



S.A.(MD) No.887 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.887 of 2014

Veera Azhagappan

... Defendant/Appellant/Appellant

Vs.

Peri.Visalakshi (Died)

2.K.Ramamani

3.Rajamanickam

4.Ramalingam

5.Rajeswari

6.Subramanian

7.Ramakrishnan

8.Selvam

9.Raja

... Respondents/Respondents/Plaintiffs

(R3 to R9 are brought on record as LR's of the deceased first respondent vide order dated 15.07.2022 made in C.M.P(MD).No.6071 of 2022 in S.A(MD).No.887 of 2014)

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 03.12.2012 passed in O.S.No.142 of 2011 on the file of the Principal District Munsif cum Judicial Magistrate, Karaikudi, as confirmed in A.S.No.9 of 2007 dated 11.03.2013 of the Sub-ordinate Judge, Devakottai.



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For Appellant : Mr.S.Jayakumar

For respondents : R1-Died
Mr.Shanmugaraj
for Mr.R.Sundar Srinivasan for R2 to R9

J U D G M E N T

The sole defendant in O.S.No.142 of 2011 laid for partition of plaintiffs $\frac{1}{2}$ share in the suit property, is the appellant herein. The suit came to be decreed and A.S.No.9 of 2007 which the defendant had preferred came to be dismissed by the First Appellate Court.

2.The facts are as below:-

- Survey No.896 had a total extent of 6,776 sq.ft [approximately 15.6 cents]. According to the plaintiff, the northern half measuring 3888.05 sq.ft [approximately 7.80 cents] belongs to certain Velaichamy Ambalam. The plaintiffs are the daughters of this Velaichamy Ambalam.



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- The defendant is the purchaser of the southern half of the property under Ext.B1, Sale deed, dated 21.10.1964. In this sale deed, the northern boundary is shown to be the property of the aforesaid Velaichamy Ambalam. Since the properties lie together, the plaintiffs have filed the present suit for partition.

3.The only line of defence offered by the defendant is that he has prescribed title by adverse possession. The dispute went to trial and before it, both sides adduced oral and documentary evidence.

4.The trial Court finds that the defendant had not proved his plea of adverse possession and decreed the suit. The First Appellate Court also followed so and concurred with the findings of the trial Court. Hence, this appeal.

5.This appeal is admitted for considering the following substantial questions of law:

a) whether the judgments of the Courts below are legally sustainable in thrusting the burden of proof on



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the defendant about his adverse possession over the southern side property even after he produced revenue records in favour of him?

b) whether the judgment and decree of the Courts below are liable to be set aside on the ground that the same are perverse and also on the ground that they have misread and misquoted the evidence on record.

6.The substantial questions of law raised essentially require the defendant/appellant to prove whether the judgments of the Courts below are perverse.

7.Heard, Mr.S.Jayakumar, learned counsel appearing for the appellant and Mr.Shanmugaraj for Mr.R.Sundar Srinivasan, learned counsel appearing for the respondents 6 to 9.

8.This Court also perused the documents. What is not in dispute is that the northern half belongs to Velaichamy Ambalam and there is ample evidence to the same from Ext-B1, Sale Deed, under which, the defendant claimed



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title.

9.The learned counsel appearing for the appellant has urged during his cross-examination that the property is fully enclosed with fence and this aspect has been admitted by P.W.1. He further submitted that the defendant was in continuous uninterrupted hostile possession to the knowledge of the said Velaichamy Ambalam and also the plaintiffs for a continuous period well over 12 years. Hence, he has prescribed title by adverse possession.

10.This Court carefully perused the written statement and finds that nowhere the defendant has given the specific date or year in which he has put up the fence. Reading of the written statement itself indicates that the defendant could not have been in possession from the date of Ext.B1 (i.e.,) 21.10.1964.

11. In fine, this Court does not find that there is hardly any element in the judgments of the Courts below to draw an inference that they are perverse.



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Since the findings of the Courts below are in order, this Court does not deem it appropriate to interfere with the same under Section 100 of the Civil Procedure Code.

12. Accordingly, this Second Appeal is dismissed. No costs.

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Internet: Yes/No
Index: Yes/No
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To
1. Principal District Munsif cum Judicial Magistrate, Karaikudi,
2. Sub-ordinate Judge, Devakottai.



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N.SESHASAYEE, J.

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