



S.A.No.1714 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1714 of 2001

1.Karuppiah Thevar
2.Saminathan
3.Kattu Raja

... Appellants/Appellants/Defendants

Vs.

1.Periasamy Thevar (Died)
2.Sasi
3.Pandi
4.Karthick
5.Sarasu
6.Indrani
7.Jeyalalitha
8.Chandrakleha
9.Rajeswari

... Respondents/Respondents/Plaintiffs

(RR3 to 9 are brought on record as
Lrs of deceased 1st respondent vide
Court Order, dated 24.01.2020)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.32 of 2000, on the



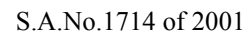
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file of the Principal District Judge, Ramanathapuram, dated 01.11.2000 confirming the judgment and decree made in O.S.No.54 of 1996, on the file of the District Munsif, Paramakudi, dated 22.12.1999.

For Appellants : Mr.R.Murali
for V.J.Latha
For R2 : Mr.A.Srinivasan
For R3 to R9 : Mr.H.Thayumanaswamy

J U D G M E N T

The first respondent is the plaintiff. The appellants are the defendants. The first respondent filed a suit in O.S.No.54 of 1996, on the file of the District Munsif Court, Paramakudi against the appellants/defendants for declaration and recovery of possession directing the second respondent to remove the construction and handed over the vacant possession regarding the first schedule property. In respect of second and third schedule properties in the plaint are concerned seeking declaration and consequential relief of permanent injunction.



3. On considering the above said oral and documentary evidence, the trial Court decreed the suit as prayed for. Aggrieved by the said judgment and decree of the trial Court, the defendants filed an appeal before the Principal District Court, Ramanathapuram. The Principal District Judge taken the appeal on file in A.S.No.32 of 2000. On hearing the arguments, considering the entire materials and re-appreciated the oral and documentary evidence, the appellate Court dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

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following substantial questions of law:-

“a. Whether the learned Judge is correct in holding that the defendant has not prescribed title to the suit property by adverse possession on the grounds that the first defendant is not in possession of the suit property and at the same time directing the first appellant to handover possession of the suit property with or without the superstructure of the respondent.

b. Whether the learned Judge is correct in decreeing the suit when the respondent approaches the court after a period of one year having acquiesced the constructions put up by the first appellant.

c. Whether the respondent is not estopped from recovery of the possession of the suit property when he allowed the first appellant to put up construction in the property alleged to be his own.”

5. At the time of admitting the second appeal, this Court has formulated the following substantial questions of law:-



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“(I) Whether the defendants have prescribed title to the suit property by adverse possession?

(ii) Whether the findings of the Courts below on the issue regarding adverse possession are vitiated by perversity?”

6. The specific case of the respondent/plaintiff is that the suit properties and other properties originally belonged to three brothers, namely, plaintiff, 1st defendant and one Angusamy Thevar. They enjoyed the properties as common properties with joint patta. Subsequently, three brothers divided the suit properties on 12.07.1961 in the presence of the Panchayatars. As far as the suit properties are concerned, Northern side 1/3rd was allowed to the first defendant, in the middle portion of the 1/3rd was allotted to the plaintiff and the southern portion of 1/3rd was allotted to the Angusamy Thevar, like the first item, the second item of the properties are also divided in the same way. As far as third item of the properties are concerned, it was shown as a joint property. The defendants constructed three tiled houses in the first item of the properties. Apart from that, he has



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constructed yet another house Separately. The plaintiff went to Chennai for some personal work and taking advantage of his absence, the appellants/defendants constructed the house in the portion of the respondent/plaintiff. Therefore, they filed the suit for declaration and as far as the possession of first item is concerned. As far as the other items are concerned, for declaration and permanent injunction.

7. The case of the defendants are that though the portion was allotted to the respondent, but he gave the property to the appellants by getting money for his daughter's marriage expenses and other expenses and he was allowed to construct the house and enjoying the same. Even though, the portion was allotted to the respondent/plaintiff, but the same was sold by oral sale and the appellants were enjoying the properties by constructing the house. They are enjoying the property over and above the statutory period of more than 12 years, therefore, the plaintiff is not entitled for the relief of recovery of possession.



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8. The learned counsel appearing for the appellants would submit that the appellants having a right by prescribed title to the properties by adverse possession on the ground that they are in possession of the properties and the first respondent/plaintiff himself admitted that the first defendant though constructed the house only in the portion, in which, he is in possession and he has not encroached the property and has not trespassed, but even otherwise he gave the piece of portion to quietus the issue, but the plaintiff refused to take the same and therefore, they constructed the house and enjoying the same over and above the statutory period.

