



WEB COPY



S.A.(MD).No.390

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.10.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.390 of 2017

- 1.Azhagu Konar (Died)
- 2.Vellakkannu
- 3.Azhgammal
- 4.A.Subbaiya
- 5.A.Azhagu
- 6.A.Nagarajan

(Appellants 3 to 6 are brought on record as legal heirs of the deceased 1st Appellant, vide Court order, dated 14.03.2023, made in C.M.P.(MD).Nos.2898 to 2900 of 2013 in S.A.(MD).No.390 of 2017)

... Appellants

/Vs./

- 1.Jeyaraman
- 2.Vellakkannu
- 3.Rajagopal
- 4.Subramanian

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of Sub Court, Pudukottai in A.S.No.66 of 2013, dated 25.01.2017, reversing the judgment and decree of the District Munsif cum Judicial Magistrate Court, Thirumayam in O.S.No.81 of 2008, dated 31.07.2013.

For Appellants : Mr.A.Arumugam

For R1, R2 and R4 : Mr.D.Ramesh Kumar

For R3 : Non appearance



JUDGMENT

WEB COPY

This second appeal is filed by the plaintiffs in the suit against judgment and decree, dated 25.01.2017 passed in A.S.No.66 of 2013 reversing the judgment and decree of the District Munsif cum Judicial Magistrate Court, Thirumayam, dated 31.07.2013 in O.S.No.81 of 2008.

2. The plaintiffs in the suit are the appellants herein and the defendants in the suit is the respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The plaintiffs had filed the suit to declare the plaintiffs are the owners of the suit schedule property and permanent injunction against the defendants restraining as far as suit “A” schedule property and remove the encroachment as far as suit “B” schedule property and hand over possession to the plaintiff.

4. The facts as stated by the plaintiffs are that originally the suit property situated at S.No.397, to an extent of 1 acre 11½ cents at Maravanmadurai Village, Illuppur Taluk, Pudukkottai District, was purchased on 12.04.1957, by the mother of the plaintiffs’ namely Rengayee, through the sale deed dated 12.04.1957. From the date of purchase all the revenue records were mutate in mother’s name and after the death of the mother, the plaintiffs as legal heirs inherited the properties and they are



in possession and enjoyment of the properties. The defendants are having some lands in the southern side of the suit schedule property. On 18.07.2008, the defendants forcibly encroached the suit schedule property and put up a thatched shed and haystack and fenced the property. Aggrieved over the same, the plaintiffs had filed the suit.

5. The contention of the defendants is that the suit property originally belonged to one Srinivasan who was a Minor, the suit property's old S.No.397-1, the forefather of the defendants was cultivating the same as cultivating tenants. One Ramasamy Naidu, father and natural guardian of the minor Srinivasan sold an extent of 1 acre 11½ cents each to the plaintiff's mother Rengayee and mother of defendants 1 to 3, Thailammal on 12.04.1957 by way of two separate registered sale deeds. The 4th defendant is the grandson of Thailammal. The plaintiffs and the defendants are in exclusive possession and enjoyment of their respective portions since the date of their respective purchase. Sub division has also been made in revenue records on the basis of actual possession and enjoyment of the respective parties. The portion of the land where the plaintiffs are the possession and enjoyment is comprised in S.F.No. 387/9A and patta to the same stands in their name. The plaintiffs with intent to grab the portion of the property in possession and enjoyment of the defendants comprised in S.F.No.397/9B fraudulently described the same as "B" schedule property. The defendants' forefathers had put up four numbers of haystack stone pillars and two



numbers of thatched sheds as cultivating tenants and the defendants are continuing and maintaining the same till date. It is fraudulent to state that the defendants put up haystacks by trespassing the alleged “B” schedule property on 18.07.2008. There is no cause of action and the alleged cause of action is fictitious, imaginary and cooked up for the purpose of the suit, valuation of the suit and payment of court fee are not proper, the suit is vexatious. Hence the defendants prayed to dismiss the suit.

6. After perusing the rival pleadings, the Trial Court had framed the following issues:

- i. Whether the plaintiff is entitled to the relief of declaration?
- ii. Whether the plaintiff is entitled to the relief of injunction as far as A suit schedule of property?
- iii. Whether the plaintiff is entitled to the relief of possession as far as the B schedule of property?
- iv. To what other reliefs the plaintiff is entitled to?

7. The plaintiff had marked Ex.A1 to Ex.A8 and examined PW1 and the defendants had marked Ex.B1 to Ex.B4 and examined DW1. After perusing the rival pleadings, documents and depositions the Trial Court had decreed the suit and granted declaration that the A schedule property belongs to the plaintiff and further directed the defendants to hand over possession of 26 cents comprised in S.No. 397/9B which is shown as B schedule property in the suit.



WEB COPY

8. Aggrieved over the same, the defendants had filed appeal suit in A.S.No.66 of 2013, wherein the Appellate Court had confirmed the judgment and decree granting declaration and injunction as far as A schedule property and but declined the relief as far as B schedule property. Aggrieved over the same the present second appeal is preferred by the plaintiff. The second appeal is admitted on the following substantial questions of law:

“a. In the face of clear admission of respondents in their written statement and in cross examination about the title over B schedule property and in the absence of plea of adverse possession by the respondents, whether the judgment and decree of the Trial Court dismissing the suit for recovery of possession by allowing the appeal is tainted with illegality?

b. Whether the judgment and decree of the Appellate Court are vitiated by non-consideration of relevant evidence on records both oral and documentary, including report and plan of the Advocate Commissioner?”

9. It is an admitted fact that the plaintiff's mother Rengayee and the defendants mother Thailammal had purchased 11½ acres each from the total extent of 23 acres from the same vendor on the same date dated 12.04.1957 through two different sale deeds. However, while issuing patta the larger extent was granted to the defendants. When it came to the knowledge of the plaintiff, the suit is filed for recovery of possession of 26 cents of land. The Trial Court had decreed the suit by relying on the



sale deed and the extent stated in the sale deed. However, the Appellate Court was swayed away by the contention of the defendants that the defendants are in possession right from 1957 onwards and also obtained patta based on possession. When both the plaintiff's and defendant's mother had purchased 11 ½ acres through the sale deed in the year 1957, then the defendants cannot hold the excess land. Infact earlier the defendants were holding the entire property as cultivating tenants. After the sale deed the defendants is entitled to hold only 11 ½ acres alone. Any excess holding would amount to encroachment, then the same ought to be removed.

10. Further the claim of the defendants cannot be entertained since it is not the case of the defendants that they are holding as adverse possession. When there is no plea of adverse possession, no counter claim of adverse possession and no court fee paid for adverse possession, then the defendants have no right to claim title through possession. Further at held supra the defendants are claiming right from the date of sale, then the same ought to be encroachment and the same is liable to be removed.

11. Based on the discussions supra, the substantial questions of law are answered in favour of the plaintiffs. Therefore, the second appeal is allowed setting aside the Judgment and Decree dated 25.01.2017 passed in A.S.No.66 of 2013 on the file of Sub-Judge, Pudukottai and confirming the Judgment and Decree dated 31.07.2013 passed in O.S.No.81 of 2008 on the District Munsif cum Judicial



S.A.(MD).No.390

Magistrate Court, Thirumayam. No costs.

31.10.2023

WEB COPY

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1.Sub-Judge, Pudukottai.

2.District Munsif cum Judicial Magistrate Court,
Thirumayam.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD).No.390

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).Nos.390 of 2017

Dated:
31.10.2023