



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 28.02.2022

JUDGMENT PRONOUNDED ON : 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.25 of 2019

and

CMP (MD) .No.1387 of 2019

MaragathamAppellant/1st Respondent
/Plaintiff

Vs

1.Chelladurai ...1st Respondent/Appellant
/1st Defendant

2.Kirubakaran ...2nd Respondent/2nd Respondent
/2nd Defendant

(The second respondent given up as
set exparte)

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgement and decree dated 22.07.2016 passed in A.S.No.80 of 2010 on the file of the Sub Court, Thoothukudi by reversing the judgment and decree dated 17.06.2010 passed in O.S.No.115 of 2004 on the file of the District Munsif, Srivaikundam.

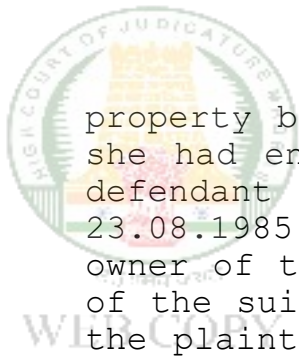
For Appellant : Mr.P.Santhoshkumar
For R1 : Mr.Ananth C.Rajesh
R2 : Given up

JUDGMENT

The plaintiff is the appellant.

2.The plaintiff filed O.S.No.115 of 2004 before the District Munsif Court, Srivaikundam for recovery of possession. The suit was decreed by the trial Court. The first defendant filed A.S.No.80 of 2010 before the Subordinate Court, Thoothukudi. The learned Subordinate Judge was pleased to allow the appeal. As against the same, the plaintiff has filed the above second appeal.

<https://hcservices.ecourts.gov.in/hcservices/> The plaintiff has contended that the suit schedule



property belongs to her mother Selvammal and during her life time, she had entrusted the suit property to one Chelladurai who is the defendant in the suit. The said Selvammal had passed away on 23.08.1985. After her death, the plaintiff has become the absolute owner of the suit schedule property. The defendant is in possession of the suit schedule property only as a permissive occupant. Hence, the plaintiff issued a notice calling upon the defendant to vacate and hand over the suit schedule property on 04.03.2003 under Exhibit A1. However, there was no reply from the defendant and the defendant has also not handed over the possession. Hence, the present suit.

4.The first defendant filed a written statement admitting that the plaintiff's mother is the owner of the suit schedule property. However, he contended that in the year 1981, the plaintiff's mother had permitted the defendant and his wife to reside in the suit schedule property. In the year 1991, to meet out the expenses of the marriage of the plaintiff, the plaintiff's father has executed an unregistered sale deed in favour of the defendant on 03.06.1991 under Exhibit B6. The said sale deed has also been attested by the plaintiff and one Kannaiya who has been examined as DW2. The defendant has further contended that the plaintiff has got one more brother by name Kirubakaran who has not been impleaded in the suit. Pursuant to the said pleadings of the defendant, the said Kirubakaran was impleaded as the second defendant in the suit. However, he remained exparte.

5.The trial Court after considering the oral and documentary evidence arrived at a finding that both the parties are admitting the fact that the suit schedule property belongs to the plaintiff's mother Selvammal. It is also admitted by both the parties that the said Selvammal has permitted the defendant to reside in the suit schedule property. But the first defendant claimed title to the suit schedule property based upon an unregistered sale deed dated 03.06.1991 marked as Exhibit B6. The trial Court rejected Exhibit B6 on the ground that it is an unstamped and unregistered document. Hence, Exhibit B6 cannot even be considered for collateral purpose. After rejecting Exhibit B6, the trial Court proceeded to hold that the possession of the first defendant in the suit schedule property is only that of permissive possession and the same has been terminated by issuing Exhibit A1 notice. Based upon the said finding, the trial Court decreed the suit as prayed for.

6.The First Appellate Court concurred with the findings of the trial Court with regard to the fact that the plaintiff's mother is the owner of the suit schedule property. The First Appellate Court also concurred with the trial Court that Exhibit B6 unregistered sale deed is not admissible in evidence. But the First Appellate Court proceeded to reverse the judgement and decree of the trial Court on the ground that the defendant is in possession of the suit schedule property for more than 13 years and the plaintiff has



findings, the First Appellate Court set aside the judgement and decree of the trial Court and dismissed the suit. As against the same, the present second appeal has been filed by the plaintiff.

