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S.A.Nos.1755 & 1756 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.Nos.1755 & 1756 of 2004

1.Chinnasamy Gounder
2.Palanisamy Gounder
3.K.R.Sivasamy

...Appellants in both S.A.Nos.

Vs.

1.Palanisamy Gounder (Died)
2.Ramasamy Gounder
3.Palanisamy Gounder (Died)
4.Vanjiappa Gounder
5.Visalakshmi Ammal
6.Saraswathy
7.Kowsalya Devi
8.Nirmala Devi
9.R.Meenakshiammal
10.Vanjithal
11.P.Ramasamy
12.P.Sakunthalai @ Rajamani
13.P.Ponnathal
14.J.Revathi
15.P.Senthil Kumar

...Respondents in S.A.No.1755/2004

(Respondents 11 to 12 brought on record as LR's
of the deceased third respondent viz., Palanisamy
Gounder vide Court order dated 18.03.2022 made in
CMP.No.20493/2004 in S.A.No.1755/2004)



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(Cause title accepted vide order dated
08.07.2004 made in CMP.Nos.10877 & 10878/2004)

(R1-Died, respondents 13 to 15 brought on record as
LR's of the deceased first respondent vide Court
dated 08.07.2022 made in CMP.Nos.7137 and 7149/2022
in S.A.No.1755 of 2004)

- 1.Palanisamy Gounder (Died)
- 2.Visalakshmi Ammal
- 3.Saraswathy
- 4.Kowsalya Devi
- 5.Nirmala Devi
- 6.Ramasamy Gounder
- 7.Palanisamy Gounder (Died)
- 8.Vanjiappa Gounder
- 9.R.Meenakshammal
- 10.Vanjithal
- 11.P.Ramasamy
- 12.P.Sakunthalai @ Rajamani
- 13.P.Ponnathal
- 14.J.Revathi
- 15.P.Sentil Kumar

...Respondents in S.A.No.1756/2004

(Respondents 11 & 12 brought on record as LR's
of the deceased 7th respondent viz., (Palanisamy Gounder)
vide Court order dated 18.03.2022 made in
CMP.No.20494 of 2004 in S.A.No.1756/2004)

(R1-Died, respondents 13 to 15 brought on record as LR's
of the deceased first respondent vide Court order dated
08.07.2022 made in CMP.Nos.6594 & 6614/2022
S.A.No.1756 of 2004)



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Prayer in S.A.No.1755 of 2004 : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.41 of 1999 (F.T.C.A.S.No.3 of 2001) dated 07.02.2002 on the file of the Fast Track Court No.3, Dharapuram (Additional District Judge, Dharapuram) reversing the judgment and decree passed in OS.No.44 of 1992 dated 11.01.1999 on the file of the District Munsif Court, Dharapuram.

Prayer in S.A.No.1756 of 2004 : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.29 of 2001(F.T.C.A.S.No.15 of 2001) dated 07.02.2002 on the file of the Fast Track Court No.3, Dharapuram (Additional District Judge, Dharapuram) reversing the judgment and decree passed in OS.No.44 of 1992 dated 11.01.1999 on the file of the District Munsif Court, Dharapuram.

For appellants in
both S.A.Nos. : Mr.V.Anandha Murthy



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For Respondents

in S.A.No.1755/2004

: R1, R3 & R12 – Died

Mr.D.Selvaraju

Assisted by

Mr.P.Navaneetha Krishnan for R11

Mr.R.Rajarajan for R13 & R15

Mr.Saravanan for R4

R2, R5, R6 to R9 & 10 – Alive

For Respondents

in S.A.No.1756/2004

: R1, R7, R10 & R12 – Died

Mr.R.Rajarajan for R13 & R15

Mr.D.Selvaraju

Assisted by

P.Navaneetha Krishnan for R11

R2 to R6, R8, R9 & R14 - Alive

COMMON JUDGMENT

The appellants herein are the plaintiffs 2 & 3 before the trial Court. The respondents are the defendants.

