



S.A(MD)Nos.450 & 451 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2022

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)Nos.450 and 451 of 2013

and

M.P.(MD) Nos.1 and 1 of 2013

S.A(MD) No.450 of 2013:

1.Lakshmi

2.Ponnammal (Died)

3.M.Chidambaram

... Appellants/Appellants/
Defendants 2, 3 & 5

4.K.Rajan

5.K.Arumugam

... Appellants

(Appellants 4 and 5 are brought on record as legal representatives of the deceased second appellant vide Court order, dated 12.02.2021, made in C.M.P(MD)Nos. 2062 and 2063 of 2018 in S.A(MD)No.450 of 2013)

Vs.

1.Sabiya Beevi (Died)

... 1st Respondent/
1st Respondent/Plaintiff

2.K.Subramanian

3.Bhagavathiamma

... Respondents 2 & 3/
Respondents 2 & 3/
Defendants 1 & 4

4.E.Nazeera Beevi

5.E.Hajamydeen (Died)



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6.E.Sakilabeevi

7.H.Syed Ali Fathima

... Respondents

(Respondents 4 to 6 are brought on record as legal representatives of the deceased first respondent vide Court order, dated 12.02.2021, made in C.M.P(MD)Nos. 3745, 3746 and 3747 of 2019 in S.A(MD)No.450 of 2013)

(Seventh respondent is brought on record as legal representatives of deceased fifth respondent vide Court order, dated 09.04.2021, made in C.M.P(MD)Nos.3622 to 3624 of 2021 & 3576, 3578 & 3580 of 2021 in S.A(MD)Nos.450 & 451 of 2013)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.64 of 2003, dated 08.03.2013, on the file of the Principal Sub-Court, Nagercoil, confirming the judgment and decree passed in O.S.No.1659 of 1985, dated 31.07.2003, on the file of the Additional District Munsif Court, Nagercoil.

For Appellants : M/s.H.Arumugam

For R-1 & R-5 : Died

For R-2 & R-3 : Exparte

For R-4, R-6
& R-7 : M/s.M.P.Senthil

S.A(MD) No.451 of 2013:

1.Lakshmi

2.Ponnammal (Died)

3.M.Chidambaram

... Appellants/Appellants/
Defendants 2, 3 & 5



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4.K.Rajan

5.K.Arumugam

... Appellants

(Appellants 4 and 5 are brought on record as legal representatives of the deceased second appellant vide Court order, dated 12.02.2021, made in C.M.P(MD)Nos.2065 and 2066 of 2018 in S.A(MD)No.451 of 2013)

Vs.

1.Sabiya Beevi (Died)

... 1st Respondent/
1st Respondent/Plaintiff

2.K.Subramanian

3.Bhagavathiamma

4.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai-2.

... Respondents 2 to 4/
Respondents 2 to 4/
Defendants 1, 4 & 6

(Respondents 2 to 4 are ex-parte before the lower Court hence notice on them may dispense with)

5.E.Nazeera Beevi

6.E.Hajamydeen (Died)

7.E.Sakilabeevi

8.H.Syed Ali Fathima

... Respondents

(Respondents 5 to 7 are brought on record as legal representatives of the deceased first respondent vide Court order, dated 12.02.2021, made in C.M.P(MD)Nos.3748 to 3750 of 2019 in S.A(MD)No.451 of 2013)

(Eighth respondent is brought on record as legal representatives of deceased sixth respondent vide Court order, dated 09.04.2021, made in C.M.P(MD)Nos.3622 to 3624 of 2021 & 3576, 3578 & 3580 of 2021 in S.A(MD)Nos.450 & 451 of 2013)



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.78 of 2003, dated 08.03.2013, on the file of the Court of Principal Sub-Court, Nagercoil, confirming the judgment and decree passed in O.S.No.24 of 1987, dated 31.07.2003, on the file of the Additional District Munsif Court, Nagercoil.

For Appellants : M/s.H.Arumugam

For R-1 & R-6 : Died

For R-2 to R-4 : Exparte

For R-5, R-7
& R-8 : M/s.M.P.Senthil

COMMON JUDGMENT

1.1. Defendants 2, 3 and 5 are the appellants herein.

1.2. S.A.(MD) No.450 of 2013 is arising out of a suit in O.S.No.1659 of 1985 filed by the first respondent. The first respondent herein had filed O.S.No.1659 of 1985 before the Principal Sub-Court, Nagercoil for redemption of mortgage. The suit was decreed by the trial Court. As against the same, the defendants had filed A.S.No. 64 of 2003



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before the Principal Sub-Court, Nagercoil. The learned Subordinate Judge concurred with the findings of the trial Court. Aggrieved by the same, defendants 2, 3 and 5 have come up by way of this second appeal.

