



S.A(MD).Nos.227 and 228 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)Nos.227 and 228 of 2020
and C.M.P(MD)Nos.2994 of 2020 and 3718 of 2023

In S.A(MD)No.227 of 2020:

1.P.Ramar

2.Pandiammal

.... Appellants/Appellants/Defendants

Vs.

M.K.Vijaya

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, by setting aside the judgment and decree in A.S.No.4 of 2018 on the file of the Principal District Judge, Dindigul dated 20.08.2019 and O.S. No.418 of 2011 dated 18.18.2017 on the file of the Additional Subordinate Judge, Dindigul.

For Appellants : Mr.K.Muraleedharan

For Respondent : Mr.S.Sarvagan Prabhu

In S.A(MD)No.228 of 2020:

P.Ramar

.... Appellant/Appellant/Plaintiff

Vs.

M.K.Vijaya

... Respondent/Respondent/Defendant



S.A(MD).Nos.227 and 228 of 2020

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, by setting aside the judgment and decree in A.S.No.6 of 2018 on the file of the Principal District Judge, Dindigul dated 20.08.2019 and decreed the suit in O.S.No.546 of 2015 dated 18.08.2017 on the file of the Additional Subordinate Judge, Dindigul.

For Appellant : Mr.K.Muraleedharan

For Respondent : Mr.S.Sarvagan Prabhu

COMMON JUDGMENT

These Second Appeals have been filed challenging the concurrent findings of the courts below. Two suits were filed namely O.S.No.418 of 2011 and O.S.No.546 of 2015 on the file of the Additional Sub Court, Dindigul. O.S.No.418 of 2011 was filed by the respondent in S.A(MD)No. 227 of 2020. O.S.No.546 of 2015 was filed by the appellant in S.A(MD)No. 228 of 2020. Both the suits were filed for declaration. O.S.No.418 of 2011 was filed also for recovery of possession.

2. The appellant in S.A(MD)No.228 of 2020, who is the plaintiff in O.S.No.546 of 2015 filed the suit for declaration and for permanent injunction based on adverse possession in respect of the suit schedule



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property and has also disputed that the defendant is the owner of the entire extent of the suit schedule property. According to the plaintiff, if at all the respondent is entitled, she is entitled only to an extent of 4 ½ cents and not the entire extent of 14 cents. According to him, the respondent's father had erroneously and illegally executed a settlement deed for a larger extent of 14 cents though the respondent's father was entitled only to an extent of 4 ½ cents. A written statement to that effect was also filed by the appellants in S.A(MD)No.227 of 2020, who are the defendants in the suit in O.S.No.418 of 2011 to that effect.

3. However, the respondent in S.A(MD)No.227 of 2020, who is the plaintiff in O.S.No.418 of 2011 had categorically pleaded in her plaint that she is entitled for the entire extent of 14 cents as per the suit schedule property by virtue of settlement deed executed in her favour by her father which is marked as Ex.A.1 in the common judgment and decree passed by the trial court.

4. As both the suits were tried jointly, evidence was recorded in O.S.No.418 of 2011 only.



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5.i) The plaintiff in O.S.No.418 of 2011 filed 4 documents which are marked as Ex.A.1 to Ex.A.4 which are as follows:

Ex.A.1: 30.11.1984 – Original Settlement Deed

Ex.A.2: 14.08.2006 – Receipt issued by Batlagudu Panchyat

Ex.A.3: 07.09.2011 – House Tax Receipt for period 2011-2012 with No.2/412

Ex.A.4: House Tax Receipts (3 in numbers for period 2012-2016 with No.2/412)

5.ii) The defendants in O.S.No.418 of 2011 have filed 7 documents which were marked as Ex.B.1 to Ex.B.7 and they are as follows:

Ex.B.1: EB card S.C.No.101, with two entries 10.02.1999 and 13.08.1999

Ex.B.2: Family Identity Card issued by Social Welfare Department

Ex.B.3: 20.08.1999- Bharat Petroleum Subscription Voucher

Ex.B.4: 08.09.2011 – Receipt issued by Batlagundu Panchayat

Ex.B.5: 14.06.2014 – Bharat Gas Receipt

Ex.B.6: House Tax Receipt D.No.1/58A 2015-2016 in name of D2

Ex.B. 7: EB Receipts for 2015-2016 in name of D2

5.iii) Two witnesses were examined on the side of the plaintiff in O.S.No.418 of 2011, namely, P.W.1, the plaintiff's husband and P.W.2 Murugesan. On the side of the defendants in O.S.No.418 of 2011, 3



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witnesses were examined namely the first defendant Ramar as D.W.1 and the second defendant Pandiammal as D.W.2 and one Muthu Naidu as D.W.3

6.i) The trial court namely, the Additional Subordinate Court, Dindigul, by its common judgment and decree dated 18.08.2017 in O.S.Nos. 418 of 2011 and 546 of 2015 decreed the suit in favour of the plaintiff in O.S.No.418 of 2011 by granting the relief of declaration and recovery of possession in respect of the suit schedule property as sought for by her;

6.ii) But, the trial court dismissed the suit in O.S.No.546 of 2015 and thereby negating the contention of the plaintiff therein that he is in continuous and uninterrupted possession of the suit schedule property for several years and rejecting his stand that he is entitled for the relief of declaration based on adverse possession. The trial court rejected the plaintiff's contention of adverse possession by holding that though the defendants were in possession, they never possessed the necessary animus, hostile to the interest of the plaintiff at any point of time. The trial court held that the same is apparent as seen from the written statement of the defendants in O.S.No.418 of 2011, which is earlier in time to the plaint filed subsequently by them seeking for declaration based on adverse possession. In the written statement in O.S.No.418 of 2011, the defendants have



