



S.A.No.2165 of 2001

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BEFORE THE MADUARAI BENCH OF MADRAS HIGH COURT,

DATED : 15.06.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A.No.2165 of 2001

1. Palmookiah Kanagasabapathy @ Pal

2. Vasantha Gokilam Chellammal @
Vasantha Samuel (Died)

3. S.J.Samuel Pandian

4. S. Steephen Sundararajan

5. S.James Thangaraj

6. S.Thomas Kanagaraj

7. S.Mary Lilly Rani

[Appellants 3 to 7 are brought on record s L.Rs of the
deceased 2nd appellant vide court order dated 08.06.2023
made in C.M.P.(MD)Nos.6828 and 6829 of 2017
in S.A.No.2165 of 2001]

[First appellant represented by his power of attorney agent J.Samuel
S/o Stephn Jothydas, residing at
No.27, Salnayakan Street, Alandur,
Chennai -16.] ... Plaintiffs/Appellants/Appellants

Vs.

Meenakshi Ammal

... Defendant/Respondent/Respondent



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PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.244 of 1997 on the file of the Principal District Judge, Thirunelveli dated 24.11.2000 by confirming the judgment and decree in O.S.No.111 of 1995 on the file of the II Additional District Munsif Court, Thirunelveli dated 28.10.1997.

For Appellants : Mr.T.Selvan
for Mr.Suresh Manickam

For Respondent :Mr.A.Jenasenan

J U D G E M E N T

This second appeal has been filed against the judgment and decree dated 24.11.2000 passed in A.S.No.244 of 1997 on the file of the Principal District Judge, Thirunelveli, confirming the judgment and decree dated 28.10.1997 passed in O.S.No.111 of 1995 on the file of the II Additional District Munsif Court, Thirunelveli.

2. The parties are referred to as per their rankings before the trial court.

3. Suit was filed for declaration and mandatory injunction and



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for removal of building if any in the suit property.

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4. The Second Appeal has been admitted on the following substantial questions of law:

i. *Whether the Courts below right in dismissing the suit without appreciating the exhibit A1, the title deed of the property of the plaintiffs?*

ii. *Whether the Courts below is right in not rejecting the Exhibit B1 which is registered in Kerala District when the property is in registration district of Melapalalyam an only half cent is in concerned Registration District and when the respondent also failed to prove the existence of the property in Kerala?*

iii. *Whether the Courts below is right in not appreciating the principles laid down in 1988 (10) M.L.J. Page 447?*

iv. *Whether the Courts below is right in not appreciating the settled principle that the possession follows title when the property is being a vacant land and not assessed to tax?*

v. *Whether the lower appellate court is right in dismissing the first appeal holding that though the presumption is there as to the tiled*



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under Exhibit A1 under section 90 of Evidence Act?

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5. The case of the appellants/ plaintiffs in brief is that the suit property is the ancestral property of the appellants. The suit property originally belonged to one Mookiah Thevar who is the grandfather of the appellants. The said Mookiah Thevar had two sons, namely Sundarapandian @ Shanmugasundaram and Arunachala Thevar. Till his life time, he enjoyed the suit property with larger extent along with other properties. After the death of said Mookiah Thevar, the father of the appellants/plaintiffs Sundarapandian @ Shanmugasundaram and Aurnachala Thevar were enjoying the suit property. The said Arunachala Thevar had executed a release deed in favour of the plaintiffs' father Shanmugasundaram on 25.09.1959 in respect of the suit property, which is shown as Item No.3 and other properties. After the execution of the release deed executed by Arunachala Thevar, the father of the appellants/plaintiffs are entitled to the suit property mentioned in the release deed and other properties. In the month of December 1994, the respondent/defendant was trying to put up a construction in the suit property and when the appellants/plaintiffs questioned about the



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unauthorised construction, the respondent/defendant promised not to carry out further construction work. Subsequently, since the respondent/defendant did not keep up the promise, the appellants/plaintiffs issued a legal notice to the respondent/defendant on 27.01.1995. The respondent/defendant also sent a reply notice containing false allegations on 03.02.1995. Hence the appellants/plaintiffs filed the suit for declaration and alternative relief of mandatory injunction for removal of building, if any, in the suit property and also for vacant possession.