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



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3. The brief facts which give rights to the instant Second Appeal are as follows:

The suit property originally belongs to one Vella Gounder. He has got 3 sons by name Vanjianna Gounder, Ragunatha Gounder and Nallanna Gounder. Among the three sons of Vella Gounder, the issue revolves among the heirs of one of the sons Vanjianna Gounder. The said Vanjianna Gounder has got 5 sons. Among them, the plaintiffs are the legal heirs of one Palanisamy Gounder S/o.Vanjianna Gounder and some of the defendants are the legal heirs of one Vella Gounder S/o.Vanjianna Gounder and other defendants are subsequent purchasers. The suit property is having a total extent of 7 acres 49 cents comprised in S.Nos.1443B, 1444 & 1448 of Moolanur Village. It is the contention of the plaintiffs that, out of 7.49 acres, by virtue of the sale deed dated 19.07.1932, the plaintiffs became the absolute owners of the property in respect of 5.84 acres, and in respect of remaining extent of 1.65 acres comprised in all the S.F.Numbers they claim title by way of adverse possession. Hence the plaintiffs have come forward with the suit for declaration.



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4. The said suit was resisted by the contesting defendants 1 to 3

who are arrayed as respondents 11 and 13 to 15. According to the above defendants, they fairly conceded that an extent of 5.84 acres belongs to the plaintiffs by virtue of Ex.A6 sale deed, but they only disputed the rights of the plaintiffs in respect of 1.66 acres. Among 1.66 acres, 50 cents was claimed by 11th respondent and an extent of 1.66 acres was claimed by the respondents 3 to 15 (legal heirs of defendants 1 and 2). Therefore, it is the contention of the defendants that the plaintiffs cannot have declaration in respect of entire property. Therefore, the defendants prayed to dismiss the suit.

5. Before the trial Court, the plaintiffs examined 3 witnesses as PW1 to PW3 and marked as many as 23 documents and on the side of the defendants, 4 witnesses were examined as DW1 to DW4 and 13 documents were marked.

6. The trial Court, after considering the oral and documentary evidence, decreed the suit as prayed for. Aggrieved by the same, the defendants 1 to 3 preferred an appeal. The first appellate Court reversed the



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findings and eventually dismissed the suit. Not satisfied with the order of the First Appellate Court, the plaintiffs are before this Court by way of Second Appeal.

7. At the time of admission of the Second Appeal, the following substantial questions of law were framed :

“(1) Whether the Lower Appellate Court is right in law in holding that the suit without seeking a relief of partition is not maintainable, when the plaintiffs have proved the earlier family arrangement by both documentary and oral evidence?

(2) Whether the plaintiffs have perfected their title by ouster and adverse possession as against the defendants?”

8. It is the contention of the learned counsel for the appellants/plaintiffs that the Lower Appellate Court has erred in allowing the I.A.No.19 of 2001 to rely upon 1892 documents and it was also contended by



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the learned counsel for the appellants that the findings recorded by the First Appellate Court that the defendants are not at all in possession of the 50 cents of the property and that the revenue records relied by the plaintiffs would unequivocally establish the plaintiffs' adverse possession over the extent of 1.66 acres. Therefore, the finding recorded by the first Appellate Court that the plaintiffs did not prove title over the said extent is erroneous and contrary to the evidence.

9. It was further contended that the findings recorded by the trial Court in rejecting Ex.A1 and Ex.A3 are also untenable under Law. The learned counsel for the appellants would further contend that the trial Court has relied upon Ex.B11/joint patta which in no way denies the title of the plaintiffs. Thus, the learned counsel would submit that the order passed by the first Appellate Court is without any evidence. Hence, prayed to interfere with the same.

10. Per contra, the learned counsel for the respondents would



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vehemently submit that the specific case of the plaintiffs in respect of adverse possession over an extent of 1.66 acres has not been proved and they also fairly submitted that they are not disputing about the plaintiffs right over the extent of 5.84 acres through Ex.A6 sale deed dated 19.07.1932. It is the further contention of the defendants that the trial Court was carried away with the weakness of the defendants' case and the revenue records cannot be relied in favour of the plaintiffs as the plaintiffs did not specify as to where exactly this 1.66 acres lie so as to claim the adverse possession. Hence, prayed to dismiss the suit.

