



S.A.No.588 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment Reserved On 22.12.2022	Judgment Pronounced On 01.03.2023
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CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.588 of 1999

1.Lakacha Gounder (Died)

2.Kaliammal (Died)

.. Appellants 1 & 2/
Respondents/Defendants

3.Varadaraj

4.Chinnasamy

5.Sasikala

6.Revathy

.. Appellants 3 to 6

[Appellants 3 to 6 – brought on record as LR's of the deceased appellants 1 and 2 vide order dated 28.02.2022 made in C.M.P.(MD) Nos.1206, 1208 and 1209 of 2022]

-VS-

Sankaran

.. Respondent/Appellant/
Plaintiff

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 02.01.1997 made in A.S.No.63 of 1996 on the file of the Principal Sub Court, Dindigul, reversing the judgment and decree dated 20.07.1993 made in O.S.No.356 of 1988 on the file of the Additional District Munsif's Court, Dindigul.



S.A.No.588 of 1999

WEB COPY

For Appellants : Mr.R.Nandakumar

For Respondent : Mr.K.R.Laxman

JUDGMENT

1.1. The defendants in the suit are the appellants. The respondent herein filed a suit for declaration of title and recovery of possession. The suit was dismissed by the trial Court. On appeal filed by the respondent, the findings of the trial Court were reversed and the appeal was allowed. Aggrieved by the same, the appellants have come up by way of this second appeal. Pending second appeal, appellants 1 and 2 passed away and their legal representatives were brought on record as appellants 3 to 6.

1.2. According to the respondent/plaintiff, the total extent in suit Survey No.510/2 is 2 acres and 36 cents. The entire extent was originally belonged to one Angamuthu Asari, who had four sons by name Veerappan Asari, Marudhai Asari, Karuppanan Asari and Kuludhari Asari. Therefore, each entitled to 59 cents in the suit property. Karuppanan Asari's son Marudhai Asari sold his share of 59 cents in favour of Marudhai Asari's son Kambian Asari. Therefore, the said Kambian Asari became entitled to 1



S.A.No.588 of 1999

acre and 18 cents viz., half of the extent in the suit survey number. Later Marudhai Asari's son Kambian Asari along with Angamuthu Asari and Arumugam Asari, both sons of Veerappan Asari, sold 1 acre and 33 cents in favour of the respondent/plaintiff under Ex.A.1. The respondent purchased 33 cents from the first appellant/first defendant under Ex.A.2 on 20.06.1981. Thus, the respondent/plaintiff claimed 1 acre and 66 cents under Ex.A.1 and Ex.A.2.

1.3. It was further averred in the plaint that the second appellant purchased 44 cents from the brothers of Kambian Asari recently. It was also alleged that the first appellant/first defendant purchased the share of Angamuthu Asari's last son Kuludhari Asari and sold 33 cents out of 59 cents to the respondent under Ex.A.2. Thus, the first appellant was entitled to only 26 cents in the suit survey number. It was further alleged that the first appellant entitled to 26 cents on the western side of the suit survey number and the second appellant entitled to only 44 cents on the eastern side of the suit survey number and in between the properties of the first and second appellants, the property of the respondent with an extent of 1 acre and 66 cents is situated. It was further alleged that the first appellant



S.A.No.588 of 1999

encroached an extent of 16 cents on the eastern portion of the respondent/plaintiff's land and the second appellant encroached 26 cents on the western portion of the respondent's land. The encroachment was made by the appellants gradually and it came to light when the Revenue Officials surveyed the land and granted patta to the respondent in the year 1983 only for an extent of 1 acre and 28 cents as against 1 acre and 66 cents. Immediately, a legal notice was issued to the appellants requesting them to surrender portion of the respondent's property encroached by them. However, they sent a reply denying the encroachment. Hence, the respondent was constrained to file a suit for declaration of title and recovery of possession.

2.1. The appellants herein filed a written statement denying the plea of encroachment made by the respondent. The appellants in their written statement contended that the parties have been in possession and enjoyment of the lands in their respective possession for a quite long time with proper ridges and the Revenue Officials granted patta based on the possession of the respective parties. The appellants also raised a plea that the respondent had not measured the property at the time of sale in his favour and hence, he



S.A.No.588 of 1999

was not entitled to the extent claimed by him in the suit survey number.

The appellants also raised a plea of adverse possession by claiming that they had been in possession and enjoyment of the property for the past 20 years or more.

