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S.A.No.327 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2023

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

**S.A.No.327 of 2007**  
**and M.P.Nos.1 of 2007 & 1 of 2012**

1.Mannammal (deceased),  
2.Janabhai Ammal,  
3.Rani. ...Appellants  
(Appellants 2 and 3 are impleaded as legal heirs of the deceased 1<sup>st</sup>  
appellant vide order dated 26.03.2013)

Vs.

1.Das Reddiar (died),  
2.Vinothini,  
3.Vickey ...Respondents  
(Respondents 2 and 3 are impleaded as legal heirs of the deceased sole  
respondent/1<sup>st</sup> respondent vide order dated 11.04.2023)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.08.2006 made in A.S.No.19 of 2005 on the file of the Subordinate Court, Gingee, reversing the judgment and decree dated 29.11.2002 made in O.S.No.262 of 1996, on the file of the Principal District Munsif Court, Gingee.

For appellants : Mr.P.Agilesh

For respondents : Mr.S.Shyamkumar

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## **J U D G M E N T**

**WEB COPY** This Second Appeal has been filed at the instance of the defendants. The respondent 2 and 3 are the legal heirs of the sole respondent. The first respondent was the plaintiff before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.

### **The brief facts which give rise to this Second Appeal are as follows:**

3. The suit property was originally purchased by one Seethammal, who is the grandmother of the plaintiff by virtue of a sale deed dated 07.05.1938. Ever since the purchase of the property, she has been in actual physical possession till her life time. After her demise, the property was enjoyed by the plaintiff's father one Narayana Reddiyar and his paternal uncle Krishnamoorthi Reddiyar. After their demise, the property devolved upon the plaintiff, his brother and the son of the plaintiff's paternal uncle Krishnamoorthi Reddiyar, one Kumar. The plaintiff further submits that they have already obtained electricity connection to the suit property. Since the defendants were attempting to interfere with the possession of the plaintiff on 30.07.1996, the plaintiff



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has filed the suit for the relief of permanent injunction.

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4. The said suit was resisted by the defendant by contending that the instant suit was hit by the principles of Order XXIII Rule 1(4)(b) of C.P.C, in view of filing of previous suit for the same relief and for the same cause of action in respect of the same property in O.S.No.235 of 1996. The defendant would further contend that in the sale deed dated 07.05.1938, the suit property viz., S.F.No.89/2 has been wrongly incorporated. The suit property is the absolute property of the defendants and that the patta and other documents stand in their name. Therefore, she prayed to dismiss the suit.

**Evidence and documents submitted before both the Courts below:**

5. Before the Trial Court, on behalf of the plaintiff, the plaintiff himself was examined as P.W.1 and three more witnesses viz., Mr.Raju, Ms.Selvi and Mr.Aaladiyan were examined as P.W.2 to P.W.4, respectively. 24 documents were marked as Exs.A1 to A24. On behalf of the defendants, the first defendant herself was examined as D.W.1 and



two more witnesses viz., Mr.Samikannu and Mr.Aladiyan, were examined as D.W.2 and D.W.3, respectively. 15 documents were marked as Exs.B1 to B15.

6. Before the First Appellate Court, on behalf of the plaintiff, one document was marked as Ex.A25 and on behalf of the defendants, two documents were marked as Exs.B16 and B17.

**Findings of both the Courts below:**

7. The Trial Court, after considering the oral and documentary evidence, has found that the suit is hit by Order XXIII Rule 1(4)(b) of C.P.C and ultimately, dismissed the same. Aggrieved by the same, the plaintiff preferred an appeal before the First Appellate Court. The First Appellate Court, after going through various aspects, found that the plaintiff has established the title over the property and the suit in O.S.No.235 of 1995 is for different property. Therefore, the First Appellate Court found that the suit is not hit by Order XXIII Rule 1(4)(b) of C.P.C and ultimately, decreed the suit. Challenging the same, the defendant is now before this Court by way of this second appeal.



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**Substantial questions of law:**

8. At the time of admission of this Second Appeal, this Court formulated the following substantial questions of law:

*“1.Even assuming that the document Ex.A5 is more than 30 years old merely on that ground can the Court presume contents of the said document to be true in the absence of any evidence to prove the same?”*

*“2.Is the Lower Appellate Court correct and justified in upholding plaintiff's title based on Ex.A5 when the defendant has disputed plaintiff's title and when there is no evidence to the effect that the Vendor under Ex.A5 had right and title to convey suit property?”*

**Submission on both sides:**

9. The learned counsel for the appellants/defendants would vehemently submit that the very contention put forth by the plaintiff in respect of the title over the suit property, and also claiming adverse possession is mutually inconsistent. Therefore, on that ground itself, the suit is liable to be dismissed.