6. The case of the respondent/defendant in brief is that the suit property in T.S.No.984 originally belonged to one Gopal Pillai whose name is registered in the Revenue Records including Town Survey Register. After the death of the said Gopal Pillai, the respondent/defendant purchased the land measuring an extent of 2192 sq.ft in T.S.No.984 from his son Deivanayagam under registered sale deed on 17.10.1992. After the purchase, the respondent/defendant had put up a construction in the suit property as early as in July 1993 itself. The respondent/defendant completed construction of two houses in the



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suit property even prior to the filing of the suit. The appellants'/plaintiffs' house is only within a short distance from the suit property. The appellants/plaintiffs also knew very well about the construction done by the respondent/defendant in the suit property. The prayer sought for by the appellants/plaintiffs is not maintainable.

7. Based on the above pleadings, the trial Court framed the following issues:

1. *Whether the suit property belongs to the plaintiffs?*
2. *Whether the plaintiffs are in possession of the suit property?*
3. *Whether the plaintiffs are entitled to get the relief of mandatory injunction?*
4. *To what other reliefs the plaintiffs are entitled to?*

8. On completion of pleadings and framing of issues, in order to substantiate the case of the plaintiffs, on the side of the plaintiffs, one witness was examined as P.W.1 and six documents were marked as Exs.A1 to A6. On the side of the respondent/defendant, three witnesses were examined as D.W.1 to D.W.3 and five documents were marked as



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Exs.B1 to B5.

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9. Based on the above pleadings and oral and documentary evidence, the trial Court came to the conclusion that the appellants/plaintiffs did not prove their case with regard to their title and possession of the property and dismissed the suit filed by them. Aggrieved by the said dismissal of the suit, the appellants/plaintiffs filed an appeal before the Principal District Court, Tirunelveli in A.S.No.244 of 1997. Based on the grounds of appeal and the arguments advanced on either side and considering the materials placed on record, the First Appellate Court, based on the pleadings regarding possession, construction and physical features of the property, appointed an Advocate Commissioner. The Advocate Commissioner inspected the suit property and filed a report and plan which were marked as Exs.C1 and C2.

10. Based on the materials on record, the first appellate Court raised the following points for determination in the First Appeal:

i. Whether Ex.A1 Release Deed presupposes title of ancestors



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of plaintiffs?

ii. Whether the plaintiffs have proved their continuous possession in the suit property from 1959?

iii. Whether the defendant is not right in basing the title under Exs.B5, B2 and B17.

iv. Whether the suit for mandatory injunction is not justifiable on the ground of laches and acquiescence by the plaintiffs?

v. Whether the judgement and decree of lower Courts calls for any interference?

11. The first appellate Court after considering the materials and raising points for consideration, found that the appellants/plaintiffs have not established their title, right and possession of the suit property and dismissed the appeal. Challenging the same, the appellants/plaintiffs have filed the present second appeal before this Court. Originally, the second appeal was filed before the Principal Bench and subsequently after establishment of the Madurai Bench, the case was transferred to this Court. After establishment of this Bench, since the territorial jurisdiction of the suit property falls before this Bench, namely the Tirunelveli



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District, the Second Appeal has been transferred from Principal Bench to this Court and pending for disposal.

12. The Second Appeal was admitted on 25.01.2002 on the following substantial questions of law:

i. *Whether the Courts below are right in dismissing the suit without appreciating Exhibit A1, being the title deed of the property of the plaintiffs?*

ii. *Whether the Courts below are right in not rejecting the Exhibit B1, which is registered in Kerala District when the property is in registration District of Melapalayam and only half cent is in concerned Registration District and when the respondent also failed to prove the existence of the property in Kerala?*

iii. *Whether the Courts below are right in not appreciating the principles laid down in 1988 (10) M.L.J Page 447?*

iv. *Whether the Courts below are right in not appreciating the settled principle that the possession follows title when the property is a vacant land and not assessed to tax?*

v. *Whether the lower appellate Court is right in dismissing the*



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first appeal holding that though the presumption is there as to the title under Exhibit A1 under Section 90 of the Indian Evidence Act.

