



S.A. No.629 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.06.2023

CORAM

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

S.A.No.629 of 2018
and
C.M.P.No.19322 of 2018

1.Girija (Died)
2.Savithri (Died)
3.Karthikeyini
4.V.Ganesan
5.G.Lakshmisouthamini
6.B.Vanishiri
7.B.Sampath Kumar
8.B.Ravi

... Appellants

[appellants 4 to 8 brought on record as LR's of the deceased 1st and 2nd appellant vide order of Court dt.24/08/2022 made in CMP.No.13967, 13959, 13962 and 13966 of 2022 in S.A.No.629 of 2018 respectively (TVTSJ)]

Vs

S.Kumutha (died)
1.Srinivasan
2.Nisha

... Respondents



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PRAYER : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree of III Additional District and Session Judge, Gobichettipalayam made in A.S.No.3 of 2017 dated 01.07.2017 confirming the decree and judgment passed by the learened Subordinate Judge, Gobichettipalayam made in O.S.No.66 of 2010 dated 26.08.2016.

For Appellants : Mr.R.T.Duraisamy

For Respondents : Mr.M.Guruprasad

JUDGMENT

The appellants have preferred this Second Appeal against the Judgment and decree dated 01.07.2017 made in A.S.No.3 of 2017 passed by the learned III Additional District and Session Judge, Gobichettipalayam, and confirming the Judgment and Decree dated 26.08.2016 made in O.S.No.66 of 2010 passed by the learned Subordinate Judge, Gobichettipalayam.



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2. The appellants herein who are the unsuccessful defendants in O.S.No.66 of 2010 on the file of Subordinate Court, Gobichettipalayam, have preferred this Appeal.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. Originally, the suit in O.S.No.66 of 2010 was filed by the plaintiff / Kumudha (since deceased) seeking for declaration and possession of the suit property from the defendants before the trial Court. The defendants denied the plaintiff's right over the property and also contended that the said property belongs to them through oral gift as well as by adverse possession.

5. Before the trial Court, both the parties adduced evidence. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A12 were marked and on the side of the defendants, D.W.1 was examined and Ex.D1 and Ex.D2 were marked. Finally, the trial Court concluded that the property belongs to the plaintiff / Kumudha and the title was in the name of



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Sambasiva Chettiar and also not accepted the plea of oral gift as well as the adverse possession claimed by the defendants and the suit was decreed.

6. By challenging the said finding, the defendants have preferred an appeal in A.S.No.3 of 2017 on the file of III Additional Judge, Gopichettipalayam, Erode District, wherein, the learned first appellate Judge independently analysed the facts and evidence and concluded that the defendants were in permissive possession of the property given by one Sambasiva Chettiar / vendor's vendor of the plaintiff. As per the purchase made in the year of 2008, the plaintiff was the absolute owner, and accordingly, the plaintiff is entitled for the relief of declaration and recovery of possession. By confirming the trial Court's findings, the appeal was dismissed. By challenging the findings of the Courts below, the defendants have preferred this Second Appeal.

7. During the pendency of the proceedings, the plaintiff/ Kumudha died and her husband and daughter were impleaded as 2nd and 3rd plaintiffs and now they are the respondents herein. During the pendency of the



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proceedings, 1st and 2nd defendants have died and their legal heirs were added as appellants 4 to 8, in the present appeal.

8. The second appeal was admitted by this Court on 16.11.2018, on the following Substantial Questions of Law.

"(a) Whether the Courts below are correct in allowing the plaintiffs to take a contra plea of permissive occupation from that of the original vendors plea of Gopal Chettiar is only a Tenant ?

(b) Whether the Courts below are correct in holding that the suit O.S.No.66 of 2010 is filed within a period of 12 years from the date of denial of title of the original owner of the property on 03.05.1990 ignoring the law of limitation that filing and disposal of suit will not stop the running of limitation period ?

(c) Whether the Courts below were correct in law in not considering the issue of adverse possession especially, when it has been raised as a defence and the appellants had



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*pleaded to be the absolute owner of the suit property in the
Rent Control Proceedings initiated by the vendor of the
respondents ?"*

