



SA. Nos.1299 & 1300 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA Nos. 1299 & 1300 of 2007

and MP No.1 of 2007

Sakthivel

...Appellant in both second appeals

Vs.

1.Udaiya Gounder

2.Ramasamy Alian Ramana Gounder

...Respondents in both second appeals

PRAYER IN SA No. 1299 of 2007 : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned First Additional Judge of Coimbatore dated 27.07.2005 in AS No. 12 of 2004 confirming the judgment and decree of the learned Third Additional District Munsif of Coimbatore dated 29.07.2003 in O.S No. 2261



SA. Nos.1299 & 1300 of 2007

of 1996.

PRAYER IN SA No. 1300 of 2007 : This Second appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned First Additional Judge of Coimbatore dated 27.07.2005 in AS No. 15 of 2004 confirming the judgment and decree of the learned Third Additional District Munsif of Coimbatore dated 29.07.2003 in O.S No. 1872 of 1995.

For Appellant : Mr.Nicholas
(in both second appeals)

For respondents : Mr. Karthikai Balan
(in both second appeals)

COMMON JUDGMENT

The Second appeal in S.A No. 1299 of 2007 has been filed against the judgment and decree of the learned First Additional Judge of Coimbatore dated 27.07.2005 in AS No. 12 of 2004 confirming the judgment and decree of the learned Third Additional District Munsif of Coimbatore dated 29.07.2003 in O.S No. 2261 of 1996.

2. The Second appeal in S.A No. 1300 of 2007 has been filed against the judgment and decree of the learned First Additional Judge of Coimbatore dated 27.07.2005 in AS No. 15 of 2004 confirming the judgment and decree



SA. Nos.1299 & 1300 of 2007

of the learned Third Additional District Munsif of Coimbatore dated 29.07.2003 in O.S No. 1872 of 1995.

3. These appeals were arises out of the common judgment passed by the First Additional Judge, Coimbatore dated 27.07.2005 in AS Nos. 12 & 15 of 2004 hence this court dispose these appeals through common judgement.

4. The appellant herein/Sakthivel ans Rajammal filed suit in O.S No. 2261 of 1996 on the file of the III Additional District Munsif, Coimbatore, against the respondent herein for the relief of declaration to declare themselves as absolute owner of the suit property by perfected title by adverse possession in respect of 21 cents in the suit property situated in Alandurai Village in S.F No. 395/2 with four boundaries. Prior to that suit, the respondents herein filed suit in O.S No. 1872 of 1995 on the file of the District Munsif Court, Coimbatore, against the appellant herein and Rajammal for the relief of permanent injunction to restraint them from interfering with the respondents' peaceful possession and enjoyment of the 21 cents in the suit property situated in Alandurai Village in S.F No. 395/2 with four boundaries.



SA. Nos.1299 & 1300 of 2007

5. The parties and properties involved in the both the suits were one and same hence the suits were jointly tried and the common judgements were passed by the Trial Court holding that suit property is belongs to the Udaiya Gounder and Ramasamy Gounder/respondents herein and not belongs to the Rajammal and Sakthivel/Appellant herein. Accordingly suit in OS No. 1872 of 1995 was allowed and Suit in O.S No. 2261 of 1996 was dismissed. Challenging the same, the Rajammal and Sakthivel/Appellant herein filed AS Nos. 12 & 15 of 2004 on the file of the I Additional District Judge, Coimbatore, wherein the first appellate judge independently analysed the facts and circumstances of the case, held that adverse possession claimed by the appellants not been proved on the other hand the respondents proved that the appellant trespassed and encroached the suit property. Accordingly, both the appeals were dismissed. Challenging, the concurrent findings, appellant/Sakthivel filed these appeals. This Court admitted the appeals with the following substantial questions of law:

i. When the Adangal extracts show that the defendants are in possession from 1973 onwards and that the plaintiffs admitted that the defendants are in possession of the suit property with their knowledge and as such the admitted facts need not be prove and no further evidence is required



SA. Nos.1299 & 1300 of 2007

to substantiate the possession of the defendants for more than the statutory period and thereby perfected title by adverse possession whether the courts below are correct in rejecting the claim of adverse possession by the defendants.

ii. Whether the documentary evidence placed by the defendants coupled with the admission of the plaintiffs that the defendants are in possession of 21 cents with their knowledge and thus the plea of adverse possession by the defendants have been substantiated whether the courts below are correct in rendering a decision contrary to the oral and documentary evidence.

The brief facts of the case:

6. For the sake of convenience, the parties are denoted as per Suit in O.S No. 1872 of 1995. The suit in O.S No. 1872 of 1995 was filed by the respondents herein against Rajammal and her grand sons Sakthivel/appellant herein for the relief of permanent injunction to restrain the defendants to interfere with their possession and enjoyment of 3.56 acres in S.No. 395/2 and for the recovery of possession of vacant portions measuring 21 cents as described in the suit schedule. After entered into appearance in the said suit the defendants filed the suit in O.S No. 2281 of 1996 for the relief of



SA. Nos.1299 & 1300 of 2007

declaration to declare themselves as absolute owners of 21 cents in suit property by way of adverse possession.

