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S.A.No.1042 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1042 of 2022

and

C.M.P.No.22267 of 2022

1. Thilagavathy

2. Venkatesan

....

Appellants

Vs

A.T.Balasundaram (Died)

1. Sendhil Kumar

2. Umamaheswari

3. Anandhakumar

Shanmugam (Died)

(amended as per order in

I.A.No.7 of 2022 dated 20.04.2022)

4. A.B.Gnanasoundari

5. A.B.Iyappan

6. U.S.Majula

7. A.S.Ganesh Babu

8. A.S.Rajesh Kanna

9. A.S.Viswanath

(amended as per order in

I.A.No.7 of 2022 dated 20.04.2022)

....

Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil



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Procedure Code against the Judgment and Decree dated 05.09.2022 made in A.S.No.3 of 2020 on the file of I Additional District Court, Tiruvallur, by confirming the Judgment and Decree dated 28.03.2019 made in O.S.No.104 of 2009 on the file of the Subordinate Court, Tiruvallur.

For Appellant : Mr.M.R.Khapali

For Respondents : Mr.V.M.Ravishankar

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 05.09.2022 passed in A.S.No.3 of 2020 on the file of I Additional District Court, Tiruvallur, thereby confirming the Judgment and Decree dated 28.03.2019 passed in O.S.No.104 of 2009 on the file of the Subordinate Court, Tiruvallur, thereby decreed the suit.

2. The appellants are the defendants and the respondents are the plaintiffs. The respondents filed a suit for declaration and recovery of possession in respect of the suit property. The case of the respondents is that one Narasimma Chettiar purchased the suit property and settled in favour of his wife, viz., Chengalammal, by a registered settlement deed dated 27.03.1943. She has one daughter viz., Thirupurasundrammal. She predeceased Chengalammal leaving behind her husband and three



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sons viz., the 1st and 5th plaintiffs, one Shankar and daughter as her legal

heirs. The said Shankar died on 20.10.2007 leaving behind the

respondents 2 to 4 as his legal heirs. Daughter Leelavathi also died

leaving behind her husband and children as her legal heirs. The legal

heirs of Leelavathi released their right over the suit property in favour of

the 1st and 5th plaintiffs. During the life time of Chengalammal, she

rented out the suit property in favour of one Jeevanandham for running a

clinic in a portion of the suit property. He used to pay the monthly rent

to Chengalammal or her representatives. When defaulted in payment of

monthly rent, she issued a legal notice. The first appellant is his

daughter and the second appellant is husband of the first appellant. They

have defaulted in payment of rent and started repairing works in the suit

schedule property without the consent of the respondents. After

exchange of legal notice, the respondents filed a suit.

3. The appellants resisted the suit and filed a written statement

stating that the release deed, executed by the legal heirs of daughter

Leelavathi, was not a registered document. The appellants are in

possession and enjoyment of the suit property for more than 45 years.

Apart from the respondents, there are 10 to 15 persons, claiming the



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ownership of the property. The property tax and other revenue dues stood in the name of the appellants. The appellants are not tenants under the respondents. They constructed shop and obtained electricity connection in their name. The water connection was also obtained in their name.

4. Based on the pleadings, the Trial Court framed the following issues :-

- (i) Is it true that the defendants have perfected title by adverse possession ?
- (ii) Whether the plaintiffs are entitled for the relief of declaration of title to the suit property ?
- (iii) Whether the plaintiffs are entitled for the relief of recovery of possession ?
- (iv) Whether the plaintiffs are entitled for damages as claimed ?
- (v) To what other reliefs, the plaintiffs are entitled to ?

Additional issues :

- (i) whether the suit is barred by limitation ?

5. On the side of the respondents, they had examined P.Ws.1 to 4



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and marked Exs.A1 to A26. On the side of the appellants, they had

D.W.1 and Exs.B1 to B181. On considering the oral and documentary

evidences adduced by the respective parties and the submission made by

the learned counsel, the trial Court decreed the suit as prayed for.

Aggrieved by the same, the appellants preferred an appeal in A.S.No.3 of

2020 before the I Additional District Judge, Tiruvallur and the same was

also dismissed and the Judgment and Decree of the Trial Court was

confirmed. Aggrieved by the same, the present second appeal.

6. The learned counsel for the appellants has raised the following substantial questions of law:

a) Whether the Courts below were right in invoking the plea of estoppel in view of 56 LW Madras Page 502 ?

b) Whether the Courts below ere right in having decided the question of jurisdiction in favour of the plaintiffs in view of 1996 1 LW 659 basing on 1991 2 LW 654 SC ?

c) Whether Ex.A24 can be relied upon without stamp and registration ?

d) Whether the Courts below erred in



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giving mesne profits and that too at Rs.2,000/- per month without proof ?

e) Whether the Courts below erred in not accepting the plea of adverse possession by the appellants ?

f) Whether the Courts below erred in accepting the title of the plaintiffs ?

7 . Heard, Mr.M.R.Khapali, the learned counsel appearing for the appellants and Mr.V.M.Ravishankar, learned counsel appearing for the respondents and perused the materials available on record.

8. The learned counsel appearing for the appellants would submit that the partition deed which was marked as Ex.A24 is not duly stamped or not registered one. It cannot be relied upon by the respondents. When the legal heirs of the said Leelavathi relinquished right over the schedule mentioned property by a release deed dated 14.07.2004, there is no question of partition between them. If there is any wilful default in payment of rent and denial of title, the respondents ought to have approached the Rent Control Court. That apart, the appellants perfected the title by adverse possession by enjoying the suit property for more than 45 years.

9. A perusal of the records reveals that a sale deed dated



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09.10.1918, which was marked as Ex.A1, was executed in favour of Narasimma Chettiar in respect of the suit properties. The settlement deed dated 07.04.1943, marked as Ex.A2, was executed by Narasimma Chettiar in favour of his wife Chengalammal in respect of the suit properties along with other properties. The property tax receipts were marked as Ex.A20 in respect of the suit property in the name of Chengalammal. It would establish clear right and title of the said Chengalammal and the property tax would show that her possession and enjoyment of the suit property. She died on 26.10.1976. Her death certificate and other related documents including the legal heir certificate were marked as respondents documents which were duly admitted by the appellants. The appellants had marked Exs.B1 to B181. The electricity bills and property tax could not be treated as title documents in respect of the suit properties. It would only show that the appellants are in possession of the suit property. It is not the case of the respondents that the appellants are not in possession of the suit property.

10. A perusal of exchange of notice between the parties reveals that the appellants' father was tenant under Chengalammal in respect of the suit schedule property. He paid rent to the respondents. The



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appellants also admitted that exchange of notice between the father and the respondents. When their father admitted his possession as tenant, the appellants, who steps into the shoes of their father Jeevanandham, are estopped from denying the title of the respondents. They are estopped from denying the title of the landlord as contemplated under Section 116 of Indian Evidence Act. Once a tenant is always a tenant and the tenant can never become the owner of the premises. The failure of the landlord to claim rent for several years would not amount to perfection of title to the tenant by adverse possession.

11. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail, and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 05.09.2022 made in A.S.No.3 of 2020 on the file of I Additional District Court, Tiruvallur, confirming the Judgment and Decree dated 28.03.2019 made in O.S.No.104 of 2009 on the file of



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the Subordinate Court, Tiruvallur, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

02.01.2023

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

- 1.The I Additional District Judge, Tiruvallur
2. The Subordinate Judge, Tiruvallur.



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