



S.A.No.1598 of 2008

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

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1.Kuppuswamy Padayachi

Krishnamoorthy (Died represented
by legal heir 1st respondent already
on record)

2.Rajasekaran

3.Gunasekaran

4.Raja

5.Senthil Kumar

...Appellants

Vs.

1.Manikandan (Minor)

(represented by guardian father and
next friend Krishnamoorthy)

2.The Collector of South Arcot District,
Office at the Collectorate,
Manjakuppam, Cuddalore.

3.The Tahsildar,
Taluk Office, Cuddalore Road,
Vriddhachalam.



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4. Central Bank of India, Chidambaram,
represented by its Branch Manager,
Chidambaram, Cuddalore District.

5. Balakrishnan

Royal (Died)

6. Lakshmi

7. Vimala

8. Shanmugam

... Respondents

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the common decree and judgment dated 19.07.2004 passed in A.S. No.72 of 2003, on the file of the Additional Sub Court, Vridhachalam, upholding the decree and judgment dated 25.02.2003 passed in O.S. No.119 of 1988, on the file of the I Additional District Munsif Court, Vridhachalam.

For Appellants	: Mr.V.Anand
For R2 & R3	: Mr.C.Sathish
	Government Advocate
R6	: No appearance



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JUDGMENT

The unsuccessful plaintiffs before both the Courts below have filed the present Second Appeal.

2. O.S.No.119 of 1988 on the file of the I Additional District Munsif, Vriddhachalam. O.S.No.119 of 1988 was filed by the plaintiffs/appellants against the defendants 1 to 8 / respondents 1 to 8 for declaration of their title to the suit property and for a permanent injunction restraining the defendants 1 to 3 namely,

i. The District Collector, South Arcot District at Cuddalore.

ii. The Tahsildar, Vriddhachalam and

iii. Branch Manager, Central Bank of India, Chidambaram

from proceeding against the properties of one Muthukonda Reddiar and for costs.

3. O.S.No.699 of 1988 was filed by one Dhanalakshmi Ammal against Shanmugam (8th respondent herein) for declaration of her title to



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the suit property and for a permanent injunction restraining the latter from interfering with her peaceful possession and enjoyment of the suit property.

4. The case of the plaintiffs and the defendants in nutshell is as follows :

The first plaintiff in O.S. No.119 of 1988/first appellant Kuppusamy Padayachi is the husband of Danalakshmi Ammal, who filed the suit in O.S. No.699 of 1988 before the same Court in respect of the very same suit property against the 8th respondent, namely Shanmugam, for a bare injunction. The appellants 1 and 2, namely, Kuppusamy Padayachi and Krishnamurthy are brothers, while the appellants 3 to 6 are the sons of the first appellant and the 7th appellant is the son of the 2nd appellant. Danalakshmi Ammal claims title to the suit property by virtue of a Will dated 20.12.1949 (Ex.A3) executed by her grandfather Narayana Padayachi. The present appellants and Danalakshmi Ammal (plaintiff in O.S. No. 699/1988) though had contended that the suit property is their respective family property, both of them admitted that



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they are in joint possession of the same. The case of the present appellants is that the appellants 1 and 2, in order to discharge their family debts, approached one Muthukonda Reddiar, who in turn requested them to execute a sale deed in his favour and accordingly a sale deed dated 19.08.1964 (Ex.A1) was executed by the 1st appellant in favour of Muthukonda Reddiar. The said document is a sham and nominal one. The appellants 1 and 2 did not receive any consideration for the said sale. Muthukonda Reddiar did not clear the family debts as promised by him. The possession of the suit property was not also handed over to Muthukonda Reddiar and till date the appellants are in possession and therefore, they have perfected their title to the suit property by way of adverse possession and prescription. However it is learnt by the appellants that Muthukonda Reddiar mortgaged the suit property to some third party and obtained a loan for purchase of a tractor, in which the first defendant, namely the District Collector, stood as a guarantor. In order to realise the loan amount, a suit in O.S. No.100/1973 was filed before the Sub Court, Chidambaram, by the mortgagee, in which a composite decree was passed. In order to realise the decree amount, the



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present respondents 2 and 3 brought the suit property for sale on 10.02.1988, in which the 8th respondent Shanmugam was the highest bidder. According to the appellants, when Muthukonda Reddiar is not the owner of the property and the sale deed Ex.A1 is also a sham and nominal document, he has got no right to mortgage the property in favour of the third party. It is their further contention that since they are in possession of the suit property till date, their title to the suit property has to be declared. They have, therefore, prayed for restraining respondents 1 to 4 from proceeding further in pursuance of the auction conducted in respect of the suit property, in which the 8th respondent Shanmugam was the highest bidder.