9. The Brief facts of the case are as follows:

Originally, the suit property along with other properties, belongs to one Sambasiva Chettiar and his two brothers as joint family properties. As per the decree of partition, in O.S.No.205 of 1982, the suit property was allotted to said Sambasiva Chettiar. In fact, the father of the defendants namely Gopal Chettiar was a distant relative of Sambasiva Chettiar's family. In order to look after their joint family business, at the request of Sambasiva Chettiar, Gopal Chettiar came to Gobichettipalayam and his marriage was performed by the said Sambasiva Chettiar and also permitted the Gopal Chettiar to reside in the suit property. After the demise of Sambasiva Chettiar, his legal heirs filed RCOP.No.9 of 1990, against the said Gopal Chettiar, and prayed to vacate and deliver the possession. But the said Gopal Chettiar contended that there is no land lord / tenant relationship between them, and accordingly, RCOP was disposed of, against which,



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RCA.No.2 of 1994 was preferred by them, against the landlord of Sambasiva Chettiar and the same was allowed. Aggrieved by the same, CRP.No.383 of 1996 was filed by the legal heirs of the Gopal Chettiar without making any observation with regard to the relationship between them, and a liberty was granted to initiate recovery of possession proceedings in respect of the suit property in the year 2010. Thereafter, the present appeal was filed by the plaintiff / Kumudha.

10. During the pendency of the appeal proceedings, the original owners / legal heirs of the Sambasiva Chettiar sold one property to Dhamodharan, from whom the present plaintiff Kumudha purchased the suit property for valid consideration in the year 2008. Hence, the plaintiffs filed the suit for declaration as well as for recovery of possession.

11. Per contra, the defendants who are the legal heirs of Gopal Chettiar, are the daughters of the said Gopal Chettiar and they contested the suit stating that neither the plaintiffs nor the original vendor Sambasiva Chettiar is the owner of the suit property. In fact, the said property was



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orally gifted in favour of their father Gopal Chettiar more than 56 years, and they were enjoying the property absolutely, hostile to their knowledge and also perfected title by adverse possession, besides, the suit was not filed by the plaintiffs. Immediately, the plaintiff's title was denied by the defendants, much earlier in the year 1990 and Ex.A1 notice was issued and the defendants prayed to dismiss the suit as devoid on merits.

12. However, the Court below, considering the evidence on both sides, held that the suit property originally belongs to Sambasiva Chettiar and the father of the defendants / Gopal Chettiar was permitted to occupy the same by permissive possession, as he was to look after his family business. After his demise, the legal heirs shall vacate the premises, and as he refused, they filed RCOP for eviction, but in the revision, this Court held that the relationship between them is not a land lord and tenant. However, liberty was given to the plaintiff to take action for recovery of possession. Hence, the present suit came into force.



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13. The facts reveal that the father of the defendants, namely Gopal Chettiar was a distant relative of the Sambasiva Chettiar and he came here to maintain the family business. At that time, the said Sambasiva Chettiar permitted Gopal Chettiar to enjoy the property, and so his possession was deemed as a permissive possession. According to the plaintiff, the evidence adduced before the trial Court on the side of the defendants, i.e., DW1's Cross- Examination is as follows:

‘1954ம் வருடத்தில் வேலைவெட்டி இல்லாமல், உருமலைப்பேட்டையில் இருந்து எனது அப்பாவை வேலைக்காக கோபிசெட்டிபாளையத்திற்கு அழைத்து வந்தார்கள் என்றால் சரிதான். கோபியில் பணி செய்து வந்தபோது எனது அப்பா கோபாலகிருஷ்ண செட்டியாரின் வீட்டில் தான் சாப்பிட்டு வந்தார். எனது அப்பாவின் செலவுகளை பார்த்துக்கொள்ள 3 நபர்களும் சேர்ந்து பணம் கொடுத்தார்களா என்றால் அதுபற்றி எனக்கு தெரியவில்லை.’

14. So, the father of the defendants was permitted to occupy the suit property by the said Sambasiva Chettiar's family, which is established by both plaintiff and defendants. It is also an admitted fact that as per partition decree in O.S.No.205 of 1982, the suit property was allotted to the share of said Sambasiva Chettiar. Thereafter, the said property was purchased by one



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Dhamodharan from the legal heirs of Sambasiva Chettiar and the sale deed was marked as Ex.A2 dated 20.02.2006, and from him, the present plaintiff Kumudha had purchased the property through Ex.A1 sale deed dated 05.11.2008. Therefore, from these documents it is clear that the plaintiff is able to establish how she traced her title from her original vendor.

15. Now, the burden is shifted on the defendants to prove that the property belongs to defendants' father / Gopal Chettiar. Primarily, they claimed through oral gift that the property was given to their father by Sambasiva Chettiar. But, as rightly pointed out by the respondents' counsel, under Section 123 of the Transfer of Property Act, oral gift is not permissible.

16. Section 123 of Transfer of Property Act reads as follows:

"For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on half of the donor, and attested by at least tow witnesses."

