



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.1057 of 2003

Palapallam Town Panchayat,
Rep., by Executive Officer,
Palapallam, Keezhmidalam Village,
Vilavancode Taluk, Kanyakumari District. ... Appellant/Appellant/Plaintiff

Vs

Y.Joseph (Died) ... Respondent/Respondent/
Defendant

2.J.Glory Thangam

3.J.Laila

4.J.Idapitchi

5.J.Shanthi

6.J.Sasikala

7.J.Premadali

8.J.Thangajothi

9.J.Joseph Retnadurai ... Respondents 2 to 9

***[RR2 to 9 – brought on record as LRs of the deceased sole
respondent vide order dated 19.09.2022 made in C.M.P.
(MD) Nos.6202 to 6204 of 2022 in S.A.No.1057 of 2003]***



Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 08.01.2003 made in A.S.No.21 of 2002 on the file of the Sub Court, Padmanabhapuram, confirming the judgment and decree dated 16.10.2001 made in O.S.No.192 of 1999 on the file of the Additional District Munsif's Court, Padmanabhapuram.

For Appellant : Mr.P.Thiagarajan

For RR2 to 9 : Mr.M.Saravanan

J U D G M E N T

1.1. The plaintiff in the suit is the appellant. The suit was filed for declaration of title and recovery of possession in respect of suit B-Schedule property. The suit was dismissed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the appellant/plaintiff is before this Court.

1.2. According to the appellant, suit A-Schedule property with an extent of 37.710 cents absolutely belonged to the appellant-Panchayat. Suit



B-Schedule property is part of A-Schedule property. The suit property is situated in two survey numbers viz., S.Nos.1164 and 1168. The appellant claimed 35 cents in S.No.1164 and two cents in S.No.1168. The Resurvey number relating to S.No.1164 is Resurvey Nos.371/12A and 371/12B. The Resurvey number relating to S.No.1168 is Resurvey No.371/13. The total extent of A-Schedule property is 37.710 cents. The property encroached by the first respondent/defendant, which is shown as B-Schedule property consists of 11 cents. The appellant claimed right over A-Schedule property under gift deeds executed by various persons under Ex.A.2 to Ex.A.5 dated 21.05.1959, 10.01.1968, 29.12.1967 and 10.01.1968. It was pleaded by the appellant that the first respondent tried to put up construction in the suit B-Schedule property and hence, the appellant was constrained to file a suit for bare injunction against the first respondent in O.S.No.257 of 1981 on the file of the District Munsif's Court, Padmanabhapuram. The suit was decreed by the trial Court. The judgment of the trial Court was set aside by the first appellate Court in A.S.No.21 of 1988 and A.S.No.27 of 1998 under Ex.A.7. The second appeal filed by the appellant challenging the findings of the first



appellate Court in S.A.No.469 of 1990 was dismissed, however, a liberty was granted to the appellant to file a suit for declaration. Based on the said liberty, the present suit was filed seeking declaration of title and recovery of possession in respect of B-Schedule property.

2. The first respondent herein filed a written statement and denied the title of the appellant over the suit B-Schedule property. The first respondent specifically contended that the gift deeds relied on by the appellant would not confer any title to the appellant. The first respondent further averred that he had been enjoying suit B-Schedule property along with his ancestral properties. The first respondent also averred that the High Court in S.A.No.469 of 1990, confirmed the possession of the first respondent over suit B-Schedule property and hence, the present suit filed by the appellant was not maintainable. It was further contended by the first respondent that the appellant in its written statement in O.S.No.431 of 1967 categorically admitted the possession of the first respondent over suit B-Schedule property as on 17.03.1968 and hence, the first respondent acquired adverse



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title over the suit property and consequently, the present suit for recovery of possession was not maintainable, as the first respondent prescribed his right over the suit property.

3. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the appellant failed to prove its title over suit B-Schedule property. The trial Court based on the admission made by the appellant in its written statement filed in O.S.No.431 of 1967, which was marked as Ex.B.4, came to the conclusion that the first respondent prescribed his title over suit B-Schedule property by adverse possession. Hence, the suit was dismissed by the trial Court. Aggrieved by the same, the appellant preferred an appeal in A.S.No.21 of 2002 on the file of the Sub Court, Padmanabhapuram. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.



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4. This Court, at the time of admission, formulated the following substantial question of law:

“When the present defendant, as 13th defendant in the earlier suit had not set up any independent right in himself in the earlier suit and assuming there was an averment in the written statement of the present plaintiff as 26th defendant in the earlier suit that the 13th defendant in the earlier suit was in unauthorised occupation, in the absence of any independent pleading by the present defendant in the earlier suit that his occupation was unauthorised and hostile to the true owner, can the material available in the earlier suit could be taken as a legal material to non-suit the plaintiff on the ground of adverse possession?”

