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S.A.No.733 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2024

Pronounced on: 29.01.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.No.733 of 2007

Raja Thiruvenkada Sivasubramaniyan (Died)

2.S.Kalavathy

.. Appellant

* Sole Appellant died recorded as per memo dated 14.12.2021 (Presented at Court) vide Court Order dated 14.12.2021 made in SA.No.733/2007 (AMI)

* R2 brought into record as legal heir of the deceased sole appellant viz, Raja Thiruvenkada Sivasubramaniyan vide Court order dated 10.02.2022 made in CMP.No.614/22 in S.A. No.733 of 2007 (RHJ)

Vs.

1.Vaithilingam (died)

2.Dhanalakshmi

3.Subramanian

... Respondents

* Memo recorded (USR.No.39425 dated 20.11.2023)

* R1 died, R2 is recorded as the surviving legal heir of the deceased R1 vide Court order dated 27.11.2023 made in



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SA.No.733 of 2007 and MP.No.2 of 2007. (CKJ)

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PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 26.12.2005 made in AS.No.63 of 2005, on the file of Principal Sub Court, Vridhachalam confirming the judgment and decree dated 21.12.2004 passed in OS.No.1738 of 1993, on the file of I Additional District Munsif Court, Vridhachalam.

For Appellant : Mrs.G.Sumitra

For R1 : Died

For R2 : Mrs.Hema Sampath, SC
for M/s.R.Meenal

JUDGMENT

The first defendant in the suit has filed the instant second appeal. Pending appeal, the sole appellant died. The legal heir of the deceased appellant has been brought on record as the second appellant. The plaintiffs in the suit are the respondents herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. According to the plaintiffs, the three items of the suit schedule



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properties are originally Government Tharisu Lands. The plaintiffs entered into possession of the property in the year 1985 and made improvements to the properties and they are in possession of the suit properties by paying kist to the Government. The plaintiffs admit that the Government is the paramount title holder and except the Government, no one else has any right or title over the suit property. It is further pleaded that defendants 2 to 7 filed a suit in O.S.No.1469 of 1989 against the plaintiffs, but the suit was dismissed for default. Pending the suit, the first defendant purchased the suit property from defendants 2 to 7. As such, the first defendant is not a bonafide purchaser. The first defendant approached the plaintiffs to purchase the suit property, but since they refused, the first defendant attempted to interfere in the property. Therefore, the plaintiffs have come up with the suit for declaration and permanent injunction. The first defendant resisted the suit by filing the written statement, denying that the suit property is the Government Tharisu Lands.

4. The claim of the first defendant is that the suit property was as signed to one Arumugham and he sold item no.3 of the suit property to



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Kamarunnissa wife of Chottabai on 30.01.1975. The first defendant purchased the property on 11.11.1993 and further items nos.2 and 3 were allotted to one Panchatcharam who sold the same to Chottabai on 21.11.1974. The first defendant purchased the same, and he has been in continuous possession and enjoyment for the past 20 years.

5. The fifth defendant filed the written statement stating that one Vadivel sold 29 cents in S.No.145/1 to Chottabai on 07.05.1975 and one Armugham sold 1.66 acres in S.No.149/3 to the wife of Chottabai on 30.01.1975. After the death of Chottabai, defendants 2 to 7, who are his legal heirs, sold the lands in favour of the first defendant on 11.11.1983. Further, the claim of the first defendant is that the suit property was originally forest lands of Mohasaparur village and the Neyveli Lignite Corporation acquired lands from one Munusamy, Viswanathan and Panchatcharam, and they were allotted five acres of lands. These three persons then sold the lands to Chottabai and his wife Kamarunnissa. After the death of Chottabai, defendants 2 to 7 sold the property in favour of the first defendant.



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6. Before the Trial Court, the plaintiffs were examined as P.W.1 to P.W.3 and another witness PW.4 was examined and 17 documents were marked as Ex.A.1 to Ex.A.17. The first defendant has examined seven



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witnesses as DW.1 to D.W.7 and marked 23 documents as Exs.B.1 to B.22 and Ex.X1 on the side of the defendants.

7. After analysing the evidence and documents, the Trial court decreed the suit as prayed for. The Trial court found that the plaintiffs have filed the documents in Ex.A.1 to Ex.A3, Ex.A11 to Ex.A13, Ex.A15 and A.16 coupled with the documents filed by the defendants in Ex.B.20 which are all the kist receipts and adangal extracts, which were in the names of the plaintiffs. The trial court also found that the plaintiffs are in possession and enjoyment of the property at least two years prior to the date of filing of the suit, as observed in the proceedings of Tahsildar in Ex.A.9. The Trial court found that the defendants claim title based on the assignment granted in favour of one Munusamy, Viswanathan and Panchatcharam and the defendants have filed a xerox copy of assignment orders in Ex.B.21, along with documents Ex.B.7 and Ex.B.8 which are the adangal extracts for fasli years only up to 1985. Further, the defendants have not filed any documents to show that they were in possession and enjoyment of the property after 1985 or at the time of filing the suit. Aggrieved by the decree of the trial court, the first



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defendant filed appeal in AS.No.63 of 2005, and the lower appellate court, after reappraising the evidence concluded that the plaintiffs have established their possession through documents and dismissed the appeal. Aggrieved by the same, the first defendant is before this Court on appeal and on his death, his legal heir, the second appellant is on record.