9. The learned counsel for the respondent would submit that as per the partition deed, the suit properties allotted to the first respondent/plaintiff and when he was not in the village and gone to Chennai, at the time, the appellants encroached the properties and constructed the house. Thereafter, when he went to the properties and saw that the portion of the properties were encroached and constructed the house and when they asked to remove the encroachment, the appellants promised



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to remove the same, subsequently, they refused the same. The house was constructed only within the year prior to the suit, therefore, they are not entitled for any right over by prescription or adverse possession. Therefore, both the courts rightly held that the suit properties belonged to the first respondent/plaintiff and the appellants/defendants encroached and put up construction therefore, granted the decree in favour of the first respondent/plaintiff and there is no merit in the appeal.

10. As far as the substantial questions of law are concerned, admittedly, the suit properties and other properties originally owned by three brothers, namely, plaintiff, first defendant and one Angusamy Thevar. They entered into a partition on 12.07.1961 through the Panchayatars. Subsequently, both the parties also admitted the partition and also the allotment of shares and each entitled to 1/3rd shares.

11. The main contention of the appellants is that the first respondent/plaintiff asked the appellants/defendants to pay a sum Rs.1000/-



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towards his daughter's marriage expenses stating that he would leave the first item to the appellants and that he would take the 1/3rd share of eastern portion in 14th item mentioned in the partition deed which was allotted to the appellants and the respondent also agreed to receive Rs.1000/- towards additional extent in item No.1. Based on the above said agreement, the respondent/plaintiff handed over the possession of the first item to the appellants/defendants on receipt of Rs.1000/- from him. The respondent/plaintiff also executed a document in the presence of Panchayatars namely, R.Chellam, C.Muniandi, P.Ganapathi, K.Thangavelu, A.Nagarajan, Village Administrative Officer and received a sum of Rs. 1000/-. and they have also signed in the said document as attestors. Hence from 12.02.1990 onwards, these appellants have been enjoying the first item of the property. Since the appellants 2 to 4 were intending to live separately from their families, they got loan in the Rural Co-operative Housing Society at Paramakudi even in the year 1990 and put up three tiled houses and are residing. Since these appellants have been in possession and enjoyment of the first item over and above the limitation period, they have



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prescribed title by adverse possession.

12. Therefore, now once the appellants pleaded that they are claiming title by adverse possession, it is for the appellants to prove that they were in possession of the property over and above the statutory period, namely, more than 12 years enjoying the property as their own against the true owner. Therefore, in this case, admittedly they gave the document in the year 1990 and also they obtained the loan and constructed the building of-course with the permission of the respondent/plaintiff, but however, the suit filed in the year of 1996 which itself clearly shows that they have not constructed the building and enjoying the house more than 12 years. They themselves admitted that on 12.02.1990 onwards these defendants are enjoying the first item of the properties and they obtained loan in the year 1990 and put up a tiled house, therefore, ie., within 12 years from the date of plaint and therefore, the appellants/defendants have not proved their adverse possession. The main case of the respondent/plaintiff is that he was out of possession for some time since he had gone to Chennai, thereafter



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soon after coming to the native place he noticed that the appellants encroached the property.

13. Therefore, now, the substantial question of law is that whether the defendants have prescribed title to the suit property by adverse possession. Though the original ownership of the property was admitted subsequently, partition was also effected and the same was also admitted but however, the suit properties allotted to the respondent/plaintiff also admitted and the appellants stated that the respondent obtained a sum of Rs.1000/- for the suit 1st item of the property for his daughter's marriage expenses and also the additional expenditure for Rs.1000/- which were not proved by the appellants. Once they pleaded that if the respondent/plaintiff wants to sell the property he could have sold the properties by getting consideration but the appellants have not proved that the respondent sold the properties or executed any conveyance deed and title been transferred to the appellants by the respondent/plaintiff. This plea clearly shows that they are in possession over and above the period of limitation, therefore, they are entitled to



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adverse possession. So in the absence of any title deed when the person claiming possession he has to establish that over and above the statutory period they are enjoying as their own against the true owner. In this case, admittedly the title stands in the name of the respondent/plaintiff and the appellants/defendants were in possession, but however, they have not proved the ownership. Therefore, the appellants/defendants have not proved that they are having right over the suit property by adverse possession. Once the appellants claiming title by adverse possession admitting the original ownership, it is for them to prove title by adverse possession. Therefore, the respondent/plaintiff has proved his case in both the Courts and hence, the respondent/plaintiff is entitled to get both the decree of declaration and mandatory injunction and recovery of possession by removing the superstructure and handed over the possession and also permanent injunction in respect of other items and therefore, this Court finds that the appellants have not proved the title by adverse possession and hence, the substantial questions of law are answered accordingly against the appellants.



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14.In the result, the second appeal is dismissed. No costs.

Index : Yes / No

Speaking Order : Yes / No
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To

- 1.The Principal District Court,
Ramanathapuram.
- 2.The District Munsif,
Paramakudi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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