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pleaded that they have been put in possession by paying valuable consideration to the plaintiff and that the plaintiff has caused hardship to them by not executing the sale deed in their favour. Based on the pleadings in their written statement, the trial court has correctly held that intention of the defendants was never hostile to that of the plaintiff and therefore, they cannot seek the relief of declaration based on adverse possession as seen from the documents filed by the defendants, which have been marked as exhibits. No revenue records have been filed by them to prove that they are in continuous and uninterrupted possession of the suit schedule property with the knowledge of the respondent for more than 12 years for the purpose of claiming adverse possession. The defendants have filed only EB card, Family Identity Card issued by Social Welfare Department, Bharat Petroleum subscription voucher, Receipt issued by Batlagundu Panchayat and Bharat Gas receipt and house tax receipt and EB receipts for 2015-2016 which have been disputed by the plaintiff. On the other hand, the plaintiff has filed original settlement deed standing in her name which is dated 30.11.1984 which has been marked as Ex.A1. As per the settlement deed, the plaintiff is the absolute owner of the suit schedule property having got the said settlement executed by her father. Admittedly, the settlement deed has not been challenged by the appellant in S.A(MD)No.228 of 2020, who



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is the plaintiff in the suit in O.S.No.546 of 2015. In the said suit, the relief of declaration is alone sought for in respect of the suit schedule property by the plaintiff. Though the defendant contended that the plaintiff is entitled if at all only to the extent of 4 ½ cents in the suit schedule property and not entitled for the entire 14 cents, the defendant has not produced any documentary evidence to prove the same. On the other hand, the documents produced by the respondent which have been marked as Ex.A.1 to Ex.A.4 which includes the original settlement deed, the receipt issued by Batlagundu Panchayat, House Tax receipts for the period 2011-2012, house tax receipts for the period from 2012-2016 all pertains to the entire extent of the suit schedule property namely 14 cents. The respondent has discharged her burden of proving her case as per the provisions of Section 101 of the Indian Evidence Act. When the respondent has discharged her burden, necessarily, it is for the plaintiff to disprove the same by producing contra evidence, which the plaintiff has miserably failed to do so as seen from the evidence available on record.

7. The plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show:



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9. This Court is of the considered view that only based on oral and documentary evidence available on record, by a common judgment and decree dated 18.08.2017, the trial court namely, the Additional Subordinate Court, Dindigul has rightly decreed the suit in favour of the plaintiff in O.S.No.418 of 2011 and has dismissed the suit in O.S.No.546 of 2015.

10. The lower Appellate Court, namely, the Principal District Court, Dindigul by its common judgment and decree dated 20.08.2019 in the first appeals filed by the appellant in A.S.Nos.4 of 2018 and 6 of 2018 has also rightly confirmed the findings of the trial court by dismissing both the first appeals. Aggrieved by the same, these Second Appeals have been filed by the plaintiff in O.S.No.546 of 2015 and the defendants in O.S.No.418 of 2011.

11. It is also brought to the notice of this Court by Mr.S.Sarvagan Prabhu, learned counsel appearing for the respondent in both the Second Appeals, which is also admitted by the learned counsel for the appellants, that subsequent to the passing of the judgment and decree of the lower Appellate Court which is subject matter of challenge in these Second Appeals, the plaintiff in O.S.No.418 of 2011 has already taken possession of



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the suit schedule property by virtue of a delivery order passed by the executing court.

12. Before this Court, the appellants have also filed an application under Order 41 Rule 27 C.P.C namely C.M.P(MD)No.3718 of 2023 seeking permission of this Court to receive the documents mentioned in accompanying petition as an additional evidence in S.A.(MD).No.227 of 2020. This Court is of the considered view that those documents cannot be entertained at this stage as the appellants have failed to produce the same before the courts below when the said documents were very much available even during the proceedings before the trial court as well as the lower appellate court. This Court also cannot entertain this application at this belated stage as the plaintiff in O.S.No.418 of 2011 has already taken possession of the suit schedule property by virtue of a delivery order passed by the executing court, which is also not disputed by the learned counsel for the appellants. There is no merit in the application namely C.M.P(MD)No. 3718 of 2023 seeking permission of this Court to file additional documents by way of additional evidence in S.A.(MD).No.227 of 2020.



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13. Both the courts below have rightly held that the appellants are not entitled for declaratory relief sought for by them in the suit in O.S.No.546 of 2015 based on adverse possession claimed by them. There is no substantial question of law involved in these Second Appeals as the issues raised by the appellants in these Second Appeals have been rightly considered by the courts below only based on the oral and documentary evidence available on record. There are no debatable issues of fact or law involved in these Second Appeals for further consideration by this Court under Section 100 C.P.C. The application filed by the appellants under Order 41 Rule 27 C.P.C namely, C.M.P(MD)No.3718 of 2023 also does not deserve any merit. Accordingly, the present Second Appeals as well as C.M.P(MD)No.3718 of 2023 are dismissed. Consequently, connected C.M.P(MD)No.2994 of 2020 is also closed. No costs.

02.06.2023

Index : Yes/No

Internet: Yes/No

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To

1.The Principal District Judge, Dindigul.

2. The Additional Subordinate Judge, Dindigul.

3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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