are impleaded vide Court order dated 24.01.2022 in
CMP(MD).Nos.9773 to 9775 of 2021 in SA(MD).No.64 of 2012)

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree in A.S.No.102 of 2010 dated 23.06.2011 on the file of the Additional Sub Court, Thanjavur, Thanjavur District confirming the judgment and decree passed in O.S.No.5 of 2008 on the file of the District Munsif Court, Thanjavur District dated 06.07.2010.

For Appellants : Mr.G.Gomathi Sankar
For Respondents : Mr.A.Arumugam
for M/s.Ajmal Associates



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J U D G M E N T

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The defendants, who had suffered a dismissal successively before the trial Court and the First Appellate Court, are the appellants herein.

2.The suit was originally laid as O.S.No.5 of 2008 for declaration of title and for ancillary decree of prohibitory injunction. The suit came to be decreed by the trial Court, following which, the defendants had preferred A.S.No.102 of 2010 before the Additional Sub-Court, Thanjavur and the learned Additional Sub-Judge, Thanjavur, Vide its judgment dated 23.06.2013, dismissed the appeal. Hence, this Second Appeal is directed against the said decree of the First Appellate Court.

3. The facts can be divided into two parts, since part of the same are admitted on either side. Admitted facts are:

(a) A certain Meera Maideen Sahib owned a block of agriculture land measuring an extent of 1.13 acres in S.No.366/1 of Kalyanapuram Village, Thiruvaiyaru Taluk. He had two sons namely, Abdul Razack and Syed Mohamed. On 11.11.1935, under Ex.A-1 Meera Maideen Sahib settled the property in favour of his sons. As per the settlement



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deed, Syed Mohammed was given 1.0 acre and the balance 13 cents was given to Abdul Razack;

(b) On 10.06.1953, Syed Mohamed sold his 1.0 acre to Balkis Bivi under Ex.A-2. Balkis Bivi has two daughters namely, Hathija Bivi, who is the plaintiff in the suit and one Rahima Bivi. These sisters partitioned the property under Ex.A-3 dated 20.05.1999, in which, Hathija Bivi was allotted 33.5 cents and Rahima Bivi was allotted 66.5 cents;

(c) Turning to Abdul Razack's branch, as already indicated, he is the recipient of 13 cents under Ex.A-1 settlement deed. Abdul Razack's son is Mohamed Maideen, who is the third defendant in the suit. On 25.01.2007, Mohamed Maideen executed Ex.B-1 sale deed in favour of the first defendant in the suit. The first defendant, in turn, had sold the property to the second defendant Vide sale deed dated 30.03.2007. The last mentioned sale deed was not marked in the suit.

4.1 The dispute arose in the following circumstance: While Abdul Razack was admittedly allotted only 13 cents under Ex.A.1-settlement deed, his son Mohamed Maideen had conveyed 53 cents under Ex.B-1 sale deed to the



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first defendant. This implies Mohamed Maideen had dealt with an additional extent of 4 cents over and in excess of 13 cents that his father had obtained under Ex.A-1 settlement deed.

4.2 The contentions of the third defendant in his written statement (Which are adopted by other two defendants) are two fold:

- Sometime in 1970, an identical dispute arose between Balkis Beevi and these defendants, which came to be resolved by Panchayat convened at the instance of Balkis Beevi, in which a compromise was arrived, as per which some 40 cents out of the extent purchased by Balkis Beevi was given to these defendants; and at any rate the defendants have prescribed title by adverse possession.

5.1 The dispute went to trial and before the trial Court Hathijaammal @ Hathija Bivi examined herself as P.W.1 and she examined two other independent witnesses as P.W.2 and P.W.3. She has produced as many as 12 documents, which came to be marked as Ex.A-1 to Ex.A-12, of which, Ex.A-12 is the patta passbook of the property and it is dated 02.01.2003. on the side of the defendants, the third defendant examined himself as D.W.1. The husband of the first defendant was examined as D.W.2 and second



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defendant was examined as D.W.5. Besides them, D.W.3, D.W.4 and D.W.6 were examined, and on their side eleven documents were marked as Ex.B-1 to Ex.B-11.

5.2 On appreciating the evidence before it, the trial Court dismissed the defence of the defendants and decreed the suit. In the first appeal preferred by the defendants in A.S.No.102 of 2010, the first appellate Court concurred with the findings of the trial Court and arrived at a same conclusion, and dismissed the appeal. Hence, the defendants are before this Court in this second appeal.

6. The facts is admitted on the following substantial question of law:

Whether the appellants/defendants prove title by way of adverse possession?

7. Heard Mr.Gomathi Shankar, learned counsel for the appellants and Mr.A.Arumugam, learned counsel for the respondents. The learned counsel for the appellants made a valiant effort to convince this Court that Ex.B-9 is the patta issued to third defendant in 1985, and added that the suit is laid only in the year 2008, which implies the third defendant has prescribed title



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to the property by adverse possession. He also submitted that the defendants had produced other tax receipts etc.

8. This Court finds that the plea of adverse possession which the defendants canvass get nullified with their alternate plea of title taken out in the written statement. As already indicated, the defendants' primary contention was that there was a panchayat in the year 1970, in which Balkis Beevi, the mother of the plaintiff has parted with 40 cents in favour of the third defendant. While there is no documentary evidence produced to substantiate it, yet even if it is presumed as a plea available to the third defendant, its foundation is that the third defendant had obtained an additional extent of 40 cents based on the consent of Balkis Beevi. This in essence project a case for the defense founded on title. Now, in the face of this plea, the alternate plea of adverse possession cannot be accommodated, for a plea of adverse possession requires hostility of possession against the true owner and hence it cannot co-exist with a plea of title. In other words, the plea of adverse possession is an inconsistent plea, and its effect gets nullified by the principal plea of compromise in the year 1970.

9. Turning to Ex.B-9 patta, on which the defendants had pivoted their



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argument now, law is settled long long ago that patta is not a document of title. More so, when the defendants find themselves on a slippery wicket *vis-a-vis*, the plea of adverse possession.

10. To conclude, this Court does not find merit in the Second Appeal. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.06.2022

Index : Yes/No

Internet: Yes/No

rmk/cm

To

1.The Additional Sub Judge, Thanjavur, Thanjavur District.

2.The District Munsif Judge, Thanjavur District.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.

N.SESHASAYEE, J.,



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