IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2023

DELIVERED ON : 28.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.278 of 2020
and C.M.P.No.5802 of 2020

1. Chandrika
2. Janaki .. Appellants

Vs.

1. Seetha Devi
2. Prema
3. Moorthy
4. Sivammal
5. Indra
6. Srinivasan
7. Pravathy
8. The Tahsildar
   Coonoor Taluk,
   Coonoor,
   Nilgiris District.
9. The Village Administrative Officer,
   Adigaratty Village II,
   Coonoor Taluk,
   The Nilgiries District. .. Respondents

Prayer:- Second Appeal filed under Section 100 of CPC to allow this second appeal set aside the Judgment and Decree dated 4.2.2019 in A.S.No.24/2018 passed by the learned Subordinate Judge, Coonoor, confirming, the Judgment and Decree dated 20.06.2018 in O.S.No.78 of 2014, passed by the learned

District Munsif, Coonoor.

For Appellants	: Mr.R.Subramanian for Mr.J.Muthukumaran
For Respondents R1 to R7	: Mrs. Chithra Sampath, Senior Counsel for Mr.J.Franklin
R8 and R9	: Mr.C.Sathish, Government Advocate

JUDGMENT

This second appeal has been filed to set aside the Judgment and Decree dated 04.02.2019 in A.S.No.24 of 2018 passed by the learned Subordinate Judge, Coonoor, confirming the Judgment and Decree dated 20.06.2018 in O.S.No.78 of 2014, passed by the learned District Munsif, Coonoor, thereby partly decreeing the suit.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The petitioners are the defendants 1 and 2 in the suit filed by the respondents 1 to 7 in O.S.No.78 of 2014. The case of the plaintiffs is that they owned a property to an extent of 76 cents of tea estate comprised in Old Survey No.1029/4 in Patta No.222 and new Survey No.664/3, Patta No.225 of Atigaratty Village-II, Nilgiris. The suit property is their ancestral property and

it was allotted to the husband of the first plaintiff through oral family partition. After partition, all the revenue records were mutated in his favour and he was issued Settlement Patta on 09.06.1987. After his demise, the plaintiffs were in joint possession and enjoyment of the same. They are paying necessary property tax. In fact, all the revenue mutation were made in the name of the plaintiffs. When the husband of the first plaintiff was alive, on 23.01.2001, he had availed agricultural loan from Athingkaratti Primary Co-operative Agricultural Bank Limited by mortgaging the suit property. After his demise, the plaintiffs had settled the entire loan amount and also cancelled the mortgage. In fact, one of the plaintiffs registered the suit property before the Tea Board, Indira Gandhi Road, Willington Island, Kochi, to receive price subsidy scheme. The first plaintiff was looking after the suit property and other plaintiffs were residing out of station due to their employment. Utilizing the said circumstances, the first defendant in the year 2012, on the strength of the sale deed dated 18.07.2000, entered into the suit property by dispossessing the plaintiffs from their possession and enjoyment of the suit property by force. At that time, the first defendant also mutated the revenue records in her favour. On verification it was found that the alleged sale deed dated 18.07.2000 was executed by the second defendant in favour of the first defendant who had no title, right, interest, possession over the property. Hence, the suit was filed for declaration, recovery of possession and also for mandatory injunction to remove the first defendant's name from the revenue records.

4. The defendants 1 and 2 resisted the suit by way of filing written statement stating that the suit property was never allotted in favour of the husband of the first plaintiff by oral partition in the year 1958. The husband of the first plaintiff and his mother one Haliammal had sold 50 cents of land in Old Survey No.1029 of Atigaratty Village to one Seethaiammal by the registered sale deed in the year 1970. They did not have another property in Old Survey No.1029, situated at Atigaratty Village. In the said sale deed, the Old Survey No.1029/4 has been wrongly mentioned as Old Survey No.1029/2. However, the said Seethaiammal had been in possession and enjoyment of the property in Survey No.1029/4, till her death. Suppressing the said fact, the husband of the first plaintiff obtained settlement patta from the revenue officials. The settlement patta is not a document for title. After the demise of the said Seethaiammal, her husband being her legal heir, inherited the suit property. Thereafter, he got married with the second defendant. During his lifetime, he had executed a registered Will in the year 1982, bequeathing the

suit property along with several other properties in favour of the second defendant. He died in the year 1983 intestate, without cancelling or modifying the said Will. After his demise, the second defendant became the absolute owner of the suit property and other properties. After his demise, the second defendant married one Raman. Thereafter, she sold the suit property to the first defendant by the registered sale deed dated 18.07.2000 vide Document No.1184 of 2000. After purchase, the first defendant is in possession and enjoyment of the suit property continuously without any interruption. All the revenue records were also mutated in her name. The documents which are produced by the plaintiffs are no way connected to the suit property and those have no relevance to the suit property.

