



S.A No.594 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

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L.T.Palanisamy

.... Appellants

Vs

1.L.A.Thengappa Gounder
2.L.T.Lingappan
3.The Junior Engineer,
Sivagiri West,
Tamil Nadu Electricity Distribution Circle,
Sivagiri Village,
Erode Taluk and District.
4. Tamil Nadu Electricity Board,
Periyar Electricity Distribution Circle,
Rep. By its Superintending Engineer,
Power House Road,
Erode Village.

....Respondents

PRAYER : This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the learned Second Additional District Judge, Erode made in A.S No. 125 of 2008 dated 15.11.2012 confirming the judgment and decree of the learned District Munsif Cum Judicial Magistrate, Kodumudi made in O.S No. 67 of 2005 dated



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For Appellant : Mr.J.Ramakrishnan

For R1, R2 :Mr.K.G.Vasudevan

For R3, R4 : Mr.Viswanathan

JUDGMENT

The appellants herein is the plaintiff is suit O.S No. 67 of 2005 on the file of the District Munsif Cum Judicial Magistrate, Kodumudi, Erode, against the respondent herein/defendant for the relief of declaration that the plaintiff is the absolute owner of the B and C properties and also for permanent injunction restraining the first defendant from trespassing into the suit properties or interference in any manner with the peaceful possession and enjoyment of the same and restraining the defendants 3 and 4 from disconnecting the suit service connection situated in A, B and C scheduled properties. The said suit was contested by the defendants/father of the plaintiff stating that B schedule property is absolutely belongs to him by way of purchase out of his own income thereby denied the plaintiffs right over the property as well as relief of permanent injunction. The Defendants 3 and 4 Electricity Board officials contested the suit. After considering the oral and documentary evidence the Trial Court Concluded that the plaintiff



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failed to prove that he has perfected his title over the B and C schedule property by way of adverse possession and also held that the revenue records/ Adangal relied by the plaintiff also not a sufficient material to prove his title but on the other hand, the first defendant proved that by way of partition he had right over the suit B schedule property and C schedule property also purchased by him by way of self acquisition, and also observed that in the B schedule property, 3 sons of the first defendants constructed a house and they are in possession and enjoyment of the same as their absolute property as the first defendant settled B and C schedule properties in favour of other sons on 18.07.2008 through registered gift deed and the possession also delivered to them. Besides, as per the evidence of the Officials of Electricity Board they are not taken any steps to disconnect the electricity connection SC. N. 6 and 131, accordingly dismissed the suit as no merits.

2. Aggrieved over the the plaintiff preferred an appeal before the Second Additional District Judge, Erode, in A.S No. 125 of 2008, after considering the oral and documentary evidence the District Court dismissed the appeal. Challenging the same the plaintiff preferred this appeal before this Court.



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3. The learned counsel for the appellant submitted that the

Trial Court erred in holding that Ex. A2 to Ex. A13 does not reveals the physical possession of the plaintiff on the assumption that entries in the Adangal extract are not true ignoring the legal statutory presumption that Adangal extract with regard to genuineness of the entries unless contrary evidence is adduced on the side of the defendant and dismissed the suit as if the plaintiff not entitle over the said properties by way of adverse possession as such is totally unfair and liable to be set aside. Further he argued that Court below should have declared the appellant/plaintiff right over the A, B and C schedule properies as he categorically proved his possession more than statutory prescribed hostile to the interest of the defendant by satisfy all ingredients of his claim of adverse possession. But by overlooking the evidence adduced on the side of the plaintiff as such is totally erroneous and liable to be set aside. Further with regard to relief of injunction in respect of service connection declined by the Trial Court by merely relying the evidence on the side of the defendants as such also erroneous one. Accordingly prayed to allow this appeal.

4. This Court admitted the appeal with the following substantial questions of law:



i. Whether the Courts below are right in non-suiting the case of appellant/plaintiff with respect to B and C schedule suit properties, when the appellant/plaintiff has proved his possession adverse/hostile to the interest of the defendants/respondent, satisfying all the ingredients for the claim of adverse possession to the manner known to law, ignoring the Ex.A1 to Ex.A38 including the independent witnesses of PW2 & PW3 who are adjacent land owners?

ii. Whether the Courts below are right in disbelieving the credibility of the Adangal extracts (Ex.A2 to A13) when statutory presumption as to its genuineness has been attributed to it under Section 35 and 114 of the Indian Evidence Act, 1872?

iii. When it is the specific defence by the respondents/defendants that appellant/plaintiff has managed to get the revenue records mutated in collusion with revenue authorities, whether the Courts below were right in imposing burden upon the appellant/plaintiff to prove that the entries in Adangal extracts Ex.A2 to A13 were genuine?

