



S.A.No.2050 of 2000

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.04.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

S.A.No.2050 of 2000

Kalimuthu Thevar (died)

1.Somavalli

2.Vijayarani

**(A2 & A3 are brought on record as Legal Heirs of
the deceased sole appellant vide
order dated 04.04.2022 in C.M.P(MD)No.2337 of 2022.**

... Appellants

-VS-

1.Palchamy Thevar (died)

2.Kalimuthu

3.Karuppiah (died)

4.Rathinambal

5.Thirupathy (died)

6.Revathi

**(R2 & R6 are brought on record as Legal Heirs of
the deceased first respondent vide
court order dated 03.07.2012 made in
CMP Nos.19748 to 19750 of 2001)**

7.K.Pappa

8.K.Ramesh Babu

9.K.Jegadeesh

10.K.Gangadevi

11.K.Kalpana

12.K.Nandini



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**(R7 & R12 are brought on record as Legal Heirs of
the deceased 3rd respondent vide
court order dated 06.11.2020 made in
CMP(MD)No.2522 of 2020)**

13.Naganathan

14.N.Sundar

15.N.Nivetha

**(R13 to R15 are brought on record as Legal Heirs of
the deceased 5th respondent vide
court order dated 04.04.2022 made in
CMP(MD)No.2339 of 2022)**

..Respondents

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, to set aside the Judgment and Decree of the Subordinate Judge, Sivagangai in A.S.No.3 of 1999 dated 22.03.1999 confirming the Judgment and Decree of the District Munsif, Paramakudi in O.S.No.196 of 1980 dated 03.04.1984.

For Appellants ... Mr.S.Srinivasa Raghavan

For Respondents ... Mr.V.Ramakrishnan
(for R2, R4, R6 to R12)

No appearance for R13 to R15



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JUDGMENT

The appellants herein are the appellants before the lower appellate Court and the plaintiff before the trial Court. The appellant/plaintiff filed a suit in O.S.No.196 of 1980 before the District Munsif Court, Paramakudi, for declaration and permanent injunction and alternative plea of recovery of possession and the cost of the suit. The said suit was dismissed. Challenging the said Judgment of dismissal of the suit, the appellant/plaintiff filed appeal suit before the Subordinate Court, Sivagangai in A.S.No.3 of 1999. The learned Subordinate Judge, dealt with the appeal and dismissed the same. As against which, the appellant/plaintiff filed the second appeal before the Principal Bench of this Court in S.A.No.379 of 1996. This Court, while dealing with the said second appeal, found that the plea of adverse possession was not considered by the lower appellate Court. Therefore, the matter was remitted back to the lower appellate Court, namely, the Subordinate Court, Sivagangai, to reconsider on the ground that the Subordinate Judge has not dealt with the issue of adverse possession. Further, this Court gave a direction to the lower appellate Court to take up the appeal on its file and reconsider only the issue of adverse possession as put forth



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by both the parties in the light of the evidence available on records and decide the said issue in accordance with law.

2. The lower appellate Court has also taken the appeal on its file for reconsideration as directed by this Court. During the pendency of the appeal, the appellant filed an application under Order 41 Rule 27 of C.P.C to receive the additional evidence and produce certain documents. The lower appellate Court heard both the appeal and the application together and after dealt with, dismissed the appeal suit. Challenging the said dismissal of the appeal suit, the present second appeal has been filed raising the following substantial question of law:-

“(i) Has not the appellate Court erred in law in not considering the relevancy of the documents sought to be produced as additional evidence under Order XLI Rule 27 and dismissing the application?

(ii) The Lower Appellate Court has not exercise its power and jurisdiction to consider the question whether the document sought to be produced as additional evidence Order 41 Rule 27 would enable it to pronounce Judgment and render justice.



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(iii) Is it open to a Lower Appellate Court to reject an application for additional evidence under Order 41 Rule 27 without considering the question whether the documents sought to be produced are germane and relevant to decide the question whether the appellant has perfected title by adverse possession or not.

(iv) Having found that defendant has not perfected title by adverse possession. But the Lower Appellate Court contradictorily dismissed the suit.”

However, this Court, considering the facts and circumstances of the case, while admitting the second appeal, formulated the following substantial question of law:-

“Whether the lower appellate Court which decided the application filed on the part of the appellant under Order 41 Rule 27 praying to allow additional evidence disposing the same along with the appeal and without allowing the said application thereby obstructing the appellant from adducing additional evidence which are relevant for consideration to decide the appeal and whether such a decision made on the part of the First Appellate Court in the appeal without opportunity to adduce additional evidence is proper and sustainable in law.”