7.The second appeal was admitted on the following substantial questions of law:

"(1)Whether the lower Appellate Court is correct in allowing the appeal, when the defendant having taken the plea of ownership based upon Exhibit B6, cannot be entitled to adverse possession?

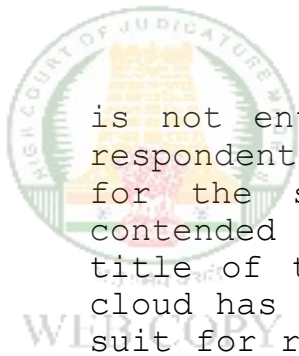
(2)Whether the Lower Appellate Court is correct in exercising the discretion in favour of the defendant /respondent in granting the relief under Article 65 of the Limitation Act, even though he had not opted to pursue his claim of adverse possession?

(3)Whether the judgment of the lower Appellate Court is not in conformity with Order 41 Rule 31 C.P.C.?"

8.The learned counsel for the appellant contended that both the Courts below have concurrently found that the plaintiff's mother is the owner of the suit schedule property. He further contended that Exhibit B6 unregistered sale deed projected by the first defendant has been rejected by the Courts below on the ground that it is inadmissible in evidence. When the defendant has admitted in his written statement that his possession from the year 1981 is permissive in character, the First Appellate Court ought not to have held that the plaintiff has lost title to the suit schedule property. The learned counsel for the appellant further contended that the first defendant has pleaded title based on Exhibit B6 and hence, the First Appellate Court was not right in dismissing the suit of the plaintiff on the ground of adverse possession of the defendant. The learned counsel of the appellant further contended that there is no pleading in the written statement that the defendant has acquired title by adverse possession. Hence, he prayed for allowing the second appeal.

9.Per contra, the learned counsel for the respondent/first defendant contended that the second defendant is the brother of the plaintiff's mother. The plaintiff is not only the legal heir of the deceased Selvammal but the plaintiff has a brother by name Kirubakaran who was not originally arrayed as a party in the suit. The plaintiff has not approached the Court with clean hands. When the plaintiff has not approached the Court with clean hands and suppressed the material fact, she is not entitled to the relief of recovery of possession.

10.The learned counsel for the respondent/first defendant relied upon the judgment of the Hon'ble Supreme Court reported in **2013 9 SCC 92** on the ground that whenever a person approaches the Court for equitable relief after suppressing the material fact, he



is not entitled to any such relief. The learned counsel for the respondent also relied upon the judgment reported in **1994 1 SCC 1** for the same proposition of law. The learned counsel further contended that the first defendant has created a cloud over the title of the plaintiff by producing Exhibit B6 sale deed. When a cloud has been created over the title of the plaintiff, the present suit for recovery of possession without a prayer for declaration of title is not maintainable. The learned counsel for the respondent also relied upon the Judgment of the Hon'ble Supreme Court reported in **2008 4 SCC 594** to impress upon the Court on the above said proposition of law. He has also relied upon **2021 0 Supreme (Mad) 1557** for the same ratio.

11.The learned counsel for the first respondent further contended that the plaintiff has failed to prove that the possession of the defendant is unlawful from the year 1981 onwards. In fact, the plaintiff's father has executed Exhibit B6 unregistered sale deed in favour of the defendant only for the marriage expenses of the plaintiff. The plaintiff herself has attested Exhibit B6 document and hence, she is estopped from disputing the title of the first defendant. He further contended that the original title deeds standing in the name of the plaintiff's mother has been marked as Exhibit B4 only on the side of the defendant. This will clearly establish the fact that the property was sold by the plaintiff's father in favour of the first defendant under Exhibit B6. The learned counsel for the first respondent further contended that the defendant has invested a huge sum of money and renovated the suit schedule property. The plaintiff had remained silent throughout the said period and making a claim for recovery of possession only after the demise of her father.

