



S.A.No.783 of 2010 & M.P. No. 1 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

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

S.A.No.783 of 2010

&

M.P. No. 1 of 2010

1. Perumal (died)
2. Palaniammal
3. Pachiappan @ Periyavan (died)
4. Raja
5. Vikaramadithan
6. Mangammal
7. Pachiammal
8. Gowran
9. Murugan

...Appellants

Appellants 6 to 9 brought on record as LR's of the 3rd appellant vide order of Court dated 06.03.2023 in C.M.P. Nos 13658 to 13660/2020.

Vs.

- K. Chinnaraj
2. Veerappan
3. Perumal
4. Kumaresan
5. Kaveriammal

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6. Prakash

7. Buvaneshwari

... Respondents

1st appellant died. RR2 to 7 brought on record as LR's of the deceased 1st appellant vide order of court dated 06.03.2023 in C.M.P. No.13657/2020.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 22.03.2010 passed in A.S. No.3 of 2007, on the file of the Subordinate Judge, Dharmapuri, upholding the decree and judgment dated 27.10.2006 passed in O.S. No.260 of 2000, on the file of the District Munsif cum Judicial Magistrate, Palacode.

For Appellants	: Mr. T. Deeraj
For R1	: M/s. Sreedevi for R. Selvakumar
R2 to R7	: Not ready in notice.

JUDGMENT

The defendants who failed before both the courts below had filed this present Second Appeal.

2. The respondent/plaintiff K. Chinnaraj filed the suit in



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O.S.No.260/2000 before the District Munsif cum Judicial Magistrate, Palacode, seeking for a relief of declaration of his title to the suit property and for a consequential relief of Permanent Injunction restraining the defendants/appellants from interfering with his peaceful possession and enjoyment of the suit property. The suit property as described in the plaint is a punja land in Survey No.656/3B of Erranahalli Reddiyur Vilage, Palacode Taluk, Dharmapuri District, admeasuring 1.25.5 hectare within the boundaries stated therein.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

4. The case of the plaintiff in nutshell is as follows:

The suit property belongs to the plaintiff through two registered sale deeds dated 08.06.2000 (Ex.A1) and 15.11.2000 (Ex.A2). He purchased the suit property from one Sathyanarayanan and ever since the date of purchase, the plaintiff has been in possession and enjoyment of



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the same by paying necessary tax to the Government, as evidenced by Ex.A3, Ex.A4 and Ex.A10. The Revenue Divisional Officer, Palacode, issued a patta (Ex.A8) dated 18.12.2000 to the plaintiff. However, the defendants without any right over the suit property are attempting to interfere with the same. Hence the suit.

5. The 4th defendant filed his written statement and the other defendants adopted the same. In the written statement the defendants/appellants have stated that the plaintiff had never been in possession of the suit property and that only they are in possession of the suit property as lessees. According to them, the original owner Sathyanarayanan orally leased out the suit property in favour of the defendants and the plaintiff after the purchase of the suit property vide sale deeds dated 08.06.2000 (Ex.A1) and 15.11.2000 (Ex.A2), had demolished the building in the suit property illegally, for which the defendants lodged a complaint with the Inspector of Police, Palacode Police Station and the same was registered as Crime No.780/2000. Moreover, on the basis of the representations given by the defendants 1



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and 4, they were registered as cultivating tenants of the suit property by the Tahsildar & Record Officer, Palacode, vide his proceedings dated 29.09.2001 (Ex.B1). Therefore, the suit filed by the plaintiff is liable to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. Whether the plaintiff is the owner of the suit property?
- ii. Whether the defendants 1 and 4 are cultivating the suit property for more than 20 years as lessees?
- iii. Whether there is no jurisdiction for the civil court to entertain the suit since the defendants 1 and 4 are recognised as cultivating tenants?
- iv. Whether the plaintiff is in possession of the suit property?
- v. To what relief the plaintiff is entitled?

7. In the trial Court, the plaintiff examined himself and two



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other witnesses and marked Ex.A1 to Ex.A11. The 4th defendant examined himself and one another witness and marked Ex.B1 to Ex.B3.

