



SA.No.664 of 1995

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.664 of 1995

1. Natraya Velar
2. Natraya Mudaliar
3. N.Kalimuthu Mudaliar
4. Murugesu Nadar
5. Rajalakshmi

... Appellants

- Vs -

1. Gnanathirumayee
2. Padmavathi
3. Thangammal
4. Nagammal
5. Poomalaiammal
6. Rajagopal
7. Megalingam

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge, Dharapuram made in A.S.No.33/91 dated 13.09.1993, reversing the judgment and decree of the learned District Munsif of Dharapuram made in O.S.No.316/85 dated 3.2.1990.



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For Appellants : Mr.P.Jagadeesan

For Respondents : Mr.D.Parivendhan
for R5 to R7
R1 to R4-died

J U D G M E N T

The defendants are the appellants herein. The respondents 1 to 3 are the plaintiff 1 to 3 and the respondents 4 and 5 are the defendants 6 and 7 before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that, the plaintiffs are the sister's children of one Eganandhasamy. Eganandhasamy died 22 years prior to the institution of the suit. It is the case of the plaintiffs that during 1935, Eganandhasamy has purchased the suit property and has put up construction thereon. It is also the contention of the plaintiff that the defendants are the tenants over the suit property. Whereas, taking advantage of the demise of the original owner Eganandhasamy, the defendants are claiming right over the suit property,



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which necessitated the plaintiffs to file a suit for declaration and for delivery of possession. It was also the contention of the plaintiffs that there are no documents to show the case of the dedication of the property to the Sengunthar Mudaliar Community.

4. The said suit was resisted by the defendants by contending that the suit property was purchased by Eganandhasamy by collecting donation from the community members, and the suit property though stands in the name of Eganandhasamy, it is the property of the community. Therefore, the plaintiffs, who are the legal heirs of Eganandhasamy, have no right over the suit property. It is also pleaded by the defendants that, even the construction made in the suit property were made out of the public collections from the Sengunthar Mudaliar community. Therefore, the sum and substance of the defence put forth by the defendants is that, the suit property is the property of the Sengunthar Mudaliar community and hence, Eganandhasamy cannot have any separate title over the property. As a result of which, the plaintiffs also cannot not have any remedy through this suit.



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5. Before the Trial Court, the plaintiffs have examined 2 witnesses as PW1 and PW2 and marked as many as 11 documents as Exs.A1 to A11. On behalf of the defendant, 2 witnesses were examined as DW1 and DW2 and 29 documents have been marked as Exs.B1 to B29.

6. The Trial Court, after having considered the oral and documentary evidence, has arrived at a conclusion that, through the recital of Ex.A1 and also through account book submitted by the defendants, held that there are materials available to establish the purchase of the property from the donation of the community people and also the dedication of the property to the community. Thus, has ultimately dismissed the suit for declaration. Not satisfying with the judgment of the Trial Court, when the plaintiffs have approached the First Appellate Court, the First Appellate Court reversed the finding on the ground that the suit property was the absolute property of Eganandhasamy and that after the demise of Eganandhasamy, by virtue of The Hindu Succession Act, the plaintiffs are the legal heirs and hence, decreed the suit as prayed for by allowing the First Appeal.



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7. Not satisfying with the judgment of the First Appellate Court, the defendants 1 to 3 have approached this Court by way of this Second Appeal.

8. At the time of admitting the Second Appeal on 16.08.1995, this Court has formulated the following substantial questions of law:-

“1. Whether the first appellate court was right and justified in law in not considering the point of adverse possession over the suit properties by Sengundhar Community?

2. Whether the lower appellate court committed an error of law in not relying upon the recitals in Ex.A4 and in wrongly interpreting Ex.A1?”

