



WEB COPY



S.A.No.1958 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1958 of 2004

1. Palanivel
2. Selvarathinam
3. Kuppusamy

... Appellants

Vs.

1. Nallayammal (Died)
2. Lakshmi
3. Rajammal

(Sole respondent died, RR2 & 