



S.A.No.671 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.671 of 1999

Rajammal

... Appellant/1st Respondent/
Plaintiff

Vs

1.Saraswathi @ Thaiyalu (Died)

2.Megarajan (Died)

3.Chidambara Ambalakarar

4.Somasundaram

5.Subramanian

... Respondents 1 to 5/Appellant &
Respondents 2 to 5/
Defendants 2, 1, 3, 4 & 6

6.Rajakumari

7.Seethalakshmi

... Respondents 6 & 7

***[RR6 & 7 – brought on record as LRs of the deceased
1st respondent vide order dated 05.02.2021 made in
C.M.P.(MD) No.5134 of 2020 in S.A.No.671 of 1999]***

8.M.Sundarammal

9.M.Manikandan

10.M.Prabha

... Respondents 8 to 10

***[RR8 to 10 – brought on record as LRs of the deceased
2nd respondent vide order dated 05.02.2021 made in
C.M.P.(MD) No.5244 of 2020 in S.A.No.671 of 1999]***



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 19.02.1999 made in A.S.No.60 of 1997 on the file of the Additional District Judge cum Chief Judicial Magistrate, Pudukkottai, reversing the judgment and decree dated 14.07.1994 made in O.S.No.419 of 1980 on the file of the District Munsif's Court, Aranthangi.

For Appellant : Mr.K.V.Subramanian
for Mr.M.A.Abdulwahab

For R7 : Mr.Balasundharam

For RR3, 4 & 5 : No appearance

J U D G M E N T

1.1. The plaintiff in the suit is the appellant. He filed a suit for declaration of title and for consequential injunction. The suit was decreed by the trial Court as prayed for. Aggrieved by the same, the first respondent herein filed an appeal in A.S.No.60 of 1997. The first appellate Court partly allowed the appeal by setting aside the judgment and decree granting a consequential prayer for injunction. The judgment and decree passed by the trial Court granting prayer for declaration was confirmed. Aggrieved by the same, the plaintiff has come by way of this second appeal. Pending second



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appeal, the first respondent died and respondents 6 and 7 were brought on record as her legal representatives. The second respondent also died pending second appeal and her legal representatives were brought on record as respondents 8 to 10.

1.2. According to the appellant/plaintiff, the suit property originally belonged to one Subbiah Kankani. The deceased 5th defendant in the suit viz., Mangalathammal was his only heir. The appellant claimed that she purchased the suit property from the deceased 5th defendant Mangalathammal for a valid consideration on 06.09.1976 and had been enjoying the suit property from that date onwards. It was also averred that one Silambayee, claiming herself as wife of Subbiah Kankani, executed a settlement deed in favour of the first respondent herein and later on cancelled the same. It was specifically averred that the property was in possession and enjoyment of the deceased 5th defendant Mangalathammal and after sale in favour of the appellant, she had been in possession and enjoyment of the suit property. On these pleadings, the appellant sought for declaration of title and injunction.



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2. The first respondent herein filed a written statement and resisted the suit. She claimed that the deceased 5th defendant Mangalathammal was not the wife of Subbiah Kankani, but one Silambayee was the legally wedded wife of Subbiah Kankani. The first respondent denied the right of Mangalathammal over the suit property and hence, the title and possession of the appellant over the suit property was denied by her.

3. The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the title as well as possession of the appellant was proved by her and consequently, decreed the suit in its entirety. Aggrieved by the same, the first respondent herein filed an appeal in A.S.No.60 of 1997 on the file of the Additional District Judge cum Chief Judicial Magistrate, Pudukkottai. The first appellate Court confirmed the findings of the trial Court with regard to the declaration of appellant's title and upheld the title of the appellant. However, the first appellate came to the conclusion that the appellant failed to prove her possession over the suit property. On the other hand, based on Ex.B.24 to



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Ex.B.37, the first appellate Court came to the conclusion that the second defendant was in possession of the suit property. However, after upholding the title of the appellant, the first appellate Court in view of its finding with regard to the consequential prayer for injunction, dismissed the entire suit. Aggrieved by the same, the appellant is before this Court.

4. This Court, at the time of admitting the second appeal, formulated the following substantial questions of law:

“(i) Whether the lower appellate Court erred in law in reversing the finding of the trial Court regarding possession, when the plaintiff has clearly established possession of the suit property from 1964 as evidenced by the kist receipts issued in the name of her husband and thereafter in the name of the plaintiff? and

(ii) Whether the learned District Judge erred in dismissing the entire suit when the plaintiff's title has been upheld and one of the reliefs prayed for is declaration of her right to the suit property?”