9. The sum and substance of the issue revolves around in this appeal is that the ownership over the suit property. According to the plaintiffs, the suit property is the absolute property of Eganandhasamy. Whereas the defendants contends that the property was purchased from the contribution made by the community people and that the building was also constructed thereon with the contribution made by the community people and by virtue



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of the conduct of Eganandhasamy, the property was dealt as the property of the Community. To substantiate the plaintiffs' claim, the plaintiffs show much reliance on Ex.A1. This Court has perused Ex.A1-Sale Deed, which stands in the name of Eganandhasamy. In Ex.A1-Sale Deed, there is a specific recital that Eganandhasamy was having the right over the property. However, the Trial Court has misdirected by the word “vagaiyara” and by the account books Exs.B2 to B4.

10. It is the contention of the learned counsel for the appellants that the word “vagaiyara” which is coupled with the account books submitted by the defendants shows that the construction made in the suit property through the donations of the community, and the community people have maintained the account for construction. No doubt, as found in the judgments, there may be a word “vagaiyara”. But the mere reference of the word “vagaiyara” itself cannot be a ground to hold that the property is the community property. The above finding of the Court would further vindicate from the previous line of Ex.A1-Sale Deed, where there is a conferment of absolute right with the deceased Eganandhasamy. Therefore,



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this Court is of the firm view that the finding recorded by the Trial Court that the property is a community property is absolutely a perverse finding, which has no support from any of the materials. Whereas, the First Appellate Court, after gone into various aspects, has rightly arrived at a correct conclusion that the property is Eganandhasamy's absolute property.

11. Apart from that, the First Appellate Court has also found that the document, which has been submitted has not been filed in the previous suit, where the defendants have claimed that the suit property are the community property. However, the earlier suit was allowed to be dismissed. The First Appellate Court, taking advantage of dismissal of the earlier suit and also non production of the account books in the previous suit, has found that the account books cannot be believed. At the time of admitting the Second Appeal, this Court has formulated the substantial question of law that “whether the long possession of the defendants would suffice to hold that they have perfected the title by way of adverse possession”.

12. At this juncture, the learned counsel for the appellants would invite the attention of this Court that Eganandhasamy, who was the original



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owner died during 1963 viz., 22 years prior to filing of the instant suit.

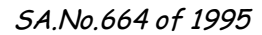
Whereas, the suit for delivery of possession has been filed after a period of 12 years and therefore, the same is hit by Article 65 of The Limitation Act. However, this Court is not persuaded by the submissions made by the learned counsel for the appellants. It is the case of the plaintiffs that the defendants are the tenants. The defendants have also not disputed that they are the tenants of the property. It is their only contention that they are the tenants under the Community and not under Eganandhasamy. If that being the case, in order to attract Article 65 of The Limitation Act, the document, which has been relied by the defendants/appellants is that the rent receipt, which contains the name of Eganandhasamy Public Shop. If we go by the document, such receipt came into existence only during 1983. Whereas, the suit has been filed in the year 1985. Therefore, when the defendants project an adverse claim over the property in the year 1983, the plaintiffs came forward with a suit within a period of two years, during 1985. Hence, this Court could not find any material so as to decide the substantial question of law in favour of the appellants.



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13. The learned counsel for the appellants would further submit that there was an earlier suit in O.S.No.229 of 1983 filed by the 4th defendant against the other defendants claiming right over the suit property. Whereas, the said suit has been dismissed by holding that the property is the community property. However, the learned counsel for the respondents would submit that in the said suit, the plaintiffs were not the party to the suit. Therefore, it will not bind them. I am in full agreement with the submission made by the learned counsel for the respondents.

14. Coming to the second aspect viz., the interpretation of Exs.A1 and A4, as already discussed, the First Appellate Court has rightly arrived at a conclusion that there is a recital in Ex.A1-Sale Deed that the suit property is the absolute property of Eganandhasamy. Therefore, after the demise of Eganandhasamy, the devolution would take place according to the Hindu Succession Act. Admittedly, the plaintiffs are Eganandhasamy's sister's children. By virtue of The Hindu Succession Act, they became the absolute owner of the suit property. Therefore, the second substantial question of law is also liable to be answered in favour of the respondents. Furthermore, from the submissions of the learned counsel for the appellants, this Court



15. In view of the above detailed discussions, the substantial
ons of law are answered in favour of the respondents.

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2. The Subordinate Court, Dharapuram.



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C.KUMARAPPAN, J

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