5. On the basis of the pleadings, the Trial Court framed the following issues:-

> "*1. Whether the plaintiff is entitled for the declaration as prayed for?*
> *2. Whether the plaintiff entitled for delivery of the vacant possession as prayed for?*
> *3. Whether the plaintiff entitled for the mandatory injunction against 3rd and 4th defendant as prayed for?*
> *4. To what other relief parties are entitled?*"

6. On the side of the plaintiffs, they had examined P.W.1 and marked Exs.A1 to 18. On the side of the defendants, they had examined D.W.1 and D.W.2 and marked Exs.B1 to 6. On a perusal of oral and documentary evidences, the Trial Court partly decreed the suit in respect of declaration and recovery of possession alone. In respect of cancellation of patta, the suit was dismissed. Aggrieved by the same, the defendants 1 and 2 preferred an appeal suit in A.S.No.24 of 2018 and the same was dismissed, confirming the Judgment and Decree passed by the Trial Court.

7. Aggrieved by the same, this present second appeal has been filed with the following substantial questions of law:-

> *" A) Whether the Courts below are right in declaring the title of the plaintiffs to the suit schedule property on the basis mere entries in Revenue Records, which do not convey or extinguish any titled.*
>
> *B) Whether the Courts below are right in decreeing the suit partly, in the absence of proof of the plaintiffs allegations, and in the absence of documents of title, by picking up in the title of the defendant, since the holes plaintiffs are not entitled to take advantage of the weakness of defence case and they must prove their case on the basis of their documents of title?*
>
> *C) Whether the Court below are right in admitting Exhibits A4, A7 and A8, which do not relate to the suit schedule property and the plaintiffs deliberately suppressed the truth and falsely contended that they relate to suit property*

and when such misrepresentation by itself amounts to fraud on the court?"

This Court admitted the second appeal on the following substantial questions of law:-

> *"i) Whether the lower Appellate Court being a final Court was right in disposing the appeal in a summary manner without even considering the evidence independently and coming to its own conclusions?*
>
> *ii) Whether the Judgment of the lower Appellate Court could be termed as Judgment within the meaning of Order 41 Rule 31 of the code of civil procedure?"*

8. Mr.R.Subramanian, the learned counsel for the appellants submitted that by the registered sale deed of the year 1970, the husband of the first plaintiff and his mother had executed a sale deed in favour of one Seethaiammal which was marked as Ex.B3. After the demise of the said Seethaiammal, her husband had became the absolute owner of the property and he got married with the second defendant and he bequeathed the suit property in favour of the second defendant by the registered Will of the year 1982, which was marked as Ex.B4. After his demise, the second defendant got married with another person. She had executed a registered sale deed dated 18.07.2000 in favour of the first defendant which was marked as Ex.A10. Whereas, the present suit for declaration has been filed only in the year 2014 , which is, ex-facie, barred by limitation, since as per Article 58 of the Limitation

Act, the suit has to be filed within three years from the date in which the right to sue first accrues. In fact, the suit for possession should have been filed within a period of 12 years as contemplated under Section 65 of Limitation Act. |Therefore, the suit is exfacie barred by limitation.

9. In support of his contention, he relied upon the Judgments of the Hon'ble Supreme Court of India reported in ***2020 (4) CTC 898 (SC)*** in the case of ***Zee Telefilms Ltd.(Now known as Zee Entertainment Enterprised Ltd.) Vs Suresh Productions and Others*** and in ***2019 (4) CTC 730 (SC)*** in the case of ***Sopanrao and Another Vs. Syed Mehmood and Others***.

10. He further submitted that the plaintiffs have to prove their case and they cannot rely on the weakness of the defendants case. The first plaintiff alone was fully acquainted with the facts of the case. However, she was not examined by the plaintiffs. The non examination of the first plaintiff would result in adverse inference under Section 114 of Indian Evidence Act. In fact, the suit property and the property purchased by the first defendant are one and the same. Further, the boundaries shown in Exs.A4, A7 and A8 are different and as such the plaintiffs failed to prove their case in respect of the identity of

the property.