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respect of the very same property.

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13. This Court has given its anxious consideration to the submissions made on both sides.

**Analysis of the submissions:**

14. This Court has perused the documents in Ex.A25/decreed copy, wherein, the suit property is referred to as survey No.38/5. Whereas in the present suit, the suit property is referred to as Survey No.89/2. Further, though the plaintiff, during his cross-examination, would say that both the suits are for the same property, on a reading of Ex.A25/decreed copy, it is apparent and obvious that the earlier suit is not in respect of the present suit property. Therefore, this Court is of the firm view that the principles in Order XXIII Rule 1(4)(b) of C.P.C is not applicable to the present case.

16. Coming to the next aspect of the plaintiff's right over the property, and claiming of possessory title, the learned counsel for the respondents would invite the attention of this Court in respect of the



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finding of fact rendered by the First Appellate Court as well as Trial Court. Wherein, there is no issue as to the perfection of title by way of adverse possession. The only case put forth by the plaintiff during the trial, is her title through their predecessor-in-title Smt.Seethammal, though the plaintiff also pleaded for adverse possession.

17. In support of the above aspect, the learned counsel for the appellants/defendants has relied upon the case of ***Ramasamy & another vs. M/s.Arulmigu Visweswaraswamy Veeraraghavaperumal Temple, Tiruppur and another*** reported in ***2015 (3) LW 192*** and also a judgment rendered by a Single Judge of this Court in the case of ***Savithiri and others vs. Rajendran and others*** [***S.A.No.293 of 2019 (decided on 25.01.2022)***] and would contend that the plea of adverse possession and title are mutually inconsistent and cannot go together. This Court has no hesitation to accept the above said principles. But here, the plaintiff has put forth his claim only by way of plea of title. Therefore, the question of considering the other claim viz., adverse possession, which is mutually inconsistent, does not arise. Therefore, the submissions made by the learned counsel for the appellants that mere pleadings itself would non-suit the plaintiff is far fetched. In this regard, the learned counsel for the



appellants/defendants has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ganesh Prasad v. Rajeshwar Prasad and others*** reported in ***2023 (6) SCR 893***, wherein it has been held that the parties to the litigation are entitled to take alternative pleas in support of their case.

18. Therefore, this Court is of the firm view that by a mere pleading in respect of adverse possession, the defendant can not take advantage of the same as the plaintiff has elected the trial in respect of the title over the property by virtue of sale deed.

19. Therefore, it is the duty of this Court to see whether the finding of fact recorded by the First Appellate Court based upon the sale deed in the year 1938 is in order or not. If we look at the finding recorded by the First Appellate Court, the First Appellate Court found that the plaintiff's grandmother Smt.Seethammal purchased the property from their previous vendors during 1938 and the Revenue records submitted by the plaintiffs show their continuous possession since the date of the purchase of the property. However, the only defence put forth by the



defendants is that the Survey No.89/2 in the sale deed is wrongly mentioned. Except such a vague reference, there is no proof available before the Trial Court as to when and how the wrong introduction of survey number came into existence in the sale deed. Therefore, the defence put forth by the defendants has not been established or proved before the Trial Court.

20. Apart from that, the defendants have also set up their title over the property based upon the Agangal and Chitta through Exs.B16 and B17 whereas these documents are from 1978 and 1983, respectively. However, the plaintiff has established their title since 1938. Therefore, this Court of the firm view that the finding of fact recorded by the First Appellate Court is based on material and this Court cannot find any material to deviate from the said well considered findings. Thus, the substantial questions of law are answered in favour of the respondents/plaintiffs.

21. In the result, this Second Appeal is dismissed by confirming the judgment and decree dated 03.08.2006 made in A.S.No.19 of 2005



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on the file of the Court of Subordinate Court, Gingee. Consequently,

connected miscellaneous petitions are closed. There shall be no order as

to costs.

**28.11.2023**

Internet : Yes/No

Index: Yes/No

apd

To

- 1.The Subordinate Court, Gingee,
- 2.The Principal District Munsif, Gingee,
- 3.The Section Officer, V.R.Section, High Court, Madras.



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**C.KUMARAPPAN,J.**

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