13. Learned counsel for the appellants/plaintiffs submitted that the suit property originally belonged to the ancestors of the appellants/plaintiffs, namely one Mookiah Thevar. During his life time, he enjoyed the property and he had two sons, namely Shanmugasundaram and Arunachala Thevar. After the death of Mookiah Thevar, his sons enjoyed the property. The said Arunachala Thevar executed the release deed dated 25.09.1959 in favour of his brother Shanmugasundaram. Thereafter, Shanmugasundaram was in possession and enjoyment of the suit property. Thereafter the appellants/plaintiffs, who are the legal heirs of the said Shanmugasundaram, were in possession of the suit property. The appellants/plaintiffs were residing in Chennai and hence they used to come to native place and visit the suit property frequently. In the month of December 1994, the respondent/defendant was trying to put up a construction in the suit property and when the appellants/plaintiffs questioned about the unauthorised construction, the respondent/defendant promised not to



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carry out any further construction work. Subsequently, since the respondent/defendant did not keep up the promise, the appellants/plaintiffs issued a legal notice to the respondent/defendant on 27.01.1995. The respondent/defendant also sent a reply notice containing false allegations on 03.02.1995. In order to prove their case, one witness was examined as P.W.1 and six documents were marked as Exs.A1 to A6. Ex.A1 is the release deed executed by the paternal uncle of the appellants/plaintiffs Arunachala Thevar who executed a settlement deed in favour of their father Shanmugasundaram. The trial court as well as the first appellate court failed to consider the registered release deed dated 25.09.1959. The suit is filed in the year 1959. Ex.A1 is an ancient document under the Indian Evidence Act. Therefore, genuineness of the document cannot be questioned. Both the Courts below failed to consider Ex.A1 and has given erroneous finding that the appellants/plaintiffs have not proved their title over the suit property and failed to consider that till the life of time of Mookiah Thevar, he was enjoying the suit property and thereafter his legal heirs Shanmugasundaram and Arunachala Thevar were enjoying the suit property and other properties. The suit property was shown as third item in Ex.A1. Hence the appellants/plaintiffs have



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proved their right and title over the property. Further the suit property is a vacant site. The appellants/plaintiffs produced Ex.A1 being the document of title deed, which is an ancient document and the property is a vacant site, the possession follows title. Taking advantage of the absence of the appellants/plaintiffs in the suit property, the respondent/defendant tried to put up a construction and when the same was questioned, the respondent/defendant initially agreed to stop the construction and later they had put up the construction. Hence, the appellants/plaintiffs also sought the relief of mandatory injunction and to hand over vacant possession. Both the Courts below failed to consider the facts and oral and documentary evidence and ignoring the evidence Ex.A1 title deed, erroneously held that appellants/plaintiffs have not proved their right, title and possession of the suit property. Hence, the judgment and decree passed by the Courts below are liable to be set aside and the Second Appeal may be allowed.

14. Learned counsel for the respondent/defendant denied all the averments made in the plaint. The respondent/defendant had set up the title independently. The suit property originally belonged to one



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Gopal Pillai, who was enjoying the property till his lifetime. After the death of Gopal Pillai, the respondent/defendant purchased the suit property from the legal heir of Gopal Pillai ie., one Deivanayagam under the registered sale deed dated 17.10.1992 and the same has been marked as Ex.B1. After the purchase of the property in the year 1992, immediately, the respondent/defendant had put up a construction during the month of July 1993 and completed the construction in the year 1993 itself. The appellants/plaintiffs knew very well about the construction made by the respondent/defendant which was completed prior to the filing of the suit. The appellants/plaintiffs' ancestors were not in the possession of the suit property at any point of time. They are trying to prove their case by taking advantage of the loopholes left by the respondent/defendant. The appellants/plaintiffs have not produced any document except the release deed said to have been executed by one Arunachala Theval in favour of Shanmugasundaram. No document has been produced by the appellants/plaintiffs to show that even prior to execution Ex.A1, their ancestors were enjoying the suit property and the appellants/plaintiffs were enjoying the property till filing of the suit. Both the trial Court and the first appellate Court rightly appreciated the



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pleadings and oral and documentary evidence. There is no merit in the Second Appeal and the same is liable to be dismissed.