5. The learned counsel for the appellant tried to assail the judgments of the Courts below on the ground that the stray statement made by the appellant in its pleadings in O.S.No.431 of 1967 was not sufficient to hold that the first respondent prescribed his title over suit B-Schedule property. The learned counsel further submitted that the Courts below in the absence of any documentary evidence on the side of the first respondent/defendant



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to prove his continuous possession over the disputed B-Schedule property, ought not to have held that he proved his adverse possession over suit B-Schedule property. The learned counsel further submitted that the appellant proved its title over the suit property by producing Ex.A.2 to Ex.A.5 and hence, the finding of the Courts below as if the appellant failed to prove its title over suit B-Schedule property is erroneous one.

6. The learned counsel for respondents 2 to 9, by taking this Court to the pleadings of the appellant in the earlier suit, which was marked as Ex.B. 4, submitted that there was a categorical admission by the appellant about the possession of the first respondent/defendant over the suit property even in the year 1968 and the present suit had been filed only in the year 1999. Therefore, the first respondent had prescribed title by adverse possession by enjoying the suit property adversely for more than the statutory period.



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7. Heard the arguments of the learned counsel for the appellant and the learned counsel for respondents 2 to 9. Perused the typed set of papers and other relevant records.

8. In order to claim title over the suit property, the appellant produced Ex.A.2 to Ex.A.5. The trial Court, after close scrutiny of Ex.A.2 to Ex.A.5, found that in Ex.A.2 to Ex.A.5, the properties dealt with under the documents situate on the western side of the road, however in the suit schedule, the suit property is shown as if it situates on the western side of the property belonged to Subramaniam. Therefore, the Courts below had come to a factual conclusion that the suit B-Schedule property as shown in Ex.A.1 plan filed by the appellant/plaintiff was not gifted to the appellant under the gift deeds relied on by it. The Executive Officer of the appellant-Panchayat was examined as P.W.1. He categorically admitted the possession of the first respondent over the suit property. He also admitted that the house situated in the second plot in S.No.1168 was constructed during the period of the first respondent Joseph's father and the first



respondent had been enjoying the same. When he was questioned in cross examination as to how long the 1st respondent/defendant had been in possession of suit B-Schedule property, he expressed his ignorance and deposed that he could say only after verifying the records. While he was confronted with the written statement filed by the appellant-Panchayat in O.S.No.431 of 1967, he expressed his ignorance. In the light of the above said evidence of P.W.1, the pleadings of the appellant-Panchayat in O.S.No.431 of 1967 need to be appreciated. A perusal of Ex.B.4 would make it clear that the appellant-Panchayat in its written statement filed in O.S.No.431 of 1967 on the file of the District Munsif's Court, Padmanabhapuram, after referring to the gift deeds under which it got the property in the suit survey numbers 1164 and 1168, categorically admitted that the first respondent/defendant took forceful possession of the property lying in front of the Panchayat Office on the eastern side on 17.03.1968. A perusal of Ex.A.1, plaintiff's plan make it clear that the suit B-Schedule property lies on the eastern side of the Panchayat Office. Therefore, it is clear that the property mentioned in Ex.B.4 is the present B-Schedule



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property. The appellant-Panchayat in its pleading categorically admitted (under Ex.B.4) that the first respondent took forceful possession of its property on 17.03.1968. The employment of the word 'forceful' signifies hostile intention on the part of the first respondent. When the appellant admitted in its pleadings filed in the earlier suit in O.S.No.431 of 1967 that the first respondent took forceful possession of its property on 17.03.1968, the appellant is not entitled to file a suit for recovery of possession in the year 1999, after expiry of more than 30 years. Therefore, the factual conclusion arrived at by the Courts below that the first respondent prescribed his title over suit B-Schedule property is well founded and requires no interference by this Court while exercising jurisdiction under Section 100 of Code of Civil Procedure.

9. In view of the discussions made earlier, even though there is no evidence available on record to show that the first respondent herein in the earlier suit in O.S.No.431 of 1967 independently pleaded hostile possession, the specific plea by the appellant that the first respondent entered the



property forcefully, would imply hostile possession of the first respondent from the year 1968. Therefore, the substantial question of law framed at the time of admission is answered against the appellant and the second appeal stands dismissed.

10. In nutshell, (i) this Second Appeal is dismissed by confirming the judgments and decrees passed by the Courts below; and (ii) in the facts and circumstances of the case, there would be no order as to costs.

03.03.2023

NCC: Yes/No
Index: Yes/No
Internet: Yes
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S.SOUNTHAR,J.
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To

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

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