



S.A.No.1909 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2022

CORAM : JUSTICE N.SESHASAYEE

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1. Joseph (Died)
2. Francis (Died)
3. Rajagopal Pandian (Died)
4. Selvaraj (Died)
5. Daisy
6. Joseph Jesuraj
7. Chandrasekar
8. Robert Chairman
9. Pushparaj ... Appellants 1 to 9/
Appellants/Plaintiffs
10. Jeyanthi Chitradevi ... 10th Appellant
*[10th appellant brought on record as LR of the deceased 1st
appellant vide order dated 14.09.2022 made in C.M.P.
(MD) Nos.8352 & 8354 of 2022 in S.A.No.1909 of 2003]*
11. F.Dhamayanthi
12. F.Nirmal Swarna
13. F.Chandradevi
14. F.Ashok Jeyakumar ... Appellants 11 to 14

*[Appellants 11 to 14 brought on record as LRs of the
deceased 2nd appellant vide order dated 14.09.2022 in C.M.P.
(MD) Nos.8352 & 8354 of 2022 in S.A.No.1909 of 2003]*



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15.J.R.Amarnath

16.R.Karthiga ... Appellants 15 & 16

[Appellants 15 and 16 brought on record as LR's of the deceased 3rd appellant vide order dated 19.09.2022 in C.M.P.(MD) Nos.8355 to 8357 of 2022 in S.A.No.1909 of 2003]

17.S.Sarojini

18.S.Balakumar

19.S.Nivetha ... Appellants 17 to 19

[Appellants 17 to 19 brought on record as LR's of the deceased 4th appellant vide order dated 29.09.2022 in C.M.P.(MD) No.8358 of 2022 in S.A.No.1909 of 2003]

Vs

1.A.Muthammal (Died)

... Respondent/Respondent/
Defendant

2.Arunachalavadivu

... 2nd Respondent

[R2 brought on record as LR of the deceased sole respondent vide order dated 12.08.2020 made in M.P.(MD) No.1 of 2006 in S.A.No.1909 of 2003]

3.S.Alexpandian

4.A.Latha

... Respondents 3 & 4

[Respondents 3 & 4 brought on record as LR's of the deceased sole respondent vide order dated 30.09.2022 in C.M.P.(MD) No.8359 of 2022 in S.A.No.1909 of 2003]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 09.09.2002 made in A.S.No.122 of 2001 on



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the file of the Principal Sub Court, Tenkasi confirming the judgment and decree dated 25.06.2001 made in O.S.No.23 of 1996 on the file of the Additional District Munsif Court, Tenkasi.

For Appellants : Mr.S.Soma Selvakumar
for Mr.T.Arul

For Respondents : Mr.I.Velpradeep for R2
No appearance for RR3 & 4

J U D G M E N T

The plaintiffs, who have successively lost their suit for declaration of title and for consequential relief of injunction both before the trial Court in O.S.No.23 of 1996 and in their appeal in A.S.No.122 of 2001, are the appellants herein. The dispute is over title to 30 cents of dry land in Sy.No. 198/6 of Kallurani Village, Tenkasi Taluk. For narrative convenience, parties are referred to by their rank before the trial Court.

2.1. The case of the plaintiffs is as follows:

- (a) According to the plaintiffs, the suit property originally belonged to a certain Shanmuga Nadar. Shanmuga Nadar had four sons, which includes Saysamuthu Nadar and three others. The plaintiffs are the



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heirs of Saysamuthu Nadar.

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(b) According to them, in an oral partition that took place among Saysamuthu Nadar and his brothers, the suit property came to be allotted to him. Saysamuthu Nadar died in 1961, leaving behind him surviving his widow Sornammal and his children namely the plaintiffs, one Alphonse and a daughter Jeyarathinam. Of them, Alphonse had died in 1983 and his widow is the 5th plaintiff. Jeyarathinam had relinquished her interest in the suit property in favour of the plaintiffs.

(c) The plaintiffs are in continuous uninterrupted possession for well over 50 years, have been paying *kist*, and thus they have prescribed title by adverse possession.

When they faced certain obstruction to their peaceful possession to the enjoyment of the suit property, they laid the suit.

2.2. The case of the defendant is as below:

(a) The suit property originally belonged to certain Ramasamy Nadar.

