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SA.No.509 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.509 of 2011

and

M.P.No.1 of 2011

Sundaram Mudaliar

... Appellant

- Vs -

1. Mangayarkarasi (deceased)

2. Saraswathi

3. Loganathan

4. Kanakavalli

(R2 to R4 brought on record as legal
heirs of the deceased sole respondent
vide Order of this Court dated 30.01.2017
made in C.M.P.Nos.20192 to 20194 by TRNJ)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code
against the Judgment and decree dated 25.11.2008 passed in A.S.No.23 of
2004 by the learned Subordinate Judge at Madurantakkam, Kanchipuram



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District, confirming the decree and Judgment dated 05.06.2004 passed in O.S.No.314 of 1996 by the learned District Munsif, Maduranthakkam, Kanchipuram District.

For Appellant : Mr. N. Nagu Sah
For Respondents 2 to 4 : Mr.C.Vigneshwaran for
Mr.K. Govi Ganesan
Respondent -1 : died

JUDGMENT

The instant second appeal has been filed at the instance of the plaintiff. The respondents 2 to 4 herein are the legal heirs of the deceased first respondent who was the sole defendant before the Trial Court.

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

3. The brief facts, which give rise to the instance second appeal are as follows:

The suit schedule properties absolutely belongs to the plaintiff and that the plaintiff has been in possession and enjoyment of the same continuously



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for the past more than 40 years by paying necessary kists. The patta was also issued in the name of the plaintiff. The plaintiff prescribed title by adverse possession. The defendant has no right or title over the suit properties. The defendant purchased some land on the eastern side of the first item and on the western side of the second item of the suit properties by virtue of the sale deed dated 26.03.1992. In which the suit properties were shown as boundaries. Taking vengeance against the plaintiff, the defendant was deliberately trying to trespass into the suit properties. Hence, the plaintiff came forward with the suit to declare his right and title and to direct the defendant to deliver the possession of the suit properties.

4. The said suit was resisted by the defendant by contending that the father of the plaintiff one Mr.Govindaraja Mudaliar, his another son by name one Mr.Vijayaranga Mudaliar and his father's younger brother one Mr.Kasi effected partition under an unregistered koorchit dated 29.11.1945, the original of which is with the plaintiff. In the said partition the said Mr.Govindaraja Mudaliyar was allotted 0.67 cents in Survey No.315/2B(I item) and 0.75 acres in Survey No.313/1(II item). The description of the properties and boundaries were incorrect and misleading, that she had been



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in enjoyment of the western half of the property in Survey No. 315/2B and Survey No.313/1, that the plaintiff has been in enjoyment of the eastern half in those two survey nos, that the plaintiff was not entitled for permanent injunction, that the plaintiff had no title or possession either on the date of the suit or 12 years earlier to the suit and that the plaintiff would not be entitled for the relief of declaration.

5. Before the Trial Court, the plaintiff examined himself as P.W.1 apart from two other witnesses as P.W.2 and P.W.3, marked 9 documents as Ex.A1 to Ex.A9. On behalf of the defendant, four witnesses were examined as D.W.1 to D.W4 and five documents were marked Ex.B1 to Ex.B5.

6. After having considered the oral and documentary evidence, the Trial Court found that the plaintiff has not submitted the relevant records to prove his possession and more particularly the koorchit. The Trial Court also found that the plaintiff had not established his possessory title for adverse possession and ultimately dismissed the suit. In respect of injunction, the plaintiff admitted that the defendant had forcefully took possession of the suit properties and subsequently sought for a prayer for



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recovery of possession. However, the Trial Court, as the plaintiff's title was not established, declined the relief of recovery of possession.

7. Aggrieved by the Judgment of the Trial Court, the plaintiff approached the First Appellate Court by filing an appeal. The First Appellate Court also found that though the plaintiff, pleaded that he has been in possession of the suit properties for more than 40 years, he was not in a position to submit the relevant revenue records for the said 40 years period and that he had not established his title over the properties, which, according to the plaintiff was based upon the partition. Thus, the First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent 2 to 4.

9. The learned counsel for the appellant would submit that the Trial Court erred in dismissing the plaintiff's suit for declaration of title, in its entirety, even though the defendant herself admitted that she had purchased only 50% in S.No i.e 37.5 cents and the remaining 50% was owned by the



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plaintiff. It was also contended by the learned counsel for the appellant that the defendant had only purchased the share allotted to the plaintiff's brother. However, the Trial Court as well as the First Appellate Court, without any evidence, has stated about the oral partition.

10. The sum and substance of the contention raised by learned counsel for the appellant is that the Trial Court as well as the First Appellate Court, without properly going through the plaintiff's evidence, wrongly dismissed the suit.

11. However, the learned counsel for respondents 2 to 4 would strongly object to the contention made by the appellant' by submitting that the findings recorded by both the Court below were based on material evidence. Hence, he prayed to dismiss the second appeal.

12. This Court has given its anxious consideration to either side submissions.



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13. From the plaint averments, the main contention put fourth by the plaintiff is that he is the absolute owner of the suit properties. The suit properties consist of S.F.No.315/2B of an extent of 33 1/2 cents and S.F.No.313/1 of an extent of 75 cents. The Trial Court found that patta/Ex.A1 and Chitta/Ex.A6 stand in the name of the plaintiff and his brother Vijayrangan jointly. The Trial Court also found that Exs.A2 to A5/kist receipts were obtained subsequent to the filing of the suit. Trial Court further found that the plaintiff categorically admitted that he derived the property by virtue of a oral partition,. Evidencing such oral partition, they executed a koorchit. Therefore, it is incumbent upon the plaintiff to produce such document to establish his title over the property. Therefore, it was the finding of the Trial Court, which was subsequently confirmed by the First Appellate Court that the plaintiff has not proved his right or title over the property by producing any relevant accessible documents.

14. However, the plaintiff has also taken inconsistent pleading of adverse possession. Admittedly, on seeing the plaint averments, there is no pleading so as to establish the essential requirement of **nec vi, nec clam, nec precario**.



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15. Both the Courts below held that the plaintiff has not established his *animus possidendi* for a continuous statutory period and found that the plaintiff has not established his title even by adverse possession. The findings recorded by both the Court below are based upon the evidence available on record. Further, from the submissions made by the learned counsel for the appellant, this Court could not find any material to deviate from the said findings. Thus, this Court hold that there is no substantial question of law arising for consideration in the second appeal.

16. In the result this second appeal is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

07.12.2023

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To

- 1.The Principal District Judge at Pondicherry
2. The Principal Sub Judge at Pondicherry

C.KUMARAPPAN, J



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