



SA.Nos.1449 & 1914 of 2002

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **24.02.2023**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.Nos.1449 & 1914 of 2002

[S.A.No.1449 of 2002]

Manonmani

... Appellant

Vs.

1.Subramanian (died)
2.Alagammal (died)
3.Loganayaki
4.Rajeswari
5.S.Dhanalakshmi
6.S.Vasuki

... Respondents

[Respondents 3 to 6 are brought on record as the LR's of the deceased respondents 1 and 2 viz., Subramanian and Alagammal vide order of Court dated 20.08.2020 made in CMP.Nos.16796 to 16799 of 2018 in SA.No.1449 of 2002 (TKRJ)]



SA.Nos.1449 & 1914 of 2002

PRAYER in S.A.No.1449 of 2002: Second Appeal filed under Section 100

of the CPC, against the Judgement and Decree dated 18.09.2001 and made in A.S.No.61 of 1998 on the file of Sub Court, Udumalpet, confirming the judgement and decree dated 27.02.1998 and made in O.S.No.311 of 1996 on the file of the District Munsif, Udumalpet.

For Appellants : M/s.Kandavadivel Doraisami

For Respondents : Mr.A.Amalraj [R.3 to R.6]
: R.1 and R.2 [died]

[S.A.No.1914 of 2002]

1.Muruganandam
2.Arumugam
3.Kandakumar

... Appellants

Vs.

1.Subramanian (died)
2.Alagammal (died)
3.Loganayaki
4.Rajeswari
5.S.Dhanalakshmi
6.S.Vasuki

... Respondents

[Respondents 3 to 6 are brought on record as the LR's of the deceased respondents 1 and 2 viz., Subramanian and Alagammal vide order of Court dated 20.08.2020 made in CMP.Nos.20758,20760,20764,20768, and 20769 of 2018 in SA.No.1914 of 2002 (TKRJ)]



SA.Nos.1449 & 1914 of 2002

PRAYER in S.A.No.1914 of 2002: Second Appeal filed under Section 100

of the CPC, against the Judgement and Decree in dated 18.09.2001 and made in A.S.No.62 of 1998 on the file of Sub Court, Udumalpet, confirming the judgement and decree dated 27.02.1998 and made in O.S.No.3 of 1992 on the file of the District Munsif, Udumalpet.

For Appellants : M/s.Kandavadivel Doraisami

For Respondents : Mr.A.Amalraj [R.3 to R.6]

: R.1 and R.2 [died]

JUDGEMENT

The plaintiffs in the suits OS.No.311 of 1996 and who are also the plaintiffs in OS.No.3 of 1992 have filed the above Second Appeals. Second Appeal No.1449 of 2002 is directed against the judgement and decree in AS.No.61 of 1998 on the file of the Sub Court, Udumalpet in and by which the learned judge has confirmed the judgement and decree passed by the District Munsif, Udumalpet in OS.No.311 of 1996. S.A.No.1914 of 2002 is filed challenging the judgement and decree of the Sub Court, Udumalpet in A.S.No.62 of 1998 confirming the judgement and decree in O.S.No.3 of 1992 on the file of the District Munsif, Udumalpet. Both the suits are for a declaration and for delivery of possession.



SA.Nos.1449 & 1914 of 2002

WEB COPY

2. The suit OS.No.311 of 1996 is filed in respect of Door Nos.42 and 43 Raja Street Manathakulam, Udumalpet within specified boundaries and O.S.No.3 of 1992 is in respect of 5200 Sq.Ft. vacant site which is enclosed within a live fence which abuts the property subject matter of the suit OS.No.311 of 1996 which is situate in the south and the east of this property. Since the parties are the same in both the suits and as the facts of the case overlap in both the suits, the narration of facts in common are given hereinbelow and the parties are referred to as the plaintiffs and defendant.

3. The plaintiffs would submit that both these properties belonged to the defendant herein and his brothers Karpan Pillai, Arunachala Pillai and Kandasamy Pillai. These properties were purchased by the mother of the plaintiffs's Valliammal from the aforesaid persons under a sale deed dated 23.02.1950. It is the case of the plaintiffs that from the date of the purchase of the suit property, their mother had been in possession and enjoyment of the suit schedule properties. In and by a settlement deed dated 15.12.1981, the plaintiffs' mother had bequeathed the vacant site on her sons, the plaintiff herein and the house property in favour of her daughter. The said



SA.Nos.1449 & 1914 of 2002

Valliammal passed away on 06.11.1987. It appears that the mother had cancelled the settlement deed executed. However, it is the case of the plaintiffs that they continued to be in possession and enjoyment of the property. The defendant is their maternal uncle. It is their case that considering the close relationship, their mother had permitted the defendant to occupy the suit property and that he has been in possession since then. The plaintiffs would submit that though the defendant was only in permissive occupation of the suit property he attempted to put up a new construction without permission from the plaintiffs. Therefore, left with no other alternative the plaintiffs have come forward with the aforesaid two suits.