1.3. S.A.(MD) No.451 of 2013 is arising out of a suit in O.S.No.24 of 1987 filed by the first respondent. She filed the suit for bare injunction restraining the 4th respondent from providing electric connection to the plaint schedule property and also for injunction restraining the appellants and respondents 2 and 3 from making any alteration or subletting, etc., of the plaint schedule property. The said suit for injunction was decreed by the trial Court and aggrieved by the same, the appellants herein filed an appeal in A.S.No.78 of 2003 before the Principal Sub Court, Nagercoil. The first appeal was dismissed by the first appellate Court. Aggrieved by the same, defendants 2, 3 and 5 have come up with this second appeal.

2.1. According to the first respondent / plaintiff, the suit property originally belonged to one Seetharaman and she executed three mortgage deeds in favour of Gowri Pillai under Exhibits A1, A2 and A3



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on 13.03.1958, 08.07.1960 and 15.02.1962. Subsequently, the said Gowri Pillai made over the same in favour of the second respondent / first defendant in the suit. Thereafter, the said Seetharaman executed a *purakadam* deed in favour of the first respondent under Exhibit A5 on 28.03.1963. The first respondent mortgaged the suit property in favour of the plaintiff under Exhibit A6 and it was followed by two other mortgages under Exhibits A7 and A8, dated 20.08.1970 and 02.03.1974. The total mortgage debt under three sub mortgages was Rs.2,500/- Subsequently, the first respondent / plaintiff purchased the suit property from original owner Seetharaman under Exhibit A9, dated 12.09.1979. It was also pleaded that the first respondent purchased the suit property for sale consideration of Rs.6,500/- and portion of mortgage debt was set-off and only Rs.1,000/- remained to be paid. After purchase from the original owner, the plaintiff laid the present suit for redemption of mortgage.

2.2. The appellants herein had filed a written statement and resisted the suit by raising plea of adverse possession. The appellants along with a plea of adverse possession also raised a plea that the suit



property belongs to the Government and it is a classified poromboke and the appellants have been in possession and enjoyment of the same for long time by paying 'B' Memo.

3.1. O.S.No.24 of 1987 was filed by the first respondent mainly on the ground that the appellants by influencing the revenue officials were trying to create documents in their favour and the third respondent/ fourth defendant, a tenant inducted by the second respondent/first defendant was making attempt to get electric service connection in his favour. It was also alleged by the first respondent that in that suit the appellants were making attempts to alter the physical features of the property and alienate the same to third parties. On these allegation, the suit for injunction was laid as mentioned above.

3.2. The said suit was resisted by the second respondent/first defendant by filing a written statement, wherein he claimed that he was in possession of the suit property as a mortgagee. The appellants filed a written statement denying the right of the first respondent over the suit property. They set up a defence that the suit property belonged to the



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Government and the first respondent cannot maintain the present suit for injunction against them. The appellants also claimed that the building in the suit property belonged to them and hence, they were entitled to get electricity service connection in their names. On these allegations, they sought for dismissal of the suit.

4. Before the trial Court, the first respondent / plaintiff was examined as P.W.1 and four other witnesses were examined on her behalf as P.W.2 to P.W.5. On behalf of the appellants, the third appellant Chidambaram was examined as D.W.1. On behalf of the first respondent / plaintiff, 38 documents were marked as Exhibits A1 to A38 and on behalf of the appellants, 8 documents were marked as Exhibits B1 to B8. The trial Court also appointed an Advocate Commissioner to measure the suit property with a help of surveyor and correlation register and the Advocate Commissioner's Report and Plan were marked as Exhibits C1 and C2.

5. The trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the first



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respondent / plaintiff proved her case by producing Exhibits A1 to A8 mortgage deeds and Exhibit A9 sale deed in her favour. The trial Court also held that the appellants though pleaded adverse possession, failed to prove the same by leading cogent evidence. Therefore, the suit was decreed by the trial Court and aggrieved by the same, the appellants herein had filed a first appeal in A.S.No.78 of 2003 on the file of the Principal Sub Court, Nagercoil. The lower Appellate Court also concurred with the findings rendered by the trial Court and dismissed the appeal and aggrieved by the same, the appellants are before this Court.