5. The facts reveal that the plaintiff filed the suit for the relief of declaration and permanent injunction in respect of suit properties. The case of the plaintiff is that suit properties and other properties are ancestral property of the first defendant and his sons. One of the sons filed a suit in O.S No. 933 of 1970, on the file of District Munsif, Erode, the said suit was ended in compromise between his father and his sons based on that compromise decree dated 30.09.1970. At that time, the plaintiff and his brothers were minor they were represented by their mother Palaniammal. Based on the above compromise decree the plaintiff is absolute owner of the A schedule property, after completion of his decree in horticulture he wanted to improve the land by raising perennial crops in noval and hi-tech



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method. He raised cocunut, mango, termarind, teak, Sappotta, arecanut and erected drip irrigation system not only in A schedule properties but also in B and C schedule properties. Though the suit B scheduled property was allotted to his father/first defendant in said compromise decree, but C schedule property was purchased by his father after/first defendant subsequently. According to the plaintiff he enclosed C schedule properties along with A schedule property by applying hi-tech technologies planted various trees spending more than seven lakhs and all these years enjoyed the same along with A, B and C schedule properties as a owner of the properties openly continuously uninterruptedly with necessary animus with the knowledge without any objection from the first defendant thereby prescribed title over the A, B and C schedule properties by adverse possession. Further all the revenue records/Adangal extracts stands in the name of the plaintiff. The ridge that divided A and B schedule properties was demolished by the plaintiff and both suit properties is enjoyed as one unit and for better irrigation he laid under ground pipe line in A and B schedule properties and also enjoyed the said Well plaintiff entitled to $\frac{3}{4}$ share his father entitled to $\frac{1}{4}$ share but the plaintiff leaving electricity service connection under the control of C schedule properties there is a Well with service connection No. 6 and



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131 though it stands in the name of the second defendant the plaintiff alone enjoyed the said service connection. But the defendants attempted to disconnect the electricity service connection Hence he filed the suit.

6. The first defendant/father of the plaintiff admits that as per the compromise decree passed in O.S No. 933 of 1970 A schedule property was allotted to the plaintiff and B schedule property was allotted to this defendant thereafter the first defendant purchased C schedule property and he enjoyed the B and C schedule property as absolute owner. According to him the plaintiff got government post he alone managed the A schedule property allotted to the plaintiff along with his property. Further he also denied that plaintiff's contention that he made improvement in the B and C schedule property and also enjoyed it openly and uninterruptedly. Further he contended that revenue records were fabricated by the plaintiff in collusion with revenue officials unilaterally without informing the defendants hence it is not bind him and it has no evidentiary value. Further contended that description of B and C schedule properties is wrongly mentioned in the suit since his other sons put up construction on the northern side of the said property but the same was not mentioned in the suit schedule which amount to suppression of the facts. Further C schedule properties was also enjoyed



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by this defendants absolutely and also there is no pipeline passes through it for B schedule properties. In fact, he obtained permission from the collector for irrigation survey No. 814/2 from the Well in another survey number. Furthermore, the defendants 3 and 4 submitted that they have not received any application from the defendants 1 and 2 for either transfer or disconnection of the Service connection No.131.

7. Admittedly as per the final decree passed in O.S. 933 of 1970 in the A schedule property was allotted to plaintiffs and B schedule property was allotted to his father/first defendant, and after partition his father purchased the C schedule property by way of self acquisition. The contention of the plaintiff is that after completion of degree in horticulture by applying hi-tech technology the plaintiff planted the Trees not only in allotted A schedule property but also in B and C schedule properties which belongs to the first defendant and also planted a trees and erected pipeline thereby claimed that he enjoyed the A schedule properties along with B and C schedule property openly uninterruptedly with the knowledge of the first defendant, thereby he claimed title by way of adverse possession but the first defendant totally denied the plaintiffs enjoyment. That apart, first defendant contended that since the plaintiff was employed in the Government service



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he was personally not cultivated the land, indeed he only look after the management of the property belongs to the plaintiff. To prove the uninterrupted possession before the Trial Court the plaintiff adduced the documents Ex.A2 to Ex.A13 Adangal extract for the Pasali year of 1401 to 1412, also produced kist receipt for the year 1994 to 2004 also with regard to purchase of Agricultural products, he produced E.B receipts, property tax receipts which marked as Ex.A14 to Ex.A34. Based on the Adangal extract the learned counsel for the appellant/plaintiff submitted that since the plaintiff was in possession and enjoying the B and C Schedule properties for which Adangal extract also stands in the name of the plaintiff through which the plaintiff clearly proves the possession and enjoyment of the said lands, moreover the statutory presumption attached with these documents with regard to genuineness of the entries he produced Adangal extract/Ex.A2 to ExA30.