2.2. The appellants also filed an additional written statement raising a plea that there was a partition between Veerappan Asari and his three brothers and in the said partition, Veerappan Asari was allotted larger share in S.No.509 and hence, no land was allotted to Veerappan Asari in suit Survey No.510. The appellants also claimed that the first appellant was entitled to 79 cents on the eastern side of the suit survey number and the second appellant was entitled to 94-1/4 cents on the western side of the suit survey number. Therefore, the respondent was entitled to only 66 cents in S.No.510. On these pleadings, the appellants sought for dismissal of the suit.

3. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the respondent herein failed to prove that he ever enjoyed 1 acre and 66 cents purchased by him under



S.A.No.588 of 1999

Ex.A.1 and Ex.A.2 by producing any revenue document prior to issuance of patta under Ex.A.3. The trial Court also found that in the absence of revenue document to show enjoyment of 1 acre and 66 cents purchased by the respondent/plaintiff, either in the name of the respondent or in the name of his vendors, it cannot be presumed that the respondent/plaintiff had ever enjoyed the total extent mentioned in his title documents and consequently, dismissed the suit.

4. The respondent, aggrieved by the dismissal of the suit, filed an appeal in A.S.No.63 of 1996 on the file of the Principal Sub Court, Dindigul. The first appellate Court held that based on Ex.A.1 and Ex.A.2, the respondent proved his title over 1.66 acres of land in suit Survey No.510 and appellants 1 and 2 failed to prove their right over the extent of land claimed by them in the suit survey number and consequently, set aside the findings of the trial Court and allowed the appeal. Aggrieved by the same, appellants 1 and 2 /defendants have come up by way of this second appeal. As mentioned earlier, appellants 1 and 2 passed away pending second appeal and their legal representatives were brought on record as appellants 3 to 6.



S.A.No.588 of 1999

WEB COPY

5. This Court, at the time of admission, formulated the following substantial questions of law:

“(1) Whether the lower appellate Court is right in decreeing the suit in respect of S.No.510, when the plaintiff's vendors Tvl. Arumugam and Angamuthu have no title to the said property?”

“(2) Whether the lower appellate Court is right in presuming title to the suit properties in plaintiff in the absence of evidence?”

“(3) Whether the lower appellate Court should not have drawn adverse inference in the event of non examination of the plaintiff's vendor to prove their title to the suit properties? and

“(4) Whether the lower appellate Court is right in ignoring the admission of P.W.1 when he had admitted that he owns 27 cents in S.No.509 pursuant to Ex.A-1 contrary to his specific case in the plaint that he had purchased property in S.No.510 of Kanapadi village?”

6.1. The learned counsel for the appellants, elaborating the substantial questions of law framed at the time of admission, submitted that the



S.A.No.588 of 1999

respondent failed to prove his title by examining his vendors. The learned counsel further submitted that the Revenue Officials after survey of the suit lands issued patta based on possession of the parties and hence, the respondent herein is not entitled to claim more than 1 acre and 28 cents in the suit survey number as per Ex.A.3-patta issued to him.

6.2. The learned counsel further submitted that the respondent in his pleading had not mentioned the exact date of encroachment by the appellants. The allegation in the plaint as if the appellants gradually encroached a portion of the property of the respondent from eastern side and western side is a very vague one and the same cannot be accepted. The learned counsel further submitted that the title of the respondent's vendors viz., Angamuthu Asari and Arumugam Asari had not been proved by any acceptable evidence and hence, the respondent is not entitled to declaration of title over 1.66 acres in the suit survey number.

7.1. Per contra, the learned counsel for the respondent submitted that the total extent in the suit survey number is 2 acres and 36 cents and the entire extent was originally owned by Veerappan Asari, Marudhai Asari,



S.A.No.588 of 1999

Karuppanan Asari and Kuludhari Asari, all sons of one Angamuthu. All of them entitled to 59 cents each. The respondent purchased 1.66 acres of land from Kambian Asari, son of Marudhai Asari and Angamuthu Asari, son of Veerappan Asari under Ex.A.1 and Ex.A.2. Therefore, his entitlement over 1.66 acres had been proved.

7.2. The learned counsel further submitted that the first appellant purchased 79 cents from the children of Marudhai Asari under Ex.B.8 dated 26.02.1974, whereas the said Marudhai Asari had only 59 cents and hence, the first appellant could not have acquired title over 79 cents purchased by him. It is the contention of the learned counsel for the respondent that the vendors of the first defendant/first appellant herein sold 20 cents more than what they were entitled to. The learned counsel further submitted that the second appellant purchased 94-1/4 cents under Ex.B.9 from Marudhai Asari's family when her vendor was entitled to only 44 cents. In nutshell, it is the contention of the learned counsel for the respondent that the appellants failed to prove that their vendors had title over the entire extent of the property covered by the sale deeds in favour of the appellants.



