



S.A.(MD)No.1224 of 2005

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.(MD)No.1224 of 2005

1.Madasamy Thevar (died)

2.Meenakshiammal

3.Ramasubramaniam

...Appellants

vs.

1.Panneer Selvam (died)

2.Ponniah

3.P.Petchiyammal

4.P.Paulpandiyaraj

5.R.Santhanalakshmi

6.P.Kamaraj

7.A.Amutha

... Respondents

(Appellants 2 and 3 are brought on record as LR's of the deceased sole appellant and Respondents 3 to 7 are brought on record as LR's of the deceased 1st respondent vide Court order dated 24.11.2016 in M.P. (MD)Nos.1 to 3 of 2012 in S.A.(MD)No.1224 of 2005 and M.P.(MD)Nos. 1 to 3 of 2013 in S.A.(MD)No.1224 of 2005)

(Respondent 1 deceased. Memo USR.No.4050/12 dated 17.12.2012 is recorded vide order dated 02.01.2013 in S.A.(MD)No.1224 of 2005)



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(Sole appellant deceased. Memo USR No.346/2012 is recorded vide order dated 06.11.2012 in S.A.(MD)No.1224 of 2005)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 09.09.2005 in A.S.No.74 of 2003 on the file of the Sub Court, Srivilliputhur confirming the Judgment and Decree dated 25.06.1992 in O.S.No.543 of 1985 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellants : Mr.D.Srinivasaraghavan
for Mr.S.P.Maharajan for A2, A3
A1 - died

For Respondents : Mr.Venkatesan
for Mr.A.Sivaji for R2 to R7
R1 - died

JUDGMENT

Being aggrieved by the Judgment and Decree passed by the First Appellate Court as well as the Trial Court, the defendant has preferred this Second Appeal.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Trial Court.

3. Heard the arguments of learned counsels appearing for both sides and perused the materials available on record.



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4. The suit in O.S.No.543 of 1985 was filed by Ponnuchamy Nadar against Madasamy Thevar before the Additional District Munsif Court, Srivilliputhur praying to divide the 1st item of suit property into 9 equal parts and allot 3/9 share to the plaintiff and declare the items 2 to 4 as common pathway.

5. According to the plaintiff, the suit 1st item originally belonged to Madavarvilagam Arulmighu Vaithiyanadha Swamy Devasthanam. The suit property totalling to an extent of 16.5 cents was purchased by 9 persons from Lakshmiammal w/o Sanjeeviraja through a registered sale deed dated 21.11.1948. The plaintiff purchased 3 shares from 3 persons out of 9 persons. Thereby, undivided 1/3 share of the total extent along with pathway right was purchased by the plaintiff through a registered sale deed dated 04.07.1961. The plaintiff further claimed that remaining six shares were sold by the remaining six persons to the defendant by way of sale deed dated 15.06.1963. The Survey Number which was assigned for the suit property is 1278/11. When the plaintiff demanded for partition, the defendant did not show any interest, thereby, the suit was filed for partition of 3/9 shares and for declaration of pathway right.



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6. Contending contra, the defendant has claimed in his written statement that even before the purchase by the plaintiff, he has been in possession and enjoyment of the entire extent of the suit property. However, the defendant also accepts that he has purchased 6/9 shares in the suit Survey Number. He further claims that the plaintiff never enjoyed the suit property. It is the further claim of the defendant that as he is in continuous possession, openly, he has prescribed title to the suit property by adverse possession. The defendant was granted separate patta for S.No.1278/11.

7. The Trial Court framed relevant issues as follows.

- (i) Whether the plaintiff is entitled for partition and separate possession of the 3/9 shares of the 1st item of suit property?
- (ii) Whether the plaintiff is entitled for declaratory relief of suit items 2 to 4?
- (iii) Whether the defendant has right in the suit property by way of adverse possession?
- (iv) Whether the plaintiff has not paid the correct Court Fee?
- (v) Whether the plaintiff has no cause of action to file the suit?



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(vi) Whether the suit is barred by limitation?

(vii) What other reliefs is the plaintiff entitled to?

8. At trial, the plaintiff has examined himself as PW1. Exs.A1 to A7 were marked. Sale deed in the name of the plaintiff's vendor is Ex.A1. Sale deed in the name of plaintiff is Ex.A2. Patta in the name of plaintiff is Ex.A4. Kist receipts are Ex.A7 series. On the defendant's side, the defendant has examined himself as DW1. Exs.D1 to D5 were marked. Exs.C1 and C2 are the Advocate Commissioner's Report and Plan.

9. The Trial Court has observed that in order to substantiate the case of the plaintiff, he has marked his sale deed as well as his vendor's sale deed. It is also observed that the plaintiff has marked the relevant patta namely Ex.A4 along with the kist receipts. The plea of adverse possession raised by the defendant was outrightly rejected by the Trial Court. The Trial Court did not consider the proceedings passed by the Sivakasi District Revenue Officer by giving reasons and ultimately concluded that the plaintiff is entitled for partition of 3/9 shares and he is entitled for the declaration that items 2 to 4 of the suit property are the



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common pathway.

10. Aggrieved, the defendant preferred appeal before the Sub Court, Srivilliputhur.

11. The first Appellate Court has also concluded that the purchase by the plaintiff was never objected to by the defendant and the remaining 6/9 shares was purchased by the defendant. Though the sale in the name of the plaintiff is not objected, the defendant has claimed that he has prescribed title by adverse possession. The first Appellate Court has taken pains to explain under what circumstances, the claim / the plea of adverse possession can be taken and finally chosen to confirm the finding of the Trial Court, thereby, dismissed the appeal.