5. The learned counsel for the appellant submitted that the first appellate Court upheld the title of the appellant, on the other hand, on the



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question of possession, it came to the conclusion that the appellant failed to prove her possession over the suit property and therefore, the appellant filed a petition in C.M.P.No.13557 of 1999 seeking amendment of the plaint for introduction of prayer for recovery of possession instead of prayer for injunction and the same was allowed by this Court on 22.08.2019. The learned counsel further submitted that in view of the amendment application allowed by this Court, once title of the appellant is upheld, as a necessary consequence, the appellant is entitled to recovery of possession.

6. Per contra, the learned counsel appearing for the 7th respondent submitted that even if the title of the appellant was upheld by the first appellate Court, she is not entitled to seek recovery of possession as a consequential relief. It is the submission of the learned counsel that the recovery of possession prayed for by the appellant is barred by limitation. It was also submitted by the learned counsel that the suit property was settled in favour of the second defendant in the suit viz., Megarajan by Silambayee on 22.11.1977 and based on that settlement deed, the second defendant Magarajan had been in possession and enjoyment of the suit property. The



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learned counsel further submitted that the first appellate Court based on Ex.B.24 to Ex.B.37 Adangal account, came to the conclusion that the second defendant had been in possession and enjoyment of the suit property and therefore, the appellant is not entitle to seek recovery of possession, even assuming she proved her title over the suit property.

7. Heard the learned counsel for the appellant and that of the learned counsel for the 7th respondent. Perused the typed set of papers and other relevant records.

8. The appellant claimed title to the suit property under Ex.A.1 dated 06.09.1976. Ex.A.1 is a sale deed executed by the 5th defendant Mangalathammal, wife of Subbiah Kankani in favour of the appellant. It is not in dispute that the suit property was originally belonged to Subbiah Kankani. The case of the appellant is that Mangalathammal was the only wife of Subbiah Kankani and after his death, Mangalathammal got the property and the same was sold to the appellant. On the other hand, the contesting 1st respondent contended that Mangalathammal was not the wife



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of Subbiah Kankani, but the name of the wife of Subbiah Kankani is Silambayee and she settled the suit property in favour of the first respondent herein on 22.11.1977.

9. The Courts below on appreciation of oral and documentary evidence came to a factual conclusion that Mangalathammal was the legally wedded wife of Subbiah Kankani and Silambayee was not the wife of Subbiah Kankani. Therefore, after the death of Subbiah Kankani, as his legal heir, Mangalathammal succeeded to the suit property and the same was sold to the appellant. Both the Courts below upheld the title of the appellant over the suit property. The said finding is based on evidence available on record and the same requires no interference by this Court.

10. The first appellate Court found that the appellant failed to prove her possession. It observed that the appellant failed to produce Adangal extract to prove her possession over the suit property, which was described as agriculture punja land in the plait schedule. Though the appellant produced tax receipt in her name, as Ex.A.18 dated 29.06.1980, which was



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just prior to the filing of the suit (suit was filed on 02.08.1980), the first appellate Court rejected the same on the ground that the appellant failed to produce Adangal extract in her favour. The first appellate Court was carried away by Ex.B.24 to Ex.B.37 Adangal extract, which stand in the name of the second respondent Megarajan. Ex.B.24 to Ex.B.37 are relevant to the fasli year 1388 to 1401, which is equivalent to 1979 to 1992. Based on the Adangal extract produced by the second respondent, the first appellate Court came to the conclusion that he was in possession of the suit property and refused to grant the consequential prayer for injunction.

11. Since the first appellate Court found that the appellant failed to prove her possession over the suit property, she filed an application for amendment of the plaint pending second appeal in C.M.P.No.13557 of 1999. The same was allowed by this Court on 22.08.2019. While allowing the civil miscellaneous petition for amendment of the plaint, this Court granted time for the respondent to file their written statement till 06.09.2019. Subsequently, the second appeal came up for hearing on several occasions. The respondents did not file any written statement and



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finally, time was granted till 24.01.2023 for filing written statement. The 9th respondent filed a written statement for himself and also for respondents 7, 8 and 10 on 24.01.2023. In the written statement filed by the 9th respondent, he raised a plea of limitation as against the prayer for recovery of possession. Further, he pleaded that Silambayee executed a gift settlement in favour of the first respondent herein and based on the said gift settlement, the first respondent herein enjoyed the property and after her lifetime, her heirs are enjoying the suit property. He also relied on Ex.B.10 to Ex.B.37 to prove his possession over the suit property.