11. As contended by both sides counsel, there is no dispute in respect of 5.84 acres which comprised in three S.F.Nos.qua S.F.Nos.1443B, 1444, 1448 of Moolanur Village. At the same time, it is the contention of the appellants that apart from the above three S.F.Nos., still there is an extent of 1.66 acres for which there is no title deed in the name of the plaintiffs. However, they claim title by way of adverse possession over the extent of 1.66 acres. When this Court put a pertinent question to the learned counsel for the plaintiffs as to where exactly this 1.66 acres lie, the learned counsel would



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fairly concede that 1.66 acres is jointly comprised in all the three S.F.Numbers

and he fairly submits that there is no pleading in this regard. Therefore, in

these background, we must look at whether the plaintiffs have proved adverse

possession in respect of an extent of 1.66 acres. Before we delve into the

disputed facts, this Court deem it appropriate to rely upon the judgment

reported in **(2004) 10 SCC 779 [Karnataka Board of Wakf Vs. Government**

of India] to elicit as to what are the basic requirements to prove the claim of

adverse possession and the relevant paragraph is extracted hereunder:

“11.In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that



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their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period."

12. If we look at the pleading in the plaint, the same did not contain as to from when the plaintiffs possession became adverse to the real owner. But there is only a vague averment in respect of perfection of title over 1.66 acres.

13. In this connection, the learned counsel for the appellants would rely upon the finding recorded by the trial Court. While reading of the judgment of the trial Court, there is no reference as to how the trial Court has arrived at a conclusion regarding the perfection of the plaintiffs title by way of adverse possession. However, the trial Court considered the weakness of the defendants' case and found that since the defendants have not established the possession over an extent of 50 cents of property, held that the plaintiffs have perfected title by way of adverse possession

14. It is well settled principle of law that the plaintiffs cannot



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have advantage over the weakness of the defendants' case. When the plaintiffs come forward with the defence of adverse possession, the burden is upon the plaintiffs to prove his adverse possession as they claim right against the equity. Therefore, no leniency could be given while considering the proof of adverse possession. Thus, this Court holds that the findings recorded by the trial Court that the plaintiffs have perfected title over the extent of 50 cents is without any evidence and admittedly, there is no document to show that, in respect of 50 cents, the plaintiffs have been in continuous uninterrupted and peaceful possession. In respect of 1.16 acres a finding was given by the trial Court referring about the various revenue records. While perusing the revenue records we cannot find out any specific boundaries so as to cull out the extent of 1.16 acres. Apart from that, the revenue records will in no way helpful to the plaintiffs to prove their possession, since they have come up with the specific case that 1.16 acres is comprised in three different S.F.Numbers.

15. Admittedly, the plaintiffs have also got right over the remaining extent of 5.84 acres in the above three S.F.Numbers. The mere reference about the certain revenue records cannot be relied in isolation from



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the property referred to Ex.A6 sale agreement. Therefore, this Court is of the firm view that the findings recorded by the trial Court that the plaintiffs have perfected title by way of adverse possession is without any evidence. However, the first Appellate Court has rightly held that the plaintiffs have not proved the title by way of adverse possession, based upon the reasons discussed hereunder.

16. There is also different angle to the above aspect. In respect of 1.16 acres, the defendants 1 and 2 are the co-owners of the plaintiffs. Therefore, even if we presume that the plaintiffs are in possession over the property, there are no records to show that their possession is adverse to the interest of the defendants 1 and 2 are at the best their possession could only to be construed as a joint possession along with the defendants. In this connection, it is useful to refer to the judgment reported in *AIR 1957 SC 314 (P. Lakshmi Reddy vs L. Lakshmi Reddy)*. Therefore, this Court is of the firm view that the well reasoned findings recorded by the first Appellate Court does not require any interference by this Court. Hence, in view of the above detailed discussion, the substantial questions law are answered in favour of



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the respondents.

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17. In the result, these Second Appeals are dismissed. There shall be no order as to costs.

10.04.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Fast Track Court No.3, Dharapuram
(Additional District Judge, Dharapuram).
- 2.The District Munsif Court, Dharapuram.



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C.KUMARAPPAN,J.

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