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S.A.No.326 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.326 of 2017

1.Nanjammal
2.Rangasamy
3.Subramanian
4.Rajeswari
5.Jayammal
6.Eswari
7.Santhi
8.Kumar

...Appellants

Vs.

1.Rangasamy
2.Sathiskumar
3.Maruchamy

...Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 07.02.2017 made in A.S.No.35 of 2015 on the file of the learned Subordinate Court, Sathyamangalam, reversing of the judgment and decree dated 24.02.2014 made in O.S.No.22 of 2010, on the file of the learned District Munsif Court, Sathyamangalam by allowing this second appeal.



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For Appellants : Mr.N.Manokaran

For Respondents : Mr.M.Roshan Atiq
for R1 and R2
No Appearance for R3

J U D G M E N T

The plaintiffs in a suit for declaration and injunction are the appellants, the trial Court granted a decree as prayed for and the same was reversed by the First Appellate Court. Hence, the plaintiffs are before this Court.

2. According to the plaintiffs, the suit property was originally purchased by one Nanjundagounder and Olaikkaragounder on 12.06.1952 under Ex.A1. Later on, the said Olaikkaragounder sold his share in favour of Nanjundagounder on 11.06.1959 under a registered sale deed. Thereafter, the said Nanjundagounder sold the suit properties to the plaintiffs 1 and 2 and his brother namely Pasavappagounder on 09.03.1962. It is the case of the plaintiffs that Pasuvappagounder died issueless and therefore the plaintiffs are not entitled to entire suit property. The respondents/defendants attempted



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to cause disturbance to plaintiff's possession and enjoyment of the suit property and hence they were constrained to file a suit for declaration of title and injunction.

3. The first defendant/Thirumakkal filed a written statement denying the averments found in the plaint and the same was adopted by the defendants 2 and 3. The 4th defendant in the suit remained ex-parte. According to the respondents/contesting defendants, the sale deed executed by Nanjundagounder, husband of deceased first defendant and father of second defendant in favour of plaintiffs was sham and nominal document and the possession of the suit property remained with the defendants all along. It is further averred that the deceased first defendant filed a suit in O.S.No.500 of 1962 against her husband Nanjundagounder, plaintiffs 1 and 2 and Pasavappagounder seeking a decree for maintenance. The said suit was decreed in favour of the first defendant by granting charge over the present suit property. It was specifically averred by the respondents that from 1963 onwards, the defendants have been in a possession and enjoyment of the suit property for more than statutory period and thus prescribed their right over the suit property by way of adverse possession. On these grounds, the



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respondents prayed for dismissal of the suit.

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4. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellants herein proved their title over the suit property and consequently entitled to decree for declaration and injunction as prayed for. Aggrieved by the same, the respondents 1 and 2 herein preferred an appeal in A.S.No.35 of 2015 on the file of the Subordinate Court, Sathyamangalam. The First Appellate Court reversed the findings of the trial Court and came to the conclusion that the appellants failed to establish their title and possession over the suit property and allowed the appeal. Aggrieved by the same, the appellants have come by way of this second appeal.

5. At the time of admission, this Court formulated the following substantial questions of law by order dated 05.06.2017:

"1. Whether the First Appellate Court has committed an error in accepting the plea of adverse possession projected by the defendants especially when they have not let in any legal evidence to prove peaceful, open,



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hostile and continuous possession beyond the period stipulated under Article 65 of the Limitation Act?;

2. Whether the First Appellate Court is correct in upholding the defence plea of adverse possession particularly in the absence of an issue to that effect and legal evidence to prove hostile possession from 1962 to the date of filing the suit in the year 2010?;

3. Whether the First Appellate Court is legally correct in ignoring the title of the plaintiffs under Ex.A4 dated 09.03.1962 particularly when the suit in O.S.No.500 of 1962 was filed only on 21.04.1962 which would not render the earlier sale deed dated 21.04.1962 as invalid.”

6. The learned counsel appearing for the appellants elaborated the substantial questions of law framed at the time of admission by submitting that the appellants herein proved their title over the property by producing Exs.A1 to A4 namely the title document in favour of the appellants and also the parent documents. The learned counsel further submitted that the respondents herein pleaded adverse possession by admitting the title of the appellants and hence they have to prove the same by leading cogent evidence.

In the case on hand, the respondents failed to prove the continuous possession



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from 1962 till the date of filing of the suit. The respondents miserably failed to establish the plea of adverse possession. In these circumstances, the First Appellate Court ought to have granted a decree for declaration and injunction as prayed for.

