



S.A.No.444 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.444 of 2017

and

CMP.No.10875 of 2017

1.C.Sampath

2.Sankar

3.Anbu

...Appellants

Vs.

1.Narasimhan

2.The Sub-Registrar

Walajapet.

(the second respondent is given up)

...Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment dated 05.10.2016 passed in A.S.No.59 of 2015 by the learned Subordinate Judge, Ranipet, Vellore District, by confirming the decree and judgment dated 16.09.2015 passed in OS.No.37 of 2012 by the learned District Munsif-cum-Judicial Magistrate No.I, Walajapet.



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For Appellants : Mr.N.Nagu Sah

For Respondents : Mr.K.Mohanamurali for R1
R2 – service awaited

JUDGMENT

The unsuccessful defendants 1 to 3 are the appellants. The first respondent who is the brother of the first appellant filed a suit for declaration of title and recovery of possession. He also sought for declaration that the settlement deed dated 12.04.2010 executed by the first appellant in favour of the appellants 2 & 3 is null and void. He also sought for mandatory injunction directing the first appellant to hand over the original title document of the suit property. The trial Court granted a relief in respect of all the above said prayers. The suit was dismissed only in respect of prayer for deletion of entry in the records of the second respondent.

2. Aggrieved by the judgment and decree passed by the trial



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Court, the appellant herein filed an first appeal and the same was also dismissed. Challenging the concurrent findings of the trial Court, the appellants have come up with this Second Appeal.

3. According to the first respondent/plaintiff, the suit property was purchased by him under registered sale deed dated 27.03.1977. The funds for purchasing the suit property was mobilized by selling his wife's jewel and utilizing the funds provided by his father-in-law. As the first respondent was employed as a Post Master, the first appellant as a brother was allowed to look after the suit property and the appellants 2 & 3 are the sons of the first appellant. In the year 1990, at the request of the first appellant, the original title deed was handed over to him by the first respondent for the purpose of verification by the Revenue Authorities. The father of the first appellant and the first respondent executed a Will bequeathing his self acquired property in favour of his sons. Thereafter, the relationship between the appellants and the first respondent got strained. During February-2012, the first respondent wanted to raise crop in the suit property. However, it was opposed by the appellants 2 & 3



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claiming themselves absolute owner of the suit property. Thereafter, on enquiry, the first respondent came to know that the first appellant misused the original title deed document, which was handed over to him and got revenue records mutated in his favour and settled the suit property in favour of the appellants 2 & 3. In this circumstances, the first respondent was constrained to file a suit for the above said relief.

4. The first appellant filed a written statement and the said written statement was adopted by the appellants 2 & 3. It was pleaded by the first appellant in his written statement that the suit property was purchased by his father out of joint family funds and therefore, the same shall be treated as a joint family property. It was further pleaded by the appellants that at the time of execution of Will by his father, there was an oral partition in respect of the family properties and the present suit property was allotted to his share and the title document pertains to the suit property was also handed over to him by his father. Thus, the appellants disputed the title and possession of the first respondent over the suit property. The appellants also raised a plea of limitation as defence



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in the suit.

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5. Before the trial Court, the first respondent/plaintiff was examined as PW1 and 7 documents were marked as Ex.A1 to Ex.A7. On behalf of the appellants, the first appellant was examined as DW1 and one Kaveri was examined as DW2. The appellants have not filed any documentary evidence.

6. The trial Court on appreciation of oral and documentary evidence came to the conclusion that the suit property belongs to the first respondent and granted a decree for declaration of title and recovery of possession. The trial Court also declared that the settlement deed executed by the first appellant in favour of the appellants 2 & 3 was null and void document and directed the first appellant to hand over the original title deed of the suit property to the first respondent. The prayer of the first respondent in respect of deletion of entry made in the second respondent was negatived by the trial Court. Aggrieved by the said judgment and decree, the appellants preferred an appeal in A.S.No.59 of



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2015 on the file of the Subordinate Court, Ranipet, Vellore District, the first Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellants are before this Court.

7. The learned counsel for the appellants submitted that the relationship between the parties got strained in the year 1995 itself. In such circumstances, the possession of the appellants over the suit property should be treated as hostile one from the year 1995, in such case, the suit filed by the first respondent in the year 2012 is hopelessly barred by limitation under Article 65 of the Limitation Act. The learned counsel for the appellants further submitted that the pleadings in the plaint as if the first respondent made an attempt to raise crop in the suit property in the year 2012 and the same was opposed by the appellants 2 & 3 is a false plea made with an intention to bring the suit within the limitation.

8. The first respondent by producing the certified copy of the sale deed in his favour dated 27.03.1977 proved his title over the suit property. The appellants pleaded that the suit property was purchased by



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the father of parties out of his own funds. However, there is no acceptable evidence in support of the said pleading raised by the appellants. The registered sale deed stands in the name of the first respondent itself is sufficient to presume that he is the owner of the suit property, unless contrary is proved by the person who is denying the title of the registered owner. Further there is no evidence available on record to show that the suit property was purchased by the father of the parties by utilizing his own funds. In these circumstances, there is no difficulty in coming to the conclusion that the title of the first respondent over the suit property has been proved.

9. The appellants also raised a plea of oral partition. It is the specific case of the appellants that there was an oral partition in the family and the suit property was allotted to his share and at that point of time, the original title deed of the suit property was handed over to him. However, in support of the said plea, the appellants failed to lead any acceptable evidence except the oral testimony of DW1 & DW2.



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10. The appellants raised a plea of limitation by submitting that the suit filed by the first respondent for declaration and recovery of possession is barred under Article 65 of the Registration Act. As per the own plea of the appellants, there was an oral partition in the family and the suit property was allotted to his share. However, in his written statement, the appellants have not mentioned what was the date of oral partition. In the absence of any, convincing evidence to establish the hostile possession of the appellants, the Courts below rightly came to the conclusion that the suit filed by the first respondent is well within time.

11. The learned counsel for the appellants submitted that the first respondent admitted in his pleadings that the relationship between the parties got strained in the year 1995 itself and therefore, the same shall be taken as the starting point for limitation to file a suit for recovery of possession. The said contention raised by the learned counsel for the appellants is not acceptable to this Court. Merely because, the relationship between the first respondent and his brother/first appellant



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got strained, it cannot be presumed that the possession of the first respondent shall be treated as hostile one, unless, there are any supporting evidence. In fact, it has been clearly pleaded by the appellants that the suit property was allotted to the share of the first appellant in the oral partition. A person, who is claiming adverse possession must admit the title of the other side and plead hostile possession and he cannot claim title in himself and also pray for adverse possession. The appellants in the written statement claimed title in favour of the first appellant under an oral partition in the family. However, they failed to prove the same. In such circumstances, in the absence of convincing evidence available on record to show the hostile possession for more than statutory period of 12 years immediately preceding the presentation of the suit, I am not able to accept the plea raised by the learned counsel for the appellants that the suit is barred by Article 65 of the Limitation Act.

12. In view of the discussions made earlier, I do not find any perversity or illegality in the conclusion reached by the Courts below and consequently, the Second Appeal is dismissed.



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S.SOUNTHAR, J.

dna

13. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No

dna

To

- 1.The Subordinate Judge, Ranipet, Vellore District.
- 2.The District Munsif-cum-Judicial Magistrate No.I,
Walajapet.

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and



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