15. According to the appellants/plaintiffs, the suit property is a ancestral property. After the death of their grandfather, their parents enjoyed the property and further, their uncle Arunachala Thevar had executed a release deed Ex.A1 in favour of their grandfather Shanmugasundaram. Since the appellants are the legal heirs of the said Shanmugasundaram, they are enjoying the suit property. Since it is a vacant site, they were not residing in the suit property. They were away from the native place and residing in Chennai due to their employment purpose. Further contention of the appellants/plaintiffs is that since the suit property is a vacant site, the possession follows title. The respondent/defendant stoutly denied the right, title and possession of the appellants/plaintiffs. The respondent/defendant claimed independent right over the property under Ex.B1. During the pendency of the first appeal, and Advocate Commissioner was also appointed and he inspected the suit property and filed the report and plan, which were marked as Exs.C1 and C2, which clearly show that the entire suit property was



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covered by construction. The appellants/plaintiffs have to prove their title when they claim title under Ex.A1 release deed that Arunachala Thevar has got right and title to the extent mentioned in the suit property and he is entitled to execute the release deed. The appellants/plaintiffs have not produced any document prior to 1959, to show that the suit property is the ancestral property of the appellants/plaintiffs and they were enjoying the same and patta stood in the name of their ancestor ie., the so called Mookiah Thevar and after the death of the said Mookiah Thevar, revenue records stood in the name of Shanmugasundaram, who is the father of the appellants/plaintiffs and Arunachala Thevar executed a release deed Ex.A1 and after execution of Ex.A1, the appellants/plaintiffs were in possession of the suit property. The respondent/defendant filed Ex.B1 which shows that they had purchased the property from one Deivanayagam Pillai. Exs.B2, B4 and B5 and other documents clearly show that the respondent/defendant was in possession of the suit property. Even prior to purchase of the suit property, the respondent/defendant's vendor and their ancestors were in possession of the suit property. Admittedly, Deivanayagam Pillai executed a sale deed in favour of the respondent/defendant and the respondent/defendant



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constructed the house and enjoying the property. It is well settled proposition of law that since the appellants/plaintiffs filed the suit for declaration and recovery of possession and mandatory injunction, it is for them to prove their title and right over the property. They cannot take advantage of the loopholes in the case of the respondent/defendant. Both the Courts below considered the pleadings and oral and documentary evidence and held that the appellants/plaintiffs have not established their title. Though it is stated by the appellants/plaintiffs that Ex.A1 is an ancient document and therefore, genuineness of the document cannot be questioned, but still they have to prove the right and title in respect of the person who has executed the ancient document. The person who has no right and title cannot convey the title. This Court also finds that the appellants/plaintiffs have not established that Arunachala Thevar had right, title and possession over the suit property except the fact that Ex.A1 which is a release deed was said to have been executed by Arunachala Thevar in favour of Shanmugasundaram. Ex.A1 is not proved by the appellants/plaintiffs in the manner known to law and Ex.A1 is not at all document of right and title over the property. This Court finds that mere existence of Ex.A1 will not create title, unless the



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appellants/plaintiffs proved that their ancestors have right and title over the suit property. If the suit property is their ancestral property, they have to prove entries in the revenue records, patta, chitta and adangal were in the name of their ancestors, namely the said Mookiah Thevar or predecessors-in-title. Ex.A1 is the settlement deed said to have been executed by Arunachala Thevar in favour of Shanmugasundaram, who is the father of the appellants. No document prior to 1959 was marked by the appellants/plaintiffs to prove that the property is the appellants' ancestral property. From the period 1959 to 1995, the appellants/plaintiffs have not produced any document to show that the property was transferred from the name of Arunachala Thevar to Shanmugasundaram and thereafter, the Shanmugasundaram transferred the title in the name of the appellants/plaintiffs. Except Ex.A1, no other document was produced by the appellants/plaintiffs to show that they have right and title over the property. If the property is the ancestral property of the appellants/plaintiffs, as stated earlier, they have to prove their case. The appellants/plaintiffs failed to prove that on the date of filing of the suit, they had a right in the property. Except P.W.1, no independent witness was examined to prove that the appellants/plaintiffs