7. The learned counsel appearing for the appellants relied on the following judgments in support of his arguments:

(i) *Pavayammal Vs. Komarasami and others reported in (2002) 2MLJ 601;*

(ii) *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others reported in Manu/SC/1053/2019.*

8. The learned counsel appearing for the respondents submitted that the sale deed executed by Nanjundagounder in favour of the plaintiffs was sham and nominal document and the same has been pleaded by the respondents in the suit for maintenance filed by her in the year 1962 itself. The learned counsel further submitted that the title of the appellants was disputed even in 1962. The suit filed by the appellants in the year 2010 is hopelessly barred by limitation. The learned counsel further submitted that



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the appellants failed to produce any documents to show their possession on the date of suit. Therefore, the first Appellate Court rightly came to the conclusion that the appellants are not entitled to declaration and injunction. The learned counsel also by taking this Court to the evidence of PW.3, who was examined before First Appellate Court and Exs.B5 and B6 submitted that the hostile possession of respondents has been proved from 1989 onwards and hence the First Appellate Court is justified in negating the prayer for declaration and possession prayed by the appellants.

9. The appellants herein purchased the suit property from Nanjundagounder under Ex.A4 dated 09.03.1962, the said document has been disputed by the deceased first defendant in a suit for maintenance filed by her in the year 1962. The suit register extract of maintenance suit filed by the first respondent has been marked as Ex.B11. A perusal of the same would suggest that the deceased first defendant even in the year 1962 clearly disputed the title document of appellants/plaintiffs, namely the sale deed executed by her husband Nanjundagounder in favour of the plaintiffs as a sham and nominal document. The said suit filed by the deceased first defendant was decreed by granting her decree for maintenance with a charge over the present suit



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property.

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10. It is pertinent to mention that the sale deed executed in favour of the plaintiffs was dated 09.03.1962 and the maintenance suit filed by the deceased first defendant under Ex.B11 was dated 21.04.1962. It is clear that though Ex.A4 title document in favour of appellants is dated prior to filing of the suit for maintenance by the deceased first defendant, the plea raised by the deceased first defendant was upheld and the suit was decreed for maintenance and charge was granted in her favour. The First Appellate Court by taking into consideration the Ex.B11 observed that when title of the appellants was objected in the year 1962 itself, the present suit for declaration filed by them after more than 50 years, is clearly barred by limitation. The First Appellate Court also had taken note of the fact that the appellants failed to produce any revenue documents like Patta, Adangal etc., to prove their continuous possession from 1962 to till the date of filing of the suit. If really Ex.A4 is a true document and the same was acted upon, the plaintiffs should have taken possession of the property and by passage of nearly 50 years, there should be some revenue documents in their names to prove their possession and their exercise of control over the suit property. Unfortunately, the



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appellants/plaintiffs did not produce any revenue documents to prove their alleged possession over the suit property from 1962 to till the date of filing of the suit. The failure of the appellants to produce any revenue documents probalilise the plea raised by the first defendant in the previous litigation that the sale deed executed by her husband Nanjundagounder was a sham and nominal document. Therefore, the First Appellate Court taking into consideration the other evidence available on record, correctly came to the conclusion that the appellants failed to establish their lawful title and possession over the suit property and consequently held that appellants were not entitled to declaration of title and injunction.

11. Ex.B5 series are Adangal extracts produced by the respondents relating to the suit property relevant to the fasali 1403 equivalent in the year 1994 to fasali 1417 equivalent in the year 2008. Therefore, the respondents produced revenue documents in the name of second defendant from 1994 to 2008. Ex.B6 series are Kist receipts produced by the respondents to show that they have paid Kist for the suit property in Patta No.816. Ex.B6 series starts from the year 1989. Therefore, it is clear from the revenue documents produced by the respondents that they have exercised



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control over the suit property from the year 1989 onwards by paying the Kist to the same. The Adangal extracts produced by the respondents from the year 1994 also shows the continuous possession from 1994 to the date of filing of the suit. Therefore, the evidence available on record would show that the respondents proved their continuous possession from 1989 to the date of filing of the suit for more than statutory period. The title of the appellants was disputed even in the year 1962 itself. Therefore, the respondents clearly established that they have been in hostile possession and enjoyment of the suit property for more than statutory period immediately preceding presentation of plaint. In these circumstances, the First Appellate Court rightly came to the conclusion that the appellants/plaintiffs failed to establish their title and possession over the suit property and consequently, not entitled to any decree as prayed for.

12. In view of the discussions made earlier, all the questions of law framed at the time of admission are answered against the appellants and consequently, the second appeal is dismissed.



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13. In nutshell,

(a) The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.35 of 2015 on the file of the learned Subordinate Court, Sathyamangalam, dated 07.02.2017 and by setting aside the judgment and decree in O.S.No.22 of 2010, on the file of the learned District Munsif Court, Sathyamangalam, dated 24.02.2014.

(b) In the facts and circumstances of the case, there shall be no order as to costs;

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Index : Yes/No
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S.SOUNTHAR, J.

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To

1. The Subordinate Court, Sathyamangalam.
2. The District Munsif Court, Sathyamangalam.

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