8. This court by order dated 10.03.2023 framed the following substantial questions of law.

1. Whether the Lower Appellate Court was right in granting a declaration of title in the absence of the Government as a party moreso when the respondents had admitted the paramount title of the Government?

ii. Whether the Lower Appellate Court was right in granting a decree for permanent injunction against the true owner moreso when the appellant had established title under Exs.B.2 to B.5 and Ex.B1?

Iii. Whether the Lower Appellate Court was right in upholding the claim of possession in the absence of any evidence of exclusive possession?



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9. In the appeal, the appellants have filed an application under Order XLI Rule 27 to file additional documents, which has been allowed by this Court. The case has been sent to the Lower Appellant Court for taking evidence and marking documents. Pursuant to which, D.W.1 was examined and additional documents from Ex.B.23 to Ex.B.27 have been marked on the side of the defendants.

10. Mrs.G.Sumithra, learned counsel appearing for the appellant submitted that though the suit has been filed by the plaintiffs claiming to be in possession from the year 1985, they have only filed records to show that they were in possession two years prior to the filing of the suit. The learned counsel contended that the documents marked by the appellants are only kist receipts and 'A' register extracts which are not title documents and when the plaintiffs have sought for a declaration, they have failed to produce any documents to establish the title and based on the kist receipts filed by them, at the best, they can claim only possessory title.

11. The learned counsel further contended that even kist receipts



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were obtained only after the date of the suit and therefore the plaintiffs have miserably failed to establish their title and possession. Further, the documents in Ex.A.10 is only the order of the Tahsildhar, passed in the proceedings under Section 45 of Cr.P.C, and that cannot be the basis for the Courts to arrive at their decision about the title of the plaintiffs. But whereas the defendants have filed the documents including registered sale deeds in their favour, and traced the title from the date of the assignment being granted by the Government in favour of Munusamy, Arumugham and Panchakshraram.

12. The learned counsel submitted that both the Courts below failed to consider the evidence and documents in the proper perspective and decreed the suit without the plaintiff proving the case on own merits. But the courts below have passed the decree merely relying on the defence and weakness in the case of the defendants. However, the defendants by filing an application, have brought in documents in Ex.B.23 to Ex.B.27 which are all the certified xerox copies of assignments granted in favour of the first defendant vendor's vendors. Ex.B.24 is the assignment order for the lands in S.No.145/3 granted in



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favour of Arumugham. Ex.B.25 is the assignment order in respect of the land in S.No.150/1 granted in respect of Munusamy and Ex.B.26 is the assignment order in respect of the lands in S.No.150/2 issued in favour of Panchatcharam. Relying on the documents in Ex.B.24, Ex.25 and Ex.B.26, the learned counsel for the appellant contended that as now the assignment orders issued in favour of the vendors' vendors had been brought on record, which was the sole ground on which the suit was decreed and the appeal was dismissed earlier, the present second appeal has to be allowed as the defendants have established the title. The learned counsel for the appellant further contended that when the defendants are having a better title than the plaintiffs, then naturally the defendants are bound to succeed and sought for allowing the second appeal.

13. Per contra, Mrs. Hema Sampath, Senior counsel appearing for the respondents contended that the plaintiffs have been in possession of the property since the year 1985 onwards and they have filed the Adangal and Chitta extract which would prove their possession. Further in the application filed by the defendants vendors' before the Tahsildar, an enquiry was conducted and the order passed by the Tahsildar is filed as



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Ex.A.10 which clearly discloses that the plaintiffs are in possession and enjoyment of the suit property.

