



S.A.(MD)No.403 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

S.A.(MD)No.403 of 2022
and
CMP(MD)No.4828 of 2022

S.Krishnan (died)

1. Chandran

2. Vasantha Devi

3. Kanagaraj

... Appellants

versus

Issac (died)

Thangamani @ Thavamani (died)

Krishnan (died)

1. Chinnakutti

Valliammal (died)

2. Mookammal

Chinna Gurusamy (died)

Chellathai (died)

3. Gnanammal

4. Pappa

Roothu (died)

5. Paulsamy

Karuppasamy (died)

6. Janakiammal

Bakkiyam (died)

7. Kanniammal

8. Darmaraani

9. Chandrakala

10. Maheswari

11. Balasundari

12. Eswari

13. Arumugam



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14. Krishnan
 15. Selvi
 16. Rebackaal
 17. Maari
 18. Kumar
 19. Vasantha
 20. Pushpa
 21. Thaiammal
 22. Buela Premasundari
 23. Prabhudoss
 24. Issac Kirubakaran
 25. Vijayarani
 26. Paulraj Pandian
 27. Elizabeth Rani
- Respondents

...

Second Appeal filed under Section 100 of C.P.C. against the Judgment and Decree passed in A.S.No.64 of 2008 on the file of the Additional Sub Court, Tenkasi, dated 08.04.2022 confirming the Judgment and Decree passed in O.S.No.146 of 1993 on the file of the District Munsif Court, Shenkottai dated 25.07.2008.

For Appellants : Mr.N.Ganagasapapathy

For Caveators : Mr.T.S.R.Venkatramana

JUDGMENT

This Second Appeal is filed as against the Judgment and Decree dated 08.04.2022 made in A.S.No.64 of 2008 on the file of the Additional Sub Court, Tenkasi, confirming the Judgment and Decree dated 25.07.2008 made in O.S.No.146 of 1993 on the file of the District Munsif



Court, Shenkottai.

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2. The appellants herein are legal heirs of the deceased first defendant, one S.Krishnan in O.S.No.146 of 1993. The respondents 1 to 5 herein along with seven others (now deceased) filed the above suit in O.S.No.146 of 1993 before the District Munsif Court, Shenkottai, for the relief of declaration and injunction with regard to the suit schedule property in Survey No.969/2 situated at Thirumalai Kolundhupuram, Kambaneri Pudukkudi Village, Veerakeralampudur Taluk, Tenkasi District. The said suit was decreed in favour of the plaintiffs, by Judgment and Decree dated 25.07.2008. As against the same, the defendants preferred an appeal, before the Additional Sub Court, Tenkasi, in A.S.No.64 of 2008 and the same was also dismissed by the First Appellate Court, by its Judgment and Decree dated 08.04.2022. As against the concurrent findings of the Courts below, the appellants, who are the legal heirs of the first defendant, have filed the present Second Appeal on the following substantial questions of law:

(i) Whether the Courts below are correct in granting the relief of declaration and injunction when the present appellants had proved by oral and documentary evidence that they are in continuous possession and



enjoyment of the suit property right from 13.08.1983 and had perfected their title by adverse possession?

(ii) Whether the Courts below are correct in granting the relief of injunction when admittedly the present appellants are in continuous possession of the suit property from the year 1983?

(iii) Whether the Courts below are correct in decreeing the suit as prayed for when the plaintiffs had not even proved that how the suit property absolutely belonged to Muppadathiammal on the basis of jameen patta as pleaded?

(iv) Whether the Courts below are correct in coming to a conclusion in favour of the plaintiffs as neither the jameen patta nor the correlation certificate had been produced?

(v) Whether the Courts below are correct in coming to a conclusion in favour of the plaintiffs when the suit is clearly barred by the limitation in seeking declaration and injunction when the cause of action for the suit arose on 25.10.1989 whereas the suit has been filed only in the year 1993?

3. The learned counsel appearing for the appellants submits that

the suit schedule property was originally allotted to their grandmother one



Sangilimadathi by way of a oral partition in the year 1952 and thereafter,

Sangilimadathi, by way of a gift deed dated 13.08.1983, gave the property to her son S.Krishnan, who was the first defendant in the present suit and father of the appellants and ever since the date of gift deed, the first defendant was in possession of the property. But, the trial Court, without considering the gift deed dated 13.08.1983 and other documents produced in support of their case, wrongly decreed the suit in favour of the plaintiffs. The tax receipts Exs.B3 and B4 would establish their case that their father was in continuous possession of the property, however, the same has not been considered by the Courts below.