8. After full contest, the learned District Munsif cum Judicial Magistrate, Palacode, decreed the suit in favour of the plaintiff vide his decree and judgment dated 27.10.2006 on the following grounds :

- i. The plaintiff has established that he is the title holder of the suit property by way of adducing the registered sale deeds dated 08.06.2000 (Ex.A1) and 15.11.2000 (Ex.A2).
- ii. The defendants in their written statement admitted the sale deeds executed by one Sathyanarayanan in favour of the plaintiff.
- iii. The contention of the defendants that the defendants 1 and 4 are the cultivating tenants of the suit property, has not been established by any acceptable evidence. They have not also adduced any acceptable documentary evidence like adangal extract to show that they are cultivating the suit property for more than 20 years as claimed by them.
- iv. Moreover, the 4th defendant owns a property adjacent to the suit



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property and therefore, the contention of the defendants that the defendants 1 and 4 are the cultivating tenants in the suit property cannot be accepted.

- v. The 4th defendant had also admitted that the adangal in respect of the suit property stands in the name of the original owner Sathyanarayanan.
- vi. The plaintiff has established his possession over the suit property by way of adducing acceptable evidence.

9. Aggrieved over the decree and judgment passed by the trial Court Judge, the defendants filed an appeal in A.S. No.3 of 2007 before the Subordinate Court, Dharmapuri. The learned Subordinate Judge, Dharmapuri, after analysing the oral and documentary evidence adduced on both sides, upheld the findings of the trial court vide his decree and judgment dated 22.03.2010 and dismissed the appeal.

10. Now the present Second Appeal is filed by the defendants.



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

- i. " When the competent Officer/Record Officer appointed under the Agricultural Record of Tenancy Act, after due enquiry, has recorded the appellants as cultivating tenants and found their possession over the suit properties under Ex.B1, whether the courts below are correct in law in eschewing the said order?
- ii. Whether the courts below are correct in law in casting the burden of proof upon the appellants, especially when Sections 101 to 103 of the Evidence Act, 1872 mandate that the burden of proof would be on the plaintiff/respondent?
- iii. When no decree can be passed on the weakness of the adversary, whether the courts below are justified in law in granting decree for declaration and injunction by picking holes in the defence raised by the appellants?
- iv. Whether the courts below are correct in law in ignoring the



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admissions made by P.W.1 to P.W.3 and in not considering the contradictions in the said oral testimony which would clearly negate the case of the respondent?

- v. When there is no cause of action for the suit and the alleged cause of action is not proved, whether the Courts below are correct in law in granting decree for declaration and permanent injunction?"

11. During the pendency of the appeal the appellants 1 and 3 died and their legal heirs were brought on record as respondents 2 to 7 and appellants 6 to 9 respectively.

12. Heard Mr. T. Deeraj, learned counsel for the appellants, Ms. Sreedevi, learned counsel for the first respondent.

13. Mr.T.Deeraj, learned counsel for the appellants contended that when the appellants are the cultivating tenants in the suit property, both the courts below had committed an error in decreeing the suit in favour of the plaintiff. His further contention is that when the Tahsildar & Record Officer, Palacode, vide his proceedings dated



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29.09.2001(Ex.B1) recognised the defendants 1 and 4 as cultivating tenants in the suit property, both the courts below did not properly adjudicate the dispute between the parties. His specific contention is that as per Ex.B1, the defendants are in possession of the suit property as cultivating tenants. Hence, the appeal is liable to be dismissed.

14. Per contra, Ms. Sreedevi, learned counsel for the first respondent contended that though the Tahsildar & Record Officer, Palacode, had held that the defendants 1 & 4 are cultivating tenants in the suit property, an appeal in Petition No.17/2003 was filed by the plaintiff before the Special Deputy Collector (Revenue Court), Trichy, and the said Court set aside the orders passed by the Tahsildar & Record Officer, Palacode vide its orders dated 07.04.2005 and remanded the matter back to the Tahsildar for considering the case of the plaintiff and the defendants afresh. The counsel for the appellants contended that as against the orders passed by the Revenue Court, Trichy, they filed a revision in the year 2015. However, the counsel for the appellants could not state the result of the said revision.