Ramasamy Nadar had four sons viz., Ramalinga Nadar, Subramania



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Nadar, Vethamuthu Nadar and Sudalaiandi Nadar. On Ramasamy Nadar's demise, the property devolved equally on all his four sons with each taking undivided 1/4th share in it. Subsequently, vide Ext.B.1 and Ext.B.2, dated respectively 08.03.1943 and 12.09.1949, Subramania Nadar and Sudalaiandi Nadar had sold their respective 1/4th share in the suit property in favour of Ramalinga Nadar. So far as Vethamuthu Nadar's 1/4th share is concerned, after his demise, vide Ext.B.3-sale deed dated 30.10.1950, his heirs had sold the said 1/4th share also to Ramalinga Nadar. Thus, Ramalinga Nadar had become absolute owner of the property. On his demise, the property equally devolved on his wife and son Sami Nadar.

(b) While so on 27.03.1984, under Ext.B.5-sale deed, Sami Nadar had sold the suit property to the defendant and ever since, she is in possession of the property. Be that as it may, the defendant came to know that patta has been wrongly issued in the name of the plaintiffs and hence, she approached the Revenue authorities to rectify the same. Sensing it, the plaintiffs have rushed to the Court and filed the present suit.



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3.1. The dispute went to trial and before the trial Court, the first plaintiff examined himself as P.W.1 and produced Ext.A.1 to Ext.A.10, all of which are revenue documents such as *kist* receipts, Village 'A' Register etc. For the defendant, her husband was examined as D.W.1 and she produced Ext.B.1 to Ext.B.7 of which, Ext.B.1 to Ext.B.5 have already been introduced in the narration above. Ext.B.6 is a notice dated 10.01.1996 issued by the Tahsildar to the defendant and also to the third plaintiff seeking application for mutation of patta.

3.2. On appreciating the evidence before it, the trial Court chose to dismiss the suit. Holding that the plaintiffs and defendant are adjacent owners, the trial court held that though the plaintiffs claim that they are cultivating the property, this fact is not specifically alleged in the plaint and that they have not examined any independent witness to prove it. It thus found that title to the suit property with the defendant but possession in favour of the plaintiffs. However, it proceeded to treat the plaintiffs as trespassers, and held that the trespassers are not entitled to be in possession and necessarily it dismissed the suit.



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3.3 When the matter reached the first appellate Court, it substantially concurred with the findings of the trial Court and dismissed the appeal. Hence, the second appeal.

4. The appeal was admitted for considering the following substantial question of law:

“Whether the first appellate Court was correct in its view that the plaintiff has not perfected title by adverse possession?”

5. The learned counsel for the plaintiffs/appellants herein made a valiant effort to convince this Court that the trial Court has found possession with the plaintiffs and when possession is continuously proved by several documents which the plaintiffs had produced, necessarily, it has to uphold the plea of adverse possession.

6. Per contra, the learned counsel for the defendant argued that when the matter reached the first appellate Court, it did not entirely agree with the finding on possession given by the trial Court. This apart, it also



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emphasised that Ext.B.6 notice issued for mutation of patta by the Tahsildar will refer to an application given by the present defendant dated 27.11.1995 and no sooner on 14.12.1995, the suit was laid.

7. The plaintiffs' core plea of adverse possession finds expression in paragraph 5 of the plaint. The plaint is in Tamil and when translated to English, it will mean that they have been enjoying the property openly and uninterruptedly and thus they have prescribed title by adverse possession. To prove the same, the plaintiffs have relied on Ext.A.1 to Ext.A.9 of which Ext.A.1 is a Chitta for the property in the name of Saysamuthu Nadar and issued in November, 1995, which is barely a month before the suit was laid. They have produced several sets of tax receipts viz., Exts.A.2, A.3, A.4, A.6 and A.7, but all of which refer to patta number and not the survey numbers. It is amazing how the trial Court came to the conclusion that the plaintiffs or their predecessor in title were in possession by mere reading of the patta number in the tax receipt.

8. This apart, any tax receipt paid in the name of any person other than the



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registered owner of the property may be of little assistance. It now boils down to whether the plaintiffs have been in active possession of the property by cultivating the land. As rightly held by the trial Court, the plaintiffs have not even pleaded that they are actively cultivating the land. Necessarily, the finding of the Courts below that possession follows title, when the property is a vacant land, needs to be upheld. The only document that interferes is Ext.A.5 and this will have no credence because it is not even the case of the plaintiffs that they are the title holders of the property, as they claim title only by adverse possession. When the plaintiffs are not the registered owners of the property, a document issued by a revenue authority by itself cannot improve the case of the plaintiffs.

9. In fine, this Court does not find any merit in this appeal as warranting an interference in the findings of the Courts below under Section 100 C.P.C. Accordingly, this Second Appeal is dismissed without costs.

30.09.2022

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N.SESHASAYEE, J.

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To

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

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