14. The learned Senior Counsel contended that the filing of the additional documents in Ex.B.23 to Ex.B.26 in the second appeal by the appellants will be of no avail to them but for the simple reason that the documents in Ex.B.24, B.25 and B.26 do not match with the earlier documents filed by the defendants in Ex.B.21. In fact, the learned senior counsel pointed out that DW.1 in his evidence has clearly admitted that the DKT numbers, the Government seal affixed and the scriptures of the language written on the earlier documents filed in Ex.B.21 do not match with the present documents filed in Ex.B.24 to Ex.B.26. DW.1 has categorically admitted that even in Ex.B.21, they have filed a xerox copy of the assignment order which does not resemble the present documents marked in Ex.B.24 to Ex.26. Further, the witness has admitted that in Ex.B.24, the DKT number given is 340/81 whereas in the earlier document the DKT number is 403/81. As such, the learned senior counsel contended that these documents simply have the initials of the Tahsildar and cannot be taken as certified copies, and further the witnesses have not



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explained how they got the documents. At this juncture, the learned counsel for the appellant contended that these documents have been obtained through the Right to Information Act, but no such proceedings have been filed before this Court. The learned Senior counsel further contended that to overcome the lacunas, the appellants herein have prepared the documents in Ex.B.23 to Ex.B.26 to suit their convenience, which is not in consonance of the earlier documents filed in Ex.B.21 and therefore this Court cannot rely on those documents and they are to be rejected.

15. The learned Senior Counsel further submitted that both the courts below have arrived at a finding of the fact based on the available evidence and documents on record which are not perverse. Therefore, there are no substantial questions of law involved in this appeal for the intervention of this court in the second appeal and therefore sought for dismissal of the above appeal.

16. Heard the learned counsel on either side and gave my anxious consideration.



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17. It is the case of the plaintiffs that the 3 items of the suit properties are Government Tharisu lands and they entered upon possession in the year 1985 and they have developed the property and are in possession and enjoyment of the same. The first plaintiff is in possession and enjoyment of the first item of the property and he has filed the documents Ex.A.1 to A.3 which are kist receipts dated 13.02.1993, 01.02.1992 and 03.02.1991 respectively. Ex.A.4 is the Adangal for fasali 1397 to 1402, 1405 and 1406 which corresponds to Gregorian year 1987 to 1992, 1995 and 1996. Ex.A.5 is the 'A' register extract which discloses the possession of the first plaintiff in respect of item 1 of the suit property. Ex.A.11 to Ex.A.13 are the kist receipts dated 03.02.1991, 01.02.1992 and 13.02.1993 respectively. Ex.A.14 is the Adangal extract for fasali 1400 to 1402, 1405 and 1406 which corresponds to Gregorian year 1990 to 1992, 1995 and 1996 that discloses the possession of the second plaintiff in respect of the item 2 of the suit property. Ex.A.15 and A.16 are the kist receipts dated 01.02.1992 and 13.02.1993 respectively and Ex.A.17 is the Adangal extract for fasali 1398, 1402, 1405 and 1406 which corresponds to Gregorian year 1988 to 1992, 1995 and 1996 that



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discloses the possession of the third plaintiff in respect of the item 3 of the suit property.

18. Apart from these documents, Ex.B.20 is the Adangal extract filed by the first defendant which also reveals that the first plaintiff Vaithyalingam's name is entered in respect of the item 1 of the suit property for fasali 1395 to 1397 and 1399 corresponding Gregorian year 1985 to 1987 and 1989. Further, the third plaintiff Subramaniam's name has been entered for the fasali 1399. The plaintiffs have filed Ex.A.10 which is the proceedings of the Tahsildar. Perusal of Ex.A.10 reveals that the suit property is the Government Tharisu lands and the same cannot be alienated by the private persons and therefore the purchase of the first defendant from defendants 2 to 7 is without verification of the title and are not valid. It was only on the application filed by the vendor of first defendant, Kamarunnissanesa, proceedings under Section 145 of Cr.P.C., was initiated and in the proceedings, the plaintiffs participated and submitted all the relevant documents and the inspection of the property was conducted where the defendants vendor's failed to produce any documents or effectively participate in the proceedings. Ultimately in



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Exs.A.9 and A.10 it is recorded that the plaintiffs are in the possession and enjoyment of the suit property.

19. Apart from the three witnesses of the plaintiffs, they have examined PW.4, Jayaraman, who was the neighbour of the suit property. PW.4 has clearly given evidence that the plaintiffs are in continuous possession of the suit property from the year 1985. The cross examination conducted by the defendants did not reveal anything adverse to the case of the plaintiffs.

20. When the plaintiffs have filed documents kist receipts, adangal extracts, 'A' register and the orders passed by the revenue authorities to establish their possession, the defendants have filed the documents in Exs.B.3, B.4 and B.5 which are all the sale deeds executed by Munusamy, Viswanathan and Panchatcharam in favour of Chottabai and his wife Kamarunnissanesa, the second defendant. After the death of Chottabai, his legal heirs, the second defendants 2 to 7 have sold the suit properties in favour of the first defendant through sale deed in Ex.B.11 dated 11.11.1993. It is the case of the defendants that their vendor's vendors Munusamy, Viswanathan and Panchatcharam are the assignees from the



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government. Except for Ex.B.21, xerox copy of the assignment order in the name of Arumugham, the assignment orders were not produced and therefore the courts below have arrived at the finding of fact that the defendants do not have valid title and they have failed to prove the assignment as claimed by them. The defendants have filed the documents in Ex.B.7, B.8 which are the Adangal extract for fasali up to the year 1979, and further they filed the documents in Ex.B.11 dated 14.06.1984 which are the kist receipts for patta 304 and 1509. The defendants have failed to file the patta to establish that the same correlates to the suit properties. Further the documents in Ex.B.12 to Ex.B.18 certified copy of kist receipts and Ex.B.19, chitta do not contain any survey number to ascertain that those documents pertain to the suit properties.