6. The learned Counsel for the appellants tried to assail the judgments passed by the Courts below on the ground that, the first respondent / plaintiff failed to produce any documents in support of her claim in respect of the properties covered under S.Nos.D11/49 and D11/53. It is the contention of the learned Counsel for the appellants that the appellants are not mortgagees of the suit properties and hence, the plaintiff is not entitled to recover possession of the suit properties except by establishing his title over the same. The main contention of the learned Counsel for the appellants would be that the Advocate



Commissioner found that the old survey number mentioned in the mortgage deeds produced by the first respondent, namely, S.No.1382/75 is not relating to the new survey numbers mentioned in the plaint, namely, T.S.Nos.D11/49 and D11/53.

7. On the basis of the arguments made by the learned Counsel for the appellants, the main question that has to be decided in the second appeals would be whether the property covered by the mortgage deeds produced by the plaintiff, namely, Exhibits A1 to A8 and the suit properties are one and the same. Though in the mortgage deeds produced by the plaintiff only old S.No.1382/75 is mentioned, a comparison of the boundaries given in the mortgage deed and the plaint boundary description would make it clear that the properties covered by the four boundaries mentioned in the mortgage deed produced by the plaintiff are the subject matter of the plaint. In other words, the four boundaries of the suit property given in the suit schedule property tallies with the four boundaries mentioned in the mortgage deeds produced by the appellants. It is a settled law when there is a dispute between the boundaries and the extent, boundaries will prevail over the extent. Likewise, even in cases,



where there is a doubt with regard to the survey numbers, the boundaries will prevail over the survey numbers. Both the Courts below, based on the boundary description found in the mortgage deeds and sale deed in her favour produced by the plaintiff, came to the conclusion that the suit property, the mortgaged property and the property covered by sale deed in favour of first respondent / plaintiff were one and the same.

8. As far as the plea of adverse possession raised by the appellants is concerned, it is a settled law, plea of adverse possession has to be specifically pleaded and meticulously proved by cogent evidence. In the present case, the revenue documents produced by the appellants to prove their possession are subsequent to the suits. Therefore, the appellants miserably failed to prove their case of adverse possession for more than the statutory period. In these circumstances, both the Courts below rightly negated the claim of adverse possession raised by the appellants.

9. Though the appellants in their written statement pleaded that the suit property was a poramboke property and the appellants had been



in possession and enjoyment of the same by paying 'B' Memo tax to the Government, the Advocate Commissioner, appointed by the Court after surveying the suit property, filed report stating that there was no poramboke property situated within the suit property mentioned in the plaint. The appellants also failed to substantiate the plea that the suit property is a poramboke and 'B' Memo had been issued in their favour.

10. The first respondent by producing Exhibit A9-sale deed in her favour and the previous mortgage deeds, proved her title over the suit property. The Courts below also based on the Advocate Commissioner's report came to the conclusion that the properties covered by the title document of the first respondent and the suit properties were one and the same. As a consequence, the Courts below granted a decree for redemption in favour of the first respondent as prayed for. When the title of the first respondent/plaintiff is upheld, as a necessary consequence, the first respondent is entitled to get a decree for injunction restraining the appellants and other respondents from altering the physical features of the suit property or encumbering the suit properties to the third parties so as to defeat the rights of the first respondent over the suit property.



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Likewise, the third respondent herein without having any manner of right is not entitled to get electricity service connection in her name without getting consent from the owner of the property viz., the first respondent. In such circumstances, the Courts below rightly granted a decree for injunction in favour of the first respondent in O.S.No.24 of 1987.

11. In these circumstances, I do not find any question of law, much less substantial question of law involved in these second appeals. Consequently, both the second appeals are dismissed. No costs. Connected miscellaneous petitions are closed.

23.12.2022

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr/abr
To

- 1.The Additional District Munsif Court,
Nagercoil.
- 2.The Principal Sub-Court, Nagercoil.
- 3.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

Btr/abr

Judgment made in
S.A(MD)Nos.450 & 451 of 2013

Dated:
23.12.2022