4.1. The official respondents in their written statement had denied the title of the appellants over the suit property and they had contended that Muthukonda Reddiar is the owner of the suit property by virtue of a sale deed dated 19.08.1964 (Ex.A1). According to them, Muthukonda Reddiar was in possession and enjoyment of the suit property by paying necessary kists to the Government. It is their further



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contention that the present appellants, taking advantage of the fact that Patta No.172 was wrongly assigned to them, had come out with the present suit contending that they are still in possession of the suit property despite the sale made in favour of the Muthukonda Reddiar. The fact is that the defect in patta 172 was rectified even before filing of the present suit and patta No.1115 for the suit property is in the names of the respondents 5 to 8 and the 1st appellant. The 1st appellant is in possession of remaining extent of 3.74 cents in the same survey number. Moreover, the appellants 1 and 2 herein filed a suit in O.S. No.370/75 before the District Munsif Court, Vridhachalam, against the respondents 5 to 8 and their mother Krishnaveni Ammal with the very same pleading. The suit was dismissed on 07.09.1976 and the appeal in A.S. No.5/1977 was also dismissed on 03.03.1978. Hence the present suit is barred by *res judicata*. According to them, the Government having paid the decree amount in O.S.No.100/73 on the file of the Sub Court, Chidambaram, the respondents 1 to 3 are entitled to proceed under Revenue Recovery Act without resorting to execution proceedings and the suit filed by the plaintiffs is liable to be dismissed.



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4.2. The respondents 4 to 7 did not appear before the trial court and therefore, they were set *ex parte*.

4.3. The 8th respondent, namely Shanmugam, in his written statement had contended that it is false to allege that the sale deed dated 19.08.1964 (Ex.A1) was not acted upon since Muthukonda Reddy had dealt with the property by mortgaging the same in favour of third parties and a decree has also been passed in O.S. No.100/1973 in favour of the creditors. In order to recover the decretal amount, the suit property was brought for public auction and since he is the successful bidder in the auction sale, he was put in possession of the suit property. He therefore prayed for dismissal of the suit.

5. Both the suits in O.S.No.119 of 1988 and O.S.No.699 of 1988 were tried jointly after framing necessary issues. After full contest, by a common judgment dated 25.02.2003, the trial court partly dismissed the suit in O.S. No.699 of 1988 with regard to 6 acres in R.S.No.306 of Arani village, which was sold in favour of Muthukonda Reddiar and



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decreed the suit in respect of remaining extent of the property in favour of the plaintiffs and dismissed the suit in O.S.No.119 of 1988 in *toto*.

6. Aggrieved over the same, A.S.Nos.71 & 72 of 2003 were filed by the plaintiffs before the Additional Sub Court, Vridhachalam. Both the appeals were dismissed by the first appellate court on 19.07.2004 and the decree and judgment passed by the trial Court was upheld.

7. Notice of motion was issued to the respondents and after several adjournments, the case was posted for hearing today. In the grounds of Memorandum of Second Appeal, the appellants have raised the following substantial questions of law.

(1) Whether the courts below are correct in law in insisting that Dhanalakshmi ought to have obtained probate of the Will in Ex.A3?

(2) Whether the courts below are correct in law in refusing to treat the revenue records in the name of the husband as conferring right on



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- (3) Whether the possession during and after the pendency of earlier suit and subsequently avails the possessor with the plea of adverse possession?
- (4) Whether the courts below are correct in law in ignoring Section 14 of the Hindu Succession Act regarding Ex.A3 Will?
- (5) Whether the courts below are correct in law in refusing to construe the adverse possession of Dhanalakshmi especially after concluding the appellants as trespassers?