12.The learned counsel for the respondent/first defendant further contended that the revenue records have been mutated in favour of the first defendant which are reflected in Exhibits B1 to B3. The plaintiff has not raised any objection for mutation of the revenue records. The attestation of the plaintiff in Exhibit B6 coupled with the fact that she has not raised any objection during the mutation of revenue records will clearly establish that the first defendant is the owner of the suit schedule property. Hence, he prayed for dismissal of the second appeal.

13.I have considered the submissions on either side.

14.Both the parties have admitted that the plaintiff's mother Selvammal is the absolute owner of the suit schedule property by way of a sale deed dated 12.01.1962 which is marked as Exhibit B4. According to the plaintiff, her parents have passed away and she is the legal heir who has inherited the suit schedule property. Though the defendant raised an objection that the



plaintiff has got a brother by name Kirubakaran, the said Kirubakaran was impleaded as second defendant in the suit. The second defendant has chosen to remaine exparte.

15.The defence taken by the defendant in his written statement is that he is the brother of Selvammal and he was put in possession of the suit schedule property by the said Selvammal in the year 1981. Thereafter, the plaintiff's father had executed an unregistered sale deed in favour of the first defendant under Exhibit B6 on 03.06.1991 to meet out the marriage expenses of the plaintiff. From then onwards, he is in possession of the suit schedule property as the owner. The defendant has also contended that the mutation of revenue records have taken place and there was no objection on the side of the plaintiff.

16.The second defendant has remained exparte admitting the title of the plaintiff. Hence, the plaintiff has established her title over the suit schedule property. Exhibit B6 is only an unregistered sale deed. The said document has not been stamped at all. An unregistered and unstamped document cannot be looked into even for collateral purposes. Hence, the same is inadmissible in law. An inadmissible document cannot be considered to create a cloud over the title of the plaintiff and the plaintiff is not required to pray for declaration of title.

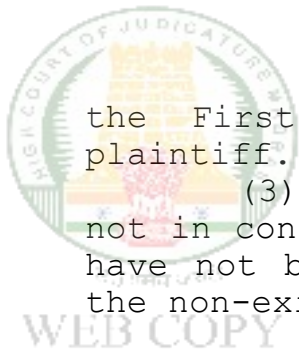
17.The defendant in his written statement has admitted that he was put in possession in the year 1981 only with permission of the plaintiff's mother. From the year 1991, he claimed title to the suit schedule property based upon Exhibit B6 unregistered sale deed.

18.When Exhibit B6 is inadmissible in evidence, the possession of the first defendant in the suit schedule property can only be considered to a permissive occupation right from the year 1981 onwards. That part, the defendant has not pleaded adverse possession in the written statement. The First Appellate Court has erroneously held that the plaintiff has lost title to the suit schedule property in view of the fact that the defendant is in possession of the suit schedule property for more than 13 years. When there is no pleadings regarding adverse possession by the first defendant, the First Appellate Court had erred in non-suiting the plaintiff on the ground of adverse possession of the first defendant.

19.In view of the above said discussion, the substantial questions of law are answered as follows:

(1)When the defendant had pleaded title based on Exhibit B6 and he had never pleaded adverse possession, the First Appellate Court has erroneously non-suited the plaintiff on the ground of adverse possession.

(2)When the defendant has not pleaded adverse possession,



the First Appellate Court ought not to have non-suited the plaintiff.

(3) The judgment and decree of the First Appellate Court are not in conformity with Order 41 Rule 31 C.P.C, since all the issues have not been considered and the decree has been reversed only on the non-existing defence of adverse possession.

20. All the substantial questions of law are answered in favour of the appellant. The judgment and decree of the First Appellate Court are set aside. The judgment and decree of the trial Court are restored. The second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

msa

To

1. The Subordinate Judge
Thoothukudi

2. The District Munsif
Srivaikundam

3. The Section Officer
V.R. Section
Madurai Bench of Madras High Court
Madurai

+1 CC to M/s.P.SANTHOSHKUMAR, Advocate (SR-10270[F] dated 07/03/2022)

S.A. (MD) .No.25 of 2019
and

CMP (MD) .No.1387 of 2019
04.03.2022

CK (CO)
KB (22.03.2022) 6P 6C