7. Heard both sides.

8. It is undisputed fact that originally one Sengaliappa Gounder owned 7 acres 36 cents in S.No. 395/2 who died leaving behind his son Subanna Gounder and Palani Gounder and thereafter they effected oral partition, in which each 3.80 acres was allotted to Palani Gounder and Subanna Gounder. The plaintiffs are the sons of Palani Gounder and first defendant/Rajammal is the wife and second defendant is the grand son of Subanna Gounder. The contention of the plaintiff is that during the course of their enjoyment the defendants encroached upon the portion of the plaintiff's property i.e., 21 cents hence panchayat was held on 07.03.1995. Thereafter, property was measured accordingly 21 cents found in possession of the defendants over and above 3.80 acres. Hence, panchayat muchalika reduced into writings through which the defendants agreed to vacate the excess 21 cents after removing sugar cane crops. Accordingly, removed and handed over the possession to the plaintiffs one week prior to the suit. Again, they attempted to trespass into the same and encroached the 21 cents. Hence, they filed the suit for recovery of possession and other consequential relief.



SA. Nos.1299 & 1300 of 2007

Further, the defendants totally denied the alleged encroachment encroachment of 21 cents made by them after said panchayat, their contention is that they enjoyed 21 cents belongs to the plaintiff openly continuously, uninterruptedly adverse to the knowledge of all including Palani Gounder and Sons/plaintiffs from 1969 onwards. Thereby, they perfected title by adverse possession and also denied the execution of panchayat Muchalika, and to declare their right they have filed O.S No. 2261 of 1996. Both the Court below dismissed the claim of the appellant by holding that they failed to prove that they have enjoyed the suit property uninterruptedly with the knowledge of the plaintiffs from the year 1969 onwards.

9. The counsel for the appellants submitted that plaintiffs themselves admits that the appellant/defendants were in possession of 21 cents for a long time. So, their admission itself is sufficient to confer the title upon the appellant by adverse possession but on perusal of the evidence there is no admission on the side of the plaintiff that defendants were in possession of the property from the year 1969 onwards. According to the plaintiffs, they solely encroached the portion of the property hence they approached the pachayatars. Furthermore, the plaintiff also relied the plaint copy filed by the



SA. Nos.1299 & 1300 of 2007

defendants in earlier suit O.S No. 1781 of 1981 which was marked as Ex.A2 in that suit defendants claimed that they were in possession of 3.80 acres which was allotted to them by way of partition and the said suit filed in the year 1994 against this plaintiff and they were not claim that they were in possession of 4.1 acres including 21 cents belongs to the plaintiff. Ex.A2 is the plaint filed by the appellant herein which itself proves that they claimed right in respect of 3.80 acres only in the year 1984. Furthermore, as per the Ex.A3/Panchayat Muchalika which contains LIT(Left impress Thumb) of Rajammal/first defendant and the plaintiff along with other panchayatars. Though the factum of panchayat is denied by the defendant, while examining as D.W.1 admitted the facts of Panchayat, one of the panchayatars P.W.2, who is close relative of the plaintiff and the defendant categorically stated that panchayat was held wherein nine persons stated as panchayatars and as per the recitals in Ex.A3/Panchayat Muchalika excess extent of 21 cents is found to be in possession of the defendants/appellants and boundaries stone is fixed for the said 21 cents, the defendants also agreed to give the excess land to the plaintiff. Since the defendants claimed right over 21 cents by way of adverse possession they bound to prove the uninterrupted possession for more than statutory period but before the Trial



SA. Nos.1299 & 1300 of 2007

Court there is no evidence on the side of the defendants to prove the same.

Further, in earlier suit the defendants claimed only 3.80 acres which was allotted to them through partition and also through Ex.A3/Panchayat Muchalika defendants agreed to hand over the 21 cents which was effected prior to the filing of the present suit as such claim of uninterrupted longer enjoyment is lost by the defendants after execution of Ex.A3. Therefore, the court below rightly concluded that plaintiffs alone entitled to 21 cents of the suit property. Accordingly, the relief claimed for recovery of possession by the plaintiffs/respondents is rightly allowed by the Courts below. The defendants/appellants failed to establish that they are perfected title by adverse possession as there is no evidence on the side of them which needs no interference. Accordingly, the questions of laws are answered. Both the appeals are dismissed as no merits, findings rendered by the Courts below in confirmed. Further, defendant/appellant is directed to vacate the suit property within a period of three months from the date of receipt of a copy of this Judgment.



SA. Nos.1299 & 1300 of 2007

10. In the result, these appeals are dismissed. No Costs.

Consequently, connected miscellaneous petitions, if any, is/are closed.

21.08.2024

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To

1. The First Additional Judge of Coimbatore.
2. Third Additional District Munsif of Coimbatore.
3. The Section Officer,
V.R Section.



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SA. Nos.1299 & 1300 of 2007

T.V.THAMILSELVI,J.

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SA Nos. 1299 & 1300 of 2007

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