S.A.No.588 of 1999

WEB COPY

8.1. The respondent herein has filed the present suit seeking declaration of title and recovery of possession in respect of 1.66 acres of land in the suit survey number. It is settled law, in a suit for title, the plaintiff has to prove his case on his own strength and succeed. In the case on hand, the respondent/plaintiff claims right over 1 acre and 66 cents in the suit survey number under Ex.A.1 dated 07.10.1975 and Ex.A.2 dated 20.06.1981. It is not disputed that the total extent in suit Survey No.510/2 is 2 acres and 36 cents, which was originally owned by one Angamuthu Asari. He had four sons viz., Veerappan Asari, Marudhai Asari, Karuppanan Asari and Kuludhari Asari. Therefore, each entitled to 59 cents in the suit survey number.

8.2. Ex.A.8, dated 24.08.1944 is the earliest document filed by the respondent. Perusal of the same would make it clear that one Marudhai Asari, son of Karuppanan Asari (one of the sons of Angamuthu Asari), sold his share of 59 cents in favour of Kambian Asari, son of Marudhai Asari (another son of Angamuthu Asari). Therefore, Kambian Asari entitled to 1.18 acres of land in the suit survey number (59 cents he purchased under Ex.A.8 + 59 cents of ancestral property he inherited from his father



S.A.No.588 of 1999

Marudhai Asari). Thereafter, the above said Kambian Asari along with Angamuthu Asari and Arumugam Asari, sons of Veerappan Asari, sold 1.33 acres to the respondent under Ex.A.1. Under Ex.A.8, the title of the respondent's vendor Kambian Asari stands proved.

8.3. As stated earlier, the original owner Angamuthu Asari had four sons viz., Veerappan Asari, Marudhai Asari, Karuppanan Asari and Kuludhari Asari. The third son Karuppanan Asari's son Marudhai Asari under Ex.A.8 sold his share of 59 cents to Marudhai Asari's son Kambian Asari. Thus, Kambian Asari entitled to 1.18 acres in the suit survey number. The first son of Angamuthu Asari viz., Veerappan Asari entitled to his share of 59 cents. Veerappan Asari's sons are the respondent's vendors viz., Angamuthu Asari and Arumugam Asari. Therefore, combined reading of Ex.A.1 and the oldest document Ex.A.8 would make it clear that the vendors of the respondent viz., Kambian Asari, Angamuthu Asari and Arumugam Asari together entitled to 1 acre 77 cents in the suit survey number (1 acre 18 cents belonged to Kambian Asari + 59 cents belonged to Veerappan Asari's branch). Therefore, out of 1 acre and 77 cents belongs to them, the vendors of the respondent viz., Kambian Asari, Angamuthu Asari



S.A.No.588 of 1999

and Arumugam Asari together with their children sold 1 acre and 33 cents to the respondent under Ex.A.1. Apart from that, the respondent purchased 33 cents from the first appellant himself under Ex.A.2, which is not in dispute. Therefore, the respondent proved his right over 1.66 acres in the suit survey number. As discussed earlier, the respondent proved the title of his vendors by producing the earliest document Ex.A.8. Therefore, I hold that the respondent proved his right over 1.66 acres in the suit survey number by preponderance of probabilities by producing Exs.A.1, A.2 and A.8.

8.4. The appellants herein in their written statement contended that the parties were in enjoyment of their respective properties with permanent ridges and therefore, the appellants perfected title over the suit property by adverse possession. It is also settled law that the person who pleads adverse possession must prove it. The burden of proof is very heavy on the person who pleads adverse possession. He has to prove precisely the time from which his possession turned hostile to that of the original owner. In the case on hand, there is no evidence available on record to show that the appellants enjoyed the properties with necessary animus for more than the statutory



S.A.No.588 of 1999

period as required under law immediately preceding the presentation of the
plaint. In these circumstances, the first appellate Court is right in coming to
the conclusion that the appellants failed to prove the adverse possession
pleaded by them by cogent evidence.

9.1. In view of the discussions made earlier, all the substantial
questions of law framed at the time of admission are answered against the
appellants and the second appeal is dismissed by confirming the judgment
and decree passed by the first appellate Court.

9.2. In fine, (i) this Second Appeal is dismissed by confirming the
judgment and decree dated 02.01.1997 made in A.S.No.63 of 1996 on the
file of the Principal Sub Court, Dindigul; and (ii) in the facts and
circumstances of the case, there would be no order as to costs.

01.03.2023

NCC: Yes/No
Index: Yes/ No
Internet: Yes

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S.A.No.588 of 1999

S.SOUNTHAR, J.

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To

- 1.The Principal Sub Judge,
Dindigul.
- 2.The Additional District Munsif,
Dindigul.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
S.A.No.588 of 1999

01.03.2023