11. In support of his contention, he also relied upon the Judgment reported in ***2018 (1) CTC 50 (Mad)*** in the case of ***S.Palanivel and Another Vs. P.Natesan, Thamarai Nayaki, Pallavi Natesan, Tharakai Natesan, Senthil Rajan (R5 declared as Major and R2 was discharged from her guardianship vide Order of Court dated 13.09.2012 made in M.P.No.1 of 2012 in A.S.No.484 of 2008), Thamari Nayaki, Pallavi Natesan, P.M.Ponnagounder, P.Natesan Muthayee (R6 was declared as Major and his guardian Kalavathi was discharged from her guardianship vide order of the Court dated 13.09.200012 made in M.P.No.1 of 2012 in A.S.No.484 of 2008).***

12. He vehemently contented that except Ex.A.15 all other documents marked by the plaintiffs are subsequent to the year 2000. In order to prove their possession they did not even produce any kist receipts or chitta extracts or any other revenue records prior to the year 2000. P.W.1 also admitted that they filed a suit in respect of the properties which were originally mortgaged with the bank. They have no other property in S.No.1029. Unfortunately, without appreciation of evidence, the first appellate Court also dismissed the suit without any sufficient reasons.

13. Mrs. Chithra Sampath, the learned Senior Counsel appearing for the respondents 1 to 7 submitted that even according to the defendants, the second defendant has bequeathed the property comprised in S.No.1029 and the documents which are marked as Exs.B3 and B4 pertains to the properties comprised in S.No.1029/2, whereas, the suit property is comprised in S.No.1029/4. Therefore, the stand taken by the defendants was rightly rejected by both the Courts that the property mentioned in Ex.B3 and the suit property are one and the same. But the survey number was wrongly mentioned in Exs.B3 and B4 as S.No.1029/2 instead of S.No.1029/4. That apart, the defendants did not take any steps to rectify the said mistake and no document was produced to that effect. Further, the defendants also failed to examine any revenue authorities to co-relate the survey number that the S.No.1029/4 and S.No.1029/2 are one and the same. She also pointed out that D.W.1 categorically admitted that she did not even verify the parental documents while purchasing the suit property. She did not know that what way the second defendant derived the title over the suit property. The property mentioned in the Will and the sale deed are one and the same. The first plaintiff's husband name not finds a place anywhere in the revenue records. Only after purchase of the suit property by the first defendant, her name has been mutated in the revenue

records. Whereas, the revenue records revealed that the first plaintiff's husband name appeared in all the revenue records. That apart, as per the Will only 50 cents of the property was bequeathed in favour of the second defendant. Whereas, the sale deed is executed for 76 cents. Therefore, the Court below rightly decreed the suit and it does not require any interference by this Court.

14. Heard Mr.R.Subramanian, the learned counsel for the appellants, Mrs.Chithra Sampath, the learned Senior Counsel appearing for the respondents 1 to 7 and Mr.C.Sathish, learned Government Advocate appearing for the respondents 8 and 9.

15. According to the plaintiffs, the suit property is their ancestral property. It was allotted in favour of the husband of the first plaintiff and father of other plaintiffs by oral and family partition in the year 1958. Thereafter, the revenue records were mutated in favour of the husband of the first plaintiff i.e, Sankaralingam. The Sketch of the suit property was marked as Ex.A3 and it stands in the name of Sankaralingam especially the extent of the property as 76 cents comprised in S.No.1029/4. The said Sankaralingam mortgaged the said property and availed loan. The mortgage loan application was marked as

Ex.A4. It is also evident from the encumbrance certificate, which was marked as Ex.A5 that the suit property was mortgaged by the said Sankaralingam. The tax receipt was marked as Ex.A6 in respect of the suit property. Thereafter, the registration certificate issued by the Tea Board was marked as Ex.A7 in the name of the 6th plaintiff. The said mortgage was redeemed by the plaintiffs through the deed which was marked as Ex.A8.