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3. It is not in dispute that the appellant filed a suit for declaration and permanent injunction and alternative plea of recovery of possession. Earlier, they filed second appeal before the Principal Bench of this Court in S.A.No.379 of 1996. This Court dealt with the said second appeal and remanded the matter back only for limited purpose. This Court, while dealing with the second appeal, has given a finding regarding the title and remitted the matter back to decide the issue of adverse possession alone for the reason that though the trial Court dealt with the issue of adverse possession, the first appellate Court failed to deal with the issue of adverse possession. Therefore, the matter was remitted back only for the limited purpose for reconsideration of the issue of adverse possession as put forth by the parties in the light of the evidence available on records and decide the said issue in accordance with law and the matter was not remitted for retrial or taking fresh evidence for establishing adverse possession. While pending disposal of the appeal suit, the appellant filed an application Order 41 Rule 27 to receive the additional evidence and produce certain documents, was also dismissed on the ground that most of the documents annexed with that application are the subsequent to the suit and therefore, that cannot be taken into



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consideration for deciding the question regarding adverse possession.

Further, the lower appellate Court held that some of the documents already filed before the trial Court and considered by the trial Court. The lower appellate Court has given a specific finding that the appellant has not satisfied the ingredients of Order 41 Rule 27 of C.P.C and they have not clearly stated as to why they have not produced those documents in the earlier occasion either before the trial Court or the first appellate Court in earlier round and therefore, the reason assigned was not satisfied, hence, the application was dismissed on that ground. Now, against the finding of the first appellate Court, the appellant has come forward with this present second appeal.

4. I have carefully perused all the materials. As already stated, this Court dealt with elaborately regarding the title of the properties and rights of the parties and only the case was remitted for the limited purpose to reconsider the issue of adverse of possession with the evidence and available documents. Subsequently, the first appellate Court has elaborately dealt with and given a finding that the appellant has not proved that he has prescribed title by adverse possession and he has not proved adverse possession. Therefore, the lower appellate Court



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again dismissed the appeal suit. Challenging the same, now, the present second appeal is filed.

5. On a careful reading of the entire records, no doubt, it is seen that the appellant is claiming title by adverse possession. Though initially, he filed the suit for declaration and for permanent injunction, subsequently, the plaint was amended and alternative plea of recovery of possession is added. Though it may be by way of abundant caution, however, the plaintiff himself was not sure about that he was in possession and therefore, he has also amended the plaint. However, the scope of the second appeal is very limited.

6. This Court has to see whether the substantial questions of law are involved in the present second appeal and whether the lower appellate Court has given answer for the purpose of remanding for reconsidering the issue of adverse possession. After remand, the lower appellate Court elaborately discussed about the adverse possession and held that the plaintiff has not proved adverse possession. Therefore, once again, the appeal was dismissed. So, the plea of adverse possession is purely question of fact. Now, the law is well settled that if the person



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claiming adverse possession has to plead and prove and this proof of adverse possession is purely a factual aspect and the lower appellate Court also specifically dealt with the said issue and after remand and reconsideration, has given answer for that. No doubt, this Court, while admitting the second appeal formulated the specific substantial question of law that whether the lower appellate Court has not considered the application filed by the appellant after remand before the lower appellate Court invoking Order 41 Rule 27 C.P.C.

7. On a reading of the materials and evidence and the additional evidence also, it is purely a question of fact and the lower appellate Court has given a finding that the appellant has not satisfied the ingredients of Order 41 Rule 27 C.P.C. Apart from that, the lower appellate Court has also given a finding, after going through all the documents annexed with the application, which will not be helpful to the appellant to prove the adverse possession and all the documents are only subsequent to the institution of suit. Therefore, in such circumstances, this Court finds that the substantial questions of law raised by the appellant are not purely substantial questions of law, which are only factual finding and there is no perversity in appreciating the same. As far as finding regarding



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adverse possession is concerned, the learned counsel for the appellant has fairly conceded that they have not established adverse possession in the manner known law. Therefore, this Court need not elaborately discuss on the finding regarding adverse possession. Therefore, the second appeal is liable to be dismissed.

8. In the result, the Second Appeal is **dismissed**. No costs.

03.04.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes

skn

To:

1.The Sub Judge, Sivagangai.

2.The District Munsif, Paramakudi.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J

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