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15. Be that as it may, the plaintiff has filed the suit for declaration of his title and for permanent injunction restraining the appellants/defendants from interfering with his peaceful possession and enjoyment of the suit property. In order to prove his title over the suit property the plaintiff relied on the two sale deeds dated 08.06.2000 (Ex.A1) and 15.11.2000 (Ex.A2). The defendants in their written statement had not denied the execution of the sale deed by one Sathyanarayanan in favour of the plaintiff. Apart from the sale deeds the plaintiff had also adduced several documentary evidence to show that he is in possession of the suit property.

16. The main contention of the defendants in the written statement is that the defendants 1 & 4 are the cultivating tenants of the suit property and in order to substantiate the same they pressed into service the proceedings of the Tahsildar & Record Officer, Palacode, dated 29.09.2001 (Ex.B1), in which the defendants are shown as cultivating tenants of the suit property. However, this particular document



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may not be useful to the case of the appellants/defendants for the simple reason that the said order passed by the Tahsildar was set aside in the appeal filed by the plaintiff before the Revenue Court, Tiruchirapalli in Appeal No.17/2003. This is evidenced from the proceedings dated 07.04.2005 (Ex.A11) of the Special Deputy Collector (Revenue Court), Trichy.

17. Learned counsel for the appellants placed reliance on the decision in *The State of Andhra Pradesh and Others vs. Star Bone Mill and Fertilizer Co.*, reported in *2013(2) CTC 347* and contended that the maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another and that presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. In the instant case, the plaintiffs have proved their title over the suit property and though the defendants have contended that the defendants 1 & 4 are cultivating tenants in the suit property, they have not adduced any



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documentary evidence and therefore, the decision in ***The State of Andhra Pradesh and Others vs. Star Bone Mill and Fertilizer Co.***, cited supra cannot be applied to the facts of the present case.

18. The appellants/defendants have not also adduced any documentary evidence to show that they were the lessees of the suit property. If they had really been cultivating the suit property as lessees, their names would have been definitely indicated in Adangal. They did not file Adangal extract before both the Courts below to substantiate their contention that they are in possession of the suit property for more than 20 years as claimed by them. Moreover, the 4th defendant as DW1 had admitted that the adangal stands in the name of Sathyanarayanan (PW3), the vendor of the plaintiff. The defendants also contend that the suit property was leased out to them by Sathyanarayanan (P.W.3). This was strongly refuted by P.W.3. When the plaintiff had established his title and possession over the suit property, the burden of proof shifts to the defendants to show that they are in possession of the suit property as cultivating tenants as claimed by them. In the instant case, the defendants



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have not established their contention by adducing acceptable oral/documentary evidence. Both the Courts below had appreciated the evidence adduced on both sides in proper perspective and decreed the suit rightly in favour of the plaintiff. The counsel for the appellant did not state how both the Courts below went wrong in assessing the evidence adduced on both sides. Moreover, there is no substantial question of law involved in the present case.

19. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in *Bholaram Vs. Ameerchand* reported in *AIR 1981 SC 1209* has held that the High Court cannot interfere with the concurrent factual findings of courts below in a second appeal. In fine, the second appeal fails and is dismissed.

20. In the result,

i. the Second Appeal is dismissed. No costs. Consequently,



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- ii. the decree and judgment dated 22.03.2010 passed in A.S. No.3 of 2007, on the file of the Subordinate Judge, Dharmapuri, and the decree and judgment dated 27.10.2006 passed in O.S. No.260 of 2000, on the file of the District Munsif cum Judicial Magistrate, Palacode, are upheld.

14.06.2023

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

R. HEMALATHA, J.
bga



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To

1. The Sub Court, Dharmapuri.
2. The District Munsif cum Judicial Magistrate, Palacode.
3. The Section Officer, VR Section, High Court, Madras.

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