16. The case of the defendants 1 and 2 is that the said Sankaralingam and his mother had executed a sale deed in the year 1970 in favour of one Seethaiammal in respect of the property comprised in S.No.1029 ad-measuring 50 cents. Except the said property, the said Sankaralingam and his mother never owned another property. However, in the said sale deed, they wrongly mentioned the survey number as S.No.1029/2 instead of S.No.1029/4. After the said purchase, the said Seethaiammal had been in possession and enjoyment of the suit property. After the death of said Seethaiammal, her husband derived the title in respect of the suit property. He got married with the second defendant and he bequeathed the said property in favour of the second defendant by the registered Will of the year 1982. After demise of her husband, the second defendant became the absolute owner of all the properties which was

bequeathed in her favour in the Will, including the suit property. Thereafter, she remarried one Raman. She had sold the suit property in favour of the first defendant by the registered sale deed dated 18.07.2000. Though, the second defendant had taken a specific stand that the sale deed executed in favour of the Seethaiammal, the survey number was wrongly mentioned, no one had taken any steps to rectify the same. Further, they also did not produce any documents to show that the predecessors in title were in possession and enjoyment of the suit property. Whereas, the plaintiffs proved their case by marking the revenue documents to show that they were in possession and enjoyment of the suit property. Even assuming that the suit property and the property which was conveyed by the said Sankaralingam and his mother is one and the same, the extent of the suit property is ad-measuring 76 cents. Whereas, the property which was conveyed in favour of one Seethaiammal is only 50 cents. Only on verification of possession and enjoyment of the suit property, the 6th plaintiff's name was registered by the Tea Board.

17. A perusal of evidence of D.W.1 shows that she does not know the description of the suit property. She did not even verify the encumbrance certificate before the purchase of the suit property from the second defendant.

She had no knowledge about the survey numbers which are wrongly mentioned in the sale deed executed in favour of Seethaiammal. The sale deed and the Will were executed only in respect of the property comprised in S.No.1029/2 to an extent of 50 cents. Further, only in the year 2012, her name has been mutated in the revenue records. Therefore, she was not in possession of the suit property. She, having been purchased the suit property in the year 2000, failed to mutate the revenue records till the year 2012. Except the sale deed and the Will, no revenue record was produced by the defendants in order to disprove the case of the plaintiffs. Therefore, the plaintiffs proved their case with all revenue documents in respect of the title over the property.

18. The learned counsel appearing for the appellants specifically contended that the suit itself is barred by limitation, since it has been filed only after 14 years challenging the sale deed dated 18.07.2000.

19. In support of his contention he relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***2020 (4) CTC 898 (SC)*** in the case of ***Zee Telefilms Ltd.(Now known as Zee Entertainment Enterprised Ltd.) Vs Suresh Productions and Others,*** in which the Hon'ble Supreme Court of India

held that the cause of action to a plaintiff to file a suit accrues when there is clear and unequivocal threat to infringe a right. The plaintiff having already assigned their right for a period of 9 years by assignment deed, dated 23.12.1994, there was no cause of action during the aforesaid period of 9 years. Therefore, the right to sue accrues when there is clear and unequivocal threat to infringe a right. He further contended that in respect of recovery of possession, the suit should be filed within a period of 12 years, as per Article 65 of the Limitation Act. Therefore, the suit is clearly barred by limitation.

20. He also relied upon the Judgment reported in ***2019 (4) CTC 730 (SC)*** in the case of ***Sopanrao and Another Vs. Syed Mehmood and Others,*** in which it was held that the suit filed for possession based on title, the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land. However, the main relief is of possession and therefore, the suit will be governed by Article 65 of the Limitation Act. This Article deals with a suit for possession of immovable property or any interest therein based on title and the limitation is 12 years from the date, when possession of the land becomes adverse to the plaintiff.

21. Whereas, in the case on hand, only in the year 2012, the first defendant forcibly entered into the suit property and taken forcible possession by using illegal means. Therefore, the plaintiffs submitted a petition dated 18.08.2014 before the revenue authorities. Therefore, the above judgment cited by the learned counsel for the appellants are not applicable to the case on hand, since the suit is filed within the period of limitation. Further, the first appellate Court considering the evidence on record, dismissed the appeal. Therefore, both the substantial questions of law are answered in favour of the plaintiffs.

22. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and also finds no substantial questions of law involved in this second appeal and this second appeal is liable to be dismissed.

23. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

28.02.2023

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

1. The Subordinate Judge, Coonoor.
2. The District Munsif, Coonoor.

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and C.M.P.No.5802 of 2020

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