12. As discussed earlier, the title of the appellant was upheld by both the Courts below and this Court has come to a conclusion that the said factual conclusion does not call for any interference. In fact, the said finding was not seriously disputed by the respondents herein. The learned counsel for the 7th respondent mainly contended that the new prayer for recovery of possession which was introduced into the plaint pending second appeal, is barred by limitation. It is settled law, right to possession is one of the essential incidence of ownership. In the case on hand, the Courts below



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have given a factual finding that the appellant had established her title over the suit property. Therefore, as a necessary consequence, she is entitled to recovery of possession, unless the defendant in the suit is able to prove special relationship to protect his possession like lessee, mortgagee or plead and prove adverse possession. In the additional written statement filed by the contesting respondents, they have not claimed any special status or relationship between the appellant and the respondents like lessee or mortgagee. Therefore, it is not the case of the respondents that by virtue of special relationship between the owner of the property and themselves, their alleged possession is protected. In fact, the first appellate Court has come to a factual conclusion that the second respondent Megarajan though found to be in possession of the suit property, he could only be treated as a trespasser.

13. The next question which has to be decided is whether the respondents pleaded and proved adverse possession. Though the respondents in their written statement filed before this Court raised the question of limitation, there is no specific plea with regard to the hostile possession. It is settled law, adverse possession has to be specifically



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pleaded and meticulously proved by cogent evidence. In the case on hand, the contesting respondents raised a plea of limitation and it was not elaborated in their written statement as to how the plea of recovery of possession is barred. The respondents also failed to raise a plea of adverse possession or hostile possession in their pleadings. In the absence of specific plea regarding hostile possession of the respondents as against the appellant, the appellant is entitled to recovery of possession of the suit property based on her title which had been already upheld.

14. The contesting respondents in their written statement filed before this Court claimed possession over the suit property based on Ex.B.24 to Ex.B.37. All the documents under Ex.B.10 to Ex.B.37 were obtained subsequent to the suit. In fact, in the written statement filed before this Court, the 9th respondent herein claimed possession by virtue of settlement deed executed by Silambayee dated 22.11.1977. The Courts below held that Silambayee was not the legally wedded wife of Subbiah Kankani and hence, she had no right to execute the settlement deed. Further, the suit was filed during August, 1980 within three years from the date of execution of the



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settlement deed. It is settled law, any amendment to the pleading allowed by the Court would go back to the date of presentation of the plaint, unless a contrary order is made by the Court specifically.

15. A perusal of the order passed by this Court in C.M.P.No.13557 of 1999 would make it clear that the petition for amendment of plaint was simply allowed. There was nothing in the order to suggest that the amendment would come into effect from any date subsequent to the presentation of the plaint. Therefore, the order passed by this Court in C.M.P.No.13557 of 1999 deemed to have taken effect from the date of presentation of the plaint viz., 2nd August, 1980. Therefore, there is nothing on record to show that the 9th respondent proved possession over the property, much less hostile possession for more than 12 years immediately preceding the presentation of the plaint. In such circumstances, there may not be any impediment for this Court to grant a decree for recovery of possession in favour of the appellant.



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16.1. In view of the discussions made earlier, the second substantial question of law formulated by this Court is answered in favour of the appellant and as a necessary consequence, the suit has to be decreed and the appellant is entitled to decree for declaration of title and recovery of possession of the suit property.

16.2. In view of the fact that the appellant got the plaint amendment pending second appeal seeking recovery of possession, as a consequence to declaration of her title, the first substantial question of law pales into insignificance. In any event, as rightly pointed out by the first appellate Court, the appellant though produced tax receipt just prior to the filing of the suit in her name, failed to produce the best evidence viz., Adangal extract in her name to prove her possession over the suit property. In such circumstances, the first substantial question of law framed at the time of admission is answered against the appellant.



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16.3. In view of my answer to the second substantial question of law, this second appeal is allowed, the appellant is granted decree for declaration of title and recovery of possession.

17. In the result,

(i) This Second Appeal is allowed by setting aside the judgment and decree passed by the first appellate Court;

(ii) The appellant/plaintiff is entitled to decree for declaration of title and recovery of possession as prayed for; and

(iii) In the facts and circumstances of the case, there will be no order as to costs.

03.03.2023

Note to the Registry

The Registry is directed to preserve the additional written statement filed by the 9th respondent dated 24.01.2023 with the original records.

NCC: Yes
Index: Yes
Internet: Yes
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S.SOUNTHAR, J.

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To

- 1.The Additional District Judge cum
Chief Judicial Magistrate,
Pudukkottai.
- 2.The District Munsif,
Aranthangi.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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