8. The learned counsel for the appellants argues that entries in the Adangal extract **should be accepted as true unless same is disproved by the contesting defendants by adducing contra evidence** but the case in hand the first defendant not adduced any such contra evidence so entries of Adangal extract prime facie proves that plaintiff was in possession of B, C



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schedule properties but the Court below failed to appreciate this legal aspects erroneously dismissed the suit as such is unfair and liable to be set aside.

9. But on perusal of records, the plaintiff admits the title in favour of his father in respect of B and C schedule properties but claiming right by way of adverse possession as he enjoyed B and C schedule properties along with his properties uninterruptedly. Further he also claimed that as he is having decree in horticulture, after obtained Government post planted trees in B and C schedule properties and the same was not objected by the first defendants all these years. It is an admitted fact that the plaintiff is employed in Government service most of time he worked in other towns and not in home town native place. So there is no possibility of using his personal labour to cultivate the B and C scheduled properties for the reason that he is in Government Service. Though the plaintiff relied the Adangal extract but he is not chosen to examine revenue officials on his side to prove the mutation of name in his favour in the Adangal extract since the first defendant denied the plaintiff's right over the B and C schedule properties. That apart, as per objection of his father the entries in the Adangal extract has been fabricated one, so initial burden is on the plaintiff to prove that



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Adangal entries are made perfectly by examining all the revenue officials.

But before Trial Court he failed to adduce the witness with regard to entries in Adangal extract. Furthermore, during cross examination of P.W.1 he deposed about the entries made in the Adangal extract which are extracted below:

வா.சா.ஆ.2 முதல் 13 வரை அடங்கல் கணக்குகளில் ச.எண்.812/2ல் கோக்கோ, பாக்கு சப்போட்டா மரங்கள் உள்ளதாக குறிப்பிடவில்லை என்றால் சரி, ஆதேபோல் மஞ்சல், குச்சிகிழங்குஇ கரும்பு போன்ற பயிர்கள் ச.எண். 814 /2 ல் பயிர் செய்யப்பட்டிருந்ததாக அடங்கல் கணக்குகளில் குறிப்பிடவில்லை என்றால் சரி. க.ச.எண். 812/2ல் வடகோட்டில் உள்ள 3 வீடுகள் அடங்கல் கணக்கில் குறிப்பிடவில்லை என்றால் சரி.

10. Therefore the above evidence clearly established that the entries in the Adangal extract are not true one. Furthermore, plaintiff also not given any application to the revenue officials for making entries in the Adangal extract which clearly probablise that by using his influence with revenue officials he might have entered his name in the revenue records which created suspicious over the entries of the revenue records/Adangal extract and the same has not been removed by the plaintiff by adducing sufficient material evidence without which genuineness of the entries in the



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Adangal extract not to be accepted as true and valid one. So such presumption with regard to entries of the Adangal extract not applied to the facts of the present case because evidence of P.W.1 itself falsifies the genuineness of the entries, thus the Court below rightly concluded these aspects which needs no interference. Hence the plaintiff not proved the possession and enjoyment of the B and C schedule properties uninterruptedly. Therefore, 1st defendant is the absolute owner of B and C scheduled properties, besides he executed gift deed in favour of his other sons and based on that plaintiff's brothers constructed house in that property, but the plaintiff suppressed those facts, it reveals that he has not approached the Court with true facts.

11. With regard to claim of permanent injunction the electricity service connection No.131 stands in the name of the second defendant as discussed above, in the said service connection the plaintiff have no right as on date. Therefore, the true owner of the B schedule properties is first defendant against the true owner plaintiff is not entitled for permanent injunction as

he failed to prove the title over the said properties. Therefore, as per the



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evidence of revenue records no application was received with regard to disconnection of electricity service connection as on date hence there is no cause of action for permanent injunction against electricity officials. The Courts below rightly appreciated this aspects which needs no interference.

12. In result, the second appeal is dismissed as no merits. There shall be no order as to costs. Consequentially connected miscellaneous petitions is closed.

26.04.2023

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To

1. The Second Additional District Judge, Erode.
2. The District Munsif Cum Judicial Magistrate, Kodumudi.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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