12. Aggrieved, the present Second Appeal is filed by the defendant.

13. The original parties to the suit died and their LRs have been brought on record as appellants and respondents.



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14. The learned counsel for the appellants / defendant would strenuously argue that the plaintiff claims that he has purchased 3/9 shares and the defendant purchased 6/9 shares. It is his argument that the plaintiff was never in enjoyment of any share of the suit property and it was the defendant who was in possession and enjoyment of 16.5 cents and prescribed title by adverse possession. He would further contend that as the plaintiff was not in possession of his 3/9 shares, his patta Ex.A4 was rightly cancelled through Ex.B3 proceedings of District Revenue Officer, Sivakasi. But these details were not properly appreciated by both the Trial Court as well as the first Appellate Court and the suit was decreed and the Judgments of the Trial Court as well as the Appellate Court are assailed by way of the Second Appeal.

15. Contending contra, the learned counsel appearing for the respondents would vehemently contend that the plaintiff purchased 3/9 shares - 5.5 cents through a registered sale deed dated 04.07.1961 from the appropriate persons and he was also granted patta which was marked as Ex.A4 dated 06.12.1983. It is his argument that as the possession was sought to be disturbed, the suit came to be laid. In Ex.B1 patta, no seal is found and it was rightly rejected by the Trial



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Court. He would draw the attention of the Court as to the cross examination of DW1, wherein, DW1 has acceded that the suit property is situated along the Ashok Talkies Road and not Mills Road and sought for dismissal of the appeal.

16. The following substantial question of law arises for consideration.

"Whether in law, the suit which was filed by the respondent in the year 1985 in respect of the property alleged to have been purchased in the year 1961 is maintainable or not?"

17. Originally, the suit properties are the 'Enam' lands of Madavarvilagam Arulmighu Vaithiyanadha Swamy Devasthanam. Suit items 2 to 4 are the common pathway that leads to the 1st item. The plaintiff and the defendant have purchased their shares from the same group of people i.e., from the people of Veduvan Vagayara. The defendant has admitted in his cross that the suit property is situated at Ashok Talkies Street and not at Mills Road.



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18. From a deep analysis of Exs.A1 to A3 sale deeds, it is made clear that 3/9 shares of the suit property was purchased by the plaintiff and the remaining 6/9 shares was purchased by the defendant. Subsequent to the sale, the plaintiff has been granted patta namely Ex.A4. The defendant has also chosen to mark his chitta as Ex.B2. But only Xerox copy was marked. Therefore, the said document need not be relied upon for any purpose. It is the evidence of PW1 that when he has demanded the defendant to effect partition, he postponed the same. When the defendant put up fence in the property, the plaintiff lodged a complaint before the Rajapalaym Town (west) Police Station and the copy of the complaint and CSR are Exs.A5 and A6. Kist receipts Ex.A7 series are after the suit.

19. Moreover, Ex.B3 is the proceeding of Sivakasi District Revenue Officer cancelling the patta Ex.A4 granted to plaintiff. On careful perusal of Ex.B3, it appears that no notice was issued to the connected person namely plaintiff. The said proceedings does not bear the office seal and the copy of the proceedings was also not sent to the plaintiff. For all these omissions and commissions, Ex.B3 cannot be relied upon for any purpose.



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20. It is the evidence of DW1 that he is in possession of the suit property and thereby he has prescribed title of the same by adverse possession. It is his further evidence that the plaintiff has purchased from the persons who did not have any title to the suit property. Admittedly, the plaintiff has purchased 1/3 share and the defendant 2/3 share. The defendant in his written statement specifically has not denied the fact that the plaintiff has purchased 1/3 share. From a perusal of Ex.A3 sale deed of defendant, it is seen that the defendant also has purchased from the same vendor as that of plaintiff. More so, it should not lie in the mouth of the defendant that the plaintiff purchased from the person who did not have any title in the suit property. The right of common pathway was purchased by the plaintiff as well as the defendant. Law is well settled that when a person raises plea of adverse possession, he has to admit the title of the owner and he should have enjoyed the property to the knowledge of the owner without any interruption for twelve years. Except the defendant's oral assertion, no positive evidence is filed to prove his plea. The Advocate Commissioner has observed that grown up babul trees are found in the suit property. Therefore, it is easy for anybody to state that the plaintiff was in possession of property. The defendant has failed to prove that he was



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in possession of the suit property uninterruptedly for 12 years to the knowledge of the plaintiff.

21. As regards the plea of limitation, the plaintiff has pleaded that only in the year 1984, the defendant was trying to disturb his possession and he lodged the complaint by way of Ex.A5. The suit was laid in the year 1985. Therefore, it is concluded that the suit was laid in time and the suit is not barred by law of limitation. Therefore, the Judgment of the Trial Court is well founded and following the same, the first Appellate Court has also rightly dismissed the appeal.

22. There is no doubt that the suit property was purchased in the year 1961 by the plaintiff from Periya Muthaiya Vagayara through Ex.A2 Sale Deed. The plaintiff's candid case is that the defendant was trying to disturb his possession in the year 1984 and he lodged the complaint by way of Exs.A5 and A6 in the year 1984 itself (13.02.1984). The suit was laid in the year 1985 (O.S.No.543 of 1985). Therefore, as the suit was laid in time, suit as filed by the plaintiff is maintainable in law and the substantial question of law is answered in favour of the plaintiff.



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23. Based on the aforesaid discussions, the Second Appeal stands dismissed by confirming the Judgment and Decree dated 09.09.2005 in A.S.No.74 of 2003 on the file of the Sub Court, Srivilliputhur. The suit in O.S.No.543 of 1985 on the file of the Additional District Munsif Court, Srivilliputhur is decreed. There is no order as to costs.

08.11.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Sub Judge, Srivilliputhur
- 2.The Additional District Munsif, Srivilliputhur
- 3.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.

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