4. It is the case of the defendant that he had purchased the land on which the house is situate and the appurtenant land under a sale deed dated 17.12.1936. The house was thereafter constructed on the south east corner of this land by the parents of the defendant. The defendants would submit that in the year 1950 they had to file a suit. However, since they did not have a requisite funds, they had intended to file the said suit as indigent persons. However, since the suit property stood in their name they could not



SA.Nos.1449 & 1914 of 2002

called themselves indigent persons. Therefore, they had created the sale deed in favour of their elder sister, the mother of the plaintiffs and it was agreed that the sale would only be a sham and nominal one since neither the original document nor the property had been handed over to the purchaser namely their sister and it was the defendant who retained possession of the same. Unfortunately, the application filed by them was dismissed and the defendant had to pay Court fees and to have the suit numbered. These suits came to be dismissed right up to this Court and the entire exercise took about 10 to 12 years. Since the said case had taken several years and as they had implicit belief in their sister, they had therefore not got the property re-conveyed in their names. The defendant would contend that it was the defendant and his mother who are residing in the suit schedule property.

5. Meanwhile, by passage of time, a portion of the house started rotting and at this stage, the defendants had purchased 3 cents abutting the eastern side of the suit property in Survey No.52/A1 under a sale deed dated 30.08.1979 and they had spent money and put up a construction on the same. The southern wall of this house is inserted onto the wall of the old house. The House is assessed to tax which has been being paid by the



SA.Nos.1449 & 1914 of 2002

defendants. The house and the land adjoining it measures a total extent of nearly 4 cents. The settlement deed dated 15.12.1989 has been fraudulently obtained.

6. Further, the defendant's sister had cancelled the settlement deed executed by her under a cancellation deed dated 06.11.1987. Thereafter, the plaintiffs had got another settlement deed dated 23.03.1990 in their favour which does not bind the defendants since they have always been in exclusive possession and enjoyment of the property. They had denied the allegation contained in the plaint that they have been put in permissive occupation. As an alternate defence, the defendant has stated that right from 1936 and at least, from the date of the sale, the defendant has continued to be in possession and enjoyment of the property and has therefore perfected title by adverse possession.

7. Both the Courts below have concurrently dismissed the suits against which the present appeals have been filed. Both the Second Appeals (SA.No.1449 of 2002 and SA.No.1914 of 2002) have been admitted on the following Substantial Questions of law vide order dated 29.11.2002.



SA.Nos.1449 & 1914 of 2002

" 1. Whether the cancellation of the settlement deed

*has any validity when the executor herself disowned
cancellation?*

2. Whether the adverse possession can be established

*as against valid registered document merely on the
electricity bill ?"*

8. Heard both the counsels.

9. The facts admitted by both sides is that the property originally belonged to the defendants. They having purchased the same under a sale deed dated 17.12.1936 which has been marked as Ex.B.56. The defendants and their brothers had executed a sale in favour of their sister Valliammal on 23.02.1950 under Ex.A.1. That the said Valliammal had executed a settlement deed in favour of the plaintiffs under Ex.A.28 is also an admitted fact. However, the case of the defendants is that the sale deed executed by them in favour of Valliammal is only a sham and nominal one. Possession has never been handed over to the said Valliammal and the original documents have also been retained only by the defendants. The sale has



SA.Nos.1449 & 1914 of 2002

come into existence only on account of the fact that the plaintiffs had to file a suit as indigent persons. To prove the fact that they had to initiate such proceedings Ex.B.3 to B.5 have been marked on the side of the defendants. The plaintiffs who claimed that it is only in the year 1964 that the defendant was put in possession of the property has not let in any evidence to show their continuous possession from 1950 till 1964 when they alleged that the defendants had put in possession of the property. Ex.A.2 to A.14 stand in the name of Valliammal since the sale deed had been executed in her favour. The defendants on their side have filed documents Ex.B.25 to B.42 to show that they are in possession of the property. That the defendants are in possession of the property is not in dispute since the suit has been filed for delivery of possession as well. The plaintiffs claimed a right under Ex.A.1 sale deed and thereafter under the settlement deed Ex.A.15. However, the plaintiffs have not produced the original documents of title pertaining to the property. In fact, though they have stated that all the original documents were handed over to them, they have not produced the original documents of title and also the sale deed standing in the name of Velliammal. The sale deed of the year 1936 has been produced only by the defendants which clearly belies the claim of the plaintiff. The plaintiffs have



SA.Nos.1449 & 1914 of 2002

only produced a certified copy of the sale deed in favour of their mother and which has been marked as Ex.A.1. They have also not proved their case that they have put the defendants in permissive occupation of the property. On the contrary, they have acknowledged possession by the defendants.

10. Therefore, the finding of both the Courts below that the defendants had perfected title by adverse possession cannot be set aside. The Substantial questions of law are therefore answered against the plaintiffs and the Second Appeals are dismissed, confirming the judgment and decree of the Courts below. No costs.

24.02.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
shr

To

1. The Sub Court, Udumalpet
2. The District Munsif, Udumalpet.



WEB COPY



SA.Nos.1449 & 1914 of 2002

P.T. ASHA, J,

shr

SA.Nos.1449 & 1914 of 2002

24.02.2023