21. From the documents filed by the defendants it can be seen that they are able to file documents to show that their vendor's were in possession up to the year 1984, but they have failed to file any documents to show the possession of the defendants or the vendors at any point in time after that, except for a kist receipt in the year 1994 which is after filing of the suit. It is the claim of the plaintiffs that they have entered



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into the possession of the property in the year 1985 and they developed the property and are in possession and enjoyment of the suit properties. From the documents filed by the plaintiffs, it is seen that they are in the possession and enjoyment of the suit properties at least two years prior to the filing of the suit and at the time of the initiation of the suit. Therefore, both the courts below have arrived at the finding of the fact that the plaintiffs are in possession and enjoyment of the suit properties.

22. It is also seen that the first defendant vendors have filed the suit as against the plaintiffs in OS.No.1469 of 1989 on 13.12.1989 for declaration of title and injunction and in the alternative for recovery of possession and the same was dismissed for default and the copies of the plaint, written statement and decree have been filed in Exs.A.6 to Ex.A.8. In the written statement, it is stated that the assignments were cancelled by Government and classified as Tharisu. If the defendants vendors had any interest in the suit properties, they could have proceeded with the suit and contested the matter and obtain suitable orders but they have failed to do so. The conduct of the first defendant vendors in allowing the suit to be dismissed and also have not filed any documents and participated in



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the proceedings before Tahsildar which resulted in proceedings in Exs.A.9 and A.10, reveals that the first defendant vendor was not in possession of the necessary documents and not taken any steps to establish their right if at all any as against the plaintiffs.

23. Now much reliance is made on the additional documents in Ex.B.23 to Ex.B.26 by the appellant to contend that those are the certified copy of the assignment orders and therefore the defendants are entitled to succeed. A cursory perusal of the documents filed in Exs.A.23 to A.26, along with the copies of the documents filed in Ex.B.21 shows that both are xerox copies of the alleged assignment orders issued by the Government in favour of Munusamy, Viswanathan, and Panchatcharam. It shows that the copy of the assignment in Ex.B.21 contains different DKT numbers with that of the documents in Ex.B.24 and Ex.B.26. The seal affixed in Ex.B.21 is also missing in the documents in Ex.B.24 to Ex.B.26 and also there are several glaring discrepancies, which shows that the documents in Ex.B.23 to Ex.B.26 and the documents in Ex.B.21 are not the same. When DW.1, admitted that both are certified xerox copies of the assignment orders, the appellant has failed to explain as to



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the differences and how they obtained these documents and further the proceedings under the Right to Information Act have also not been filed before this Court. It is the admitted case of the defendants themselves that the DKT numbers in both copies, differ and the documents in Ex.B.24 to Ex.B.26 are not similar to the same documents earlier filed in Ex.B.21. Further the Tahsildar in the reply in Ex.B.21 has stated that the files regarding DKT Nos.403/81, 404/81 are not available in record room. While so, this Court is not in a position to accept the additional documents in Ex.B.23 to B.26 as certified true copies of the assignment orders issued in favour of Munusamy, Viswanathan and Panchatcharam and therefore the 1st defendant has failed to establish the title of his vendors over the suit property.

24. The plaintiffs are in possession and enjoyment of the suit property and the same has been confirmed by the orders passed by the revenue authority apart from filing of the revenue documents. When the plaintiffs admit that the suit properties belong to the Government and their possession is also recognised by the revenue authorities, they have filed the suit only against the defendants who sought to interfere in their



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possession. The possessory title obtained by the plaintiffs will bind only the defendants and their successors and in such circumstances, it is not necessary for the plaintiffs to include the Government as a party to the suit.

25. Therefore the concurrent finding of fact by the Courts below that the plaintiffs are in possession and enjoyment of the property and the defendants failed to establish better title or possession is based on the available materials on record and is not erroneous or perverse.



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26. Under these circumstances, the substantial questions of law are answered against the appellant and in favour of the respondents. The second appeal is dismissed. However, there is no order as to costs.

29.01.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

To

1.The Principal Sub Court, Vridhachalam

2.The I Additional District Munsif Court,
Vridhachalam.



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