4. Mr.T.S.R.Venkataraman, learned counsel, who entered appearance for the respondents as caveators submits that this is the second round of litigation and seeks permission of this Court to file certain documents before this Court with regard to the suit schedule property stating that the first defendant had already filed a suit in O.S.No. 57 of 1984 before the District Munsif Court, Tenkasi and the same was dismissed by the trial Court by Judgment and Decree dated 04.05.1985, against which, an appeal suit was also preferred by the first defendant before the Sub Court, Tenkasi in A.S.No.79 of 1986, which was also



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dismissed with cost, by Judgment and Decree dated 22.12.1989. As against the same, the first defendant had also filed a Second Appeal before this Court in S.A.No.460 of 1990, which was also dismissed by this Court on 17.07.2001. The first defendant, who lost his case in the suit in O.S.No.57 of 1984, again started disturbing the plaintiffs' possession of the property, which constrained the plaintiffs to file the suit in O.S.No.146 of 1993 before the District Munsif Court, Tenkasi and the same was decreed in favour of them. The first appeal preferred by the first defendant in A.S.No.64 of 2008 before the First Additional Sub Court, Tenkasi was also dismissed by Judgment and Decree dated 08.04.2022 and therefore, pleaded to dismiss the second appeal with costs.

5. This Court considered the rival submissions made and perused the materials placed on record.

6. The appellants are legal heirs of the deceased first defendant. Insofar as the first question of law is concerned, the appellants claim that as per the oral and documentary evidence, they are in continuous possession and enjoyment of the property right from 13.06.1983. The



first defendant is said to have derived the title over the suit property through her mother one Sangilimadathi by way of oral partition. As regards the 3rd and 4th questions of law are concerned, the appellants claim that Muppudathiammal has no title over the suit property and therefore, the plaintiffs had no right over the property. The first question of law is contrary to the 3rd and 4th questions of laws.

7. In the earlier suit filed by the first defendant in O.S.No.57 of 1984, the Courts have given a finding that he had no prescribed title by adverse possession and all the documents produced by him are not relevant. The same was confirmed in the Second appeal. The second appeal filed by the first defendant in S.A.No.460 of 1990 was dismissed by this Court by its Judgment and Decree dated 17.07.2001. Thereafter, the present suit in O.S.No.146 of 1993 was filed by the respondents that the first defendant is disturbing the respondents/plaintiffs' possession of suit property in the year 1989 for the cause of action on 25.10.1989. The present suit in O.S.No.146 of 1993 was filed for the relief of declaration and permanent injunction as against the first defendant on 04.11.1989. In the 5th question of law, the appellants claim that the suit in O.S.No.146 of 1993 has been filed only in the year 1993 and it is barred by limitation. It



appears that this second appeal is filed even without ascertaining the date of filing of the present suit by the plaintiffs in O.S.No.146 of 1993 and therefore, the second question of law raised in support of this appeal is not acceptable.

8. The plaintiffs are sons of Muppudathiammal and they prescribed title over the suit schedule property by way of a gift deed (Ex.A1), which was executed by Muppudathiammal in favour of one of her sons Perumal on 25.05.1984. Thereafter, the said Perumal executed a gift deed by dividing the property equally among of his brothers, through a registered document (Ex.A2) dated 20.05.1961. The gift deed dated 25.05.1984 (Ex.A1) executed by Muppudathiammal was already challenged by the first defendant (appellants' father) in the earlier round of litigation in O.S.No.57 of 1984, which was dismissed by the trial Court by its Judgment and Decree dated 04.05.1985 and the same was also confirmed up to this Court in S.A.No.460 of 1990. This issue has already been decided by this Court in S.A.No.460 of 1990 in the earlier round of litigation. Hence, this Court is not inclined to entertain this second appeal on the above questions of law.



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9. Accordingly, the Second Appeal is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is also closed.

27.10.2022

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To

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



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B.PUGALENDHI, J.

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