17. Therefore, the plea of oral gift claimed by the defendants was



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rightly rejected by the Court below, which needs no interference.

Furthermore, the defendants also contended that they have perfected title over the suit property by way of adverse possession. According to the defendants, nearly about 56 years there was possession and enjoyment of the property, but as discussed above, D.W.1 herself admits that her father Gopal Chettiar worked under Sambasiva Chettiar by looking after their family business. Furthermore, in the year 1990, the legal heirs of Sambasiva Chettiar demanded the defendants to vacate the premises, for which they refused. Hence, he initiated eviction proceedings in RCOP.No.9 of 1990 and the same was dismissed. But, in appeal RCA.No.2 of 1994, eviction order was passed, against which CRP.No.353 of 1996 has preferred, wherein, this Court observed that plaintiffs are entitled to proceed for eviction.

18. However, there is no observation with regard to jural relationship and after the disposal of the said CRP in the year 2010, immediately, the present suit was filed. Therefore, the claim of the defendants was resisted by the legal heirs of Sambasiva Chettiar long back and thereby, the defendants



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are not entitled to the property un-interrupted, more than 12 years and they are in adverse possession with knowledge of the original owner.

19. Apart from that, the defendants failed to establish that from which dates onwards they are entitled to the property adverse to the knowledge of the plaintiff. As rightly pointed out by the respondents' counsel, defendants are not entitled raise defence by claiming title through oral gift as well as the adverse possession, and as such it is not acceptable and the same was rightly rejected by the learned trial Judge which needs no interference by this Court.

20. Furthermore, in early RCOP proceedings, though Sambasiva Chettiar claimed the defendants' father as a tenant, but in CRP proceedings, the said land lord / tenant relationship was not taken into consideration. However, liberty was granted to the plaintiffs to take action to vacate the premises from the defendants. Therefore, the earlier suit would not have any interference over the findings rendered in the present suit. The Court below rightly appreciated the evidence, beside the plaintiff had also proved her



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title by adducing oral and documentary evidence. Therefore, the Court below rightly decreed the suit. The plaintiff / Kumudha is the original owner of the suit property, which needs no interference by this Court. Accordingly, substantial question 1 of law is answered.

21. The learned counsel for the appellants furthermore argued that title of the original owner Sambasiva Chettiar was denied by the defendants father much earlier in the year 1990, and suit was not filed within three years from the date of rejection. Therefore, the suit is barred by limitation. Admittedly, from 1990 to 2010, RCOP proceedings were pending. As per Article 14 of Limitation Act, the period of pending proceedings would be deducted, and for that, the lower Court relied on the decision reported in **(2012) 4 MLJ 931, [Thangaraj Vs. Amuthavalli and others]:-**

"Therefore it is clear that the long possession had by the defendant from the date of his occupation as a permissive occupier in the suit property with electricity connection in his name, cannot be deemed as a hostile possession against the true owner,"

22. However, the learned counsel for the defendants also pointed out



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that the father of the defendants, namely Gopal Chettiar enjoyed the property as absolute owner by paying electricity consumption charge in his name, which was not objected by the original owner Sambasiva Chettiar. But mere payment of the Electricity Bill receipt would not confer any title. The respondent / plaintiff relied on the ratio laid down in **(2012) 4 MLJ 931, [Thangaraj Vs. Amuthavalli and others]**, supporting the contention of the plaintiff. Therefore, in all aspects, the defendants failed to establish the defence, on the other hand, the plaintiff have earlier proved that she is the absolute owner of the property and the defendants are in occupation of the premises, and the defendants' possession is permissive one and already notice was issued long back demanding to vacate the premises, which was refused by the defendants. Hence, this suit as such is maintainable. Accordingly, substantial question of law 2 is answered.

23. In view of answering of the 1st and 2nd Substantial Questions of law, the 3rd Substantial question of law is also answered in the above terms.

24. Therefore, there are no merits in this appeal Furthermore, most of



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the legal heirs of the defendants are not residing in the property. In fact, the defendants 1 to 3 have got married and settled in some other place. But till date, they are not permitted to occupy the premises by plaintiff who is the true owner of the property.

25. Therefore, the Second appeal is dismissed as devoid of merits. The defendants are directed to vacate and handed over the premises within a period of three months from the date of receipt of a copy of this Judgment. Accordingly, the suit is decreed as prayed for. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28 .06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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To

1. The III, Additional District and Session Judge, Gobichettipalayam.
- 2.The Subordinate Judge, Gobichettipalayam.
- 3.The Section Officer, VR Section, High Court of Madras.

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