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were in possession of the property and the appellants/plaintiffs were conveniently evading to come to witness box to subject themselves to cross examination. The sale deed executed by Deivanayagam Pillai in favour of the respondent/defendant has been marked as Ex.B1. Even in the year 1972, the vendor of the respondent/defendant executed a lease deed in favour of one Arumugam Asari and Somu Asari, which had been marked as Ex.B2, dated 01.08.1972. Further, the said “Othi” deed was subsequently redeemed. The receipt executed between the said Deivanayagam Pillai who is the vendor of the respondent/defendant and the said Arumugam Asari and Somu Asari had been marked as Ex.B3. Ex.B4-House tax receipt and Ex.B5-Town Survey Field Register were also marked. From Exs.B1 to B5, it is seen that the respondent/defendant proved title of his vendor and his vendor was in possession of the property even from the year 1972 till purchase of the property. Whereas the appellants/plaintiffs have not proved that Arunachala Thevar had executed the release deed in favour of his brother Shanmugasundaram alone. The appellants/plaintiffs have not produced any document to show that either the property stood in the name of Arunachala Thevar or after Ex.A1 release deed, the property was transferred in favour of his brother,



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namely Shanmugasundaram, who is father of the appellants/plaintiffs and

thereafter the property stood in the name of the appellants/plaintiffs.

From the pleadings, oral and documentary evidence and judgment of both the Courts below, this Court finds that the respondent/defendant has the right and title over the property. Though Ex.B1 was registered in the State of Kerala , they admitted that the property situated in the border of Kerala and the Tirunelveli District, at the relevant point of time, document can be registered in either of the place where the property is situated or the person who is temporarily residing in the place. One of the item in the suit property is situated in Tamil Nadu and other item is situated in Kerala.

16. There is no quarrel over the proposition that the possession should follow title, when the property is a vacant land. In this case, the respondent/defendant has clearly stated in pleadings that they started to put up the construction in the year 1993 itself and completed the construction even before 1994 and also stated that the appellants/plaintiffs were aware of the same. In the absence of proving title by the appellants/plaintiffs, the principle that possession follows



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title, would not apply. The respondent/defendant has proved her right and title over the property and the construction of building and payment of tax and hence the suit property is not a vacant land even prior to the filing of the suit. The respondent has also proved the same through oral and documentary evidence. Apart from that, the respondent/defendant had examined two witnesses who have clearly stated that on the date of filing of suit, construction was made in the suit property.

17. Ex.A1 document is of the year 1959 and it is an ancient document. As pointed out by the first appellate Court it is only a presumption of title that could be strengthened by the subsequent conduct of the parties and continuity of the possession of the appellants/plaintiffs. The appellants/plaintiffs miserably failed to prove that the executor of Ex.A1, Arunachala Thevar had title over the property and he was in possession of the property. Neither any document was produced nor oral evidence was let in by the appellants/plaintiffs to prove their case. Establishment of right under Section 90 of Indian Evidence Act would not be helpful to the appellants/plaintiffs, unless they proved that the executor of Ex.A1 has valid title over the property.



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18. The appellants as plaintiffs, have to prove their right and title over the property, especially when they have filed the suit for declaration. As already stated, the appellants/plaintiffs have not established their right and title and they have not produced any document prior to Ex.A1 to show that the property is their ancestral property. Except recitals in Ex.A1, neither document has been produced nor evidence has been let in.

19. On a reading of the entire pleadings, oral and documentary evidence, issues raised by the plaintiffs and the points raised by the first appellate court, judgment of the trial court and the points for consideration and determination, judgment of the first appellate court, grounds of appeal raised by the appellants and the submission of both counsel, this Court finds that both the Courts below have rightly appreciated and re-appreciated the evidence and found that the appellants/plaintiffs have not proved their right, title and possession over the property.



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20. For the reasons aforestated, the substantial questions of law formulated in the second appeal are accordingly answered against the appellants/plaintiffs and in favour of the respondent/defendant.

21. In conclusion, the Second Appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition if any is closed.

15.06.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

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

P.VELMURUGAN,J.,



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