8. The main dispute in both the suits is only in respect of 6 acres of land in R.S.No.306 of Arani Village.

9. Heard Mr. V. Anand, learned counsel appearing for the appellant and Mr. C.Sathish, learned Government Advocate appearing for the respondents 2 and 3.



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10. A perusal of the records shows that Kuppuswamy Padayatchi had inherited the suit property from his ancestors. He executed a sale deed (Ex.A1) during the year 1964 along with the second appellant in favour of Muthukonda Reddiar in respect of 6 acres of land in R.S.No.306 of Arani Village. The case of the plaintiff Dhanalakshmi Ammal in O.S.No.699 of 1988 is that her grandfather Narayana Padayatchi executed a Will (Ex.A3) dated 20.12.1949 in respect of the suit property in her favour and after the death of Narayana Padayatchi she has been in possession and enjoyment of the suit property by paying necessary kists for the property. According to her, patta also stands in her favour and that the sale deed (Ex.A1) dated 19.08.1964 executed by Kuppuswamy Padayatchi in favour of Muthukonda Reddiar is only a sham and nominal document and therefore, the same cannot be considered for any purpose. It is her specific contention that the suit property absolutely belongs to her and in any event she had perfected her title to the suit property by way of adverse possession and prescription.



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11. On the contrary the present appellants had claimed that the suit property is their ancestral property. As already observed, they admitted that they are in joint possession and enjoyment of the suit property. It is also pertinent to point out that the said Dhanalakshmi Ammal did not file any appeal against the decree and judgment of the first appellate court.

12. Both the Courts below had held that the kists paid by the defendants for a portion of the land in R.S.No.306 cannot be construed for the entire extent of the suit property and that Muthukonda Reddiar in pursuance of the sale deed dated 19.08.1964 had mortgaged his property with the Central Bank of India for purchase of a tractor. The defendants had never agitated the sale in any forum and the evidence on record also clearly shows that Ex.A1 sale deed is not a sham and nominal document. As per the said sale deed, Muthukonda Reddiar took possession of the property measuring 6 acres in R.S.No.306 of Arani Village and had also dealt with the said property by mortgaging the same with the Central



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Bank of India, Chidambaram. Since Muthukonda Reddiar did not repay the debt, the Central Bank of India initiated action against him by filing a suit and obtained a composite decree in their favour. As per the decree, the Collector, Cuddalore District, should pay the decree amount to the Central Bank of India and thereafter recover the same from the judgment debtor. In order to recover the decree amount, the District Collector, Cuddalore, brought the property for auction. Accordingly, the property measuring 6 acres was sold in public auction in which the eighth respondent was the successful bidder. The auction was also confirmed by the Revenue officials in the name of the eighth respondent and he has been put in possession of the said property. Both the Courts below after analysing the oral and documentary evidence adduced on both sides held that all the legal formalities in conducting auction and realising the decree amount and putting the eighth respondent in possession have been duly followed and therefore, the plaintiff cannot claim any title in respect of the said property. Both the Courts below have rightly appreciated the evidence on record and by no stretch of imagination the same can be termed as perverse. In the circumstances, I do not see any



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substantial questions of law involved in the present second appeal. In fact, all the substantial questions of law raised in the memorandum of grounds are only questions of facts and therefore, the second appeal fails and is dismissed.

13. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 19.07.2004 passed in A.S. No.72 of 2003, on the file of the Additional Sub Court, Vridhachalam and the decree and judgment dated 25.02.2003 passed in O.S. No.119 of 1988, on the file of the I Additional District Munsif Court, Vriddhachalam are upheld.

16.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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1. The Additional Sub Court, Vriddhachalam
2. The I Additional District Munsif Court, Vriddhachalam.
3. The Collector of South Arcot District,
Office at the Collectorate,
Manjakuppam, Cuddalore.
4. The Tahsildar,
Taluk Office, Cuddalore Road,
Vriddhachalam.
5. Central Bank of India, Chidambaram,
represented by its Branch Manager,
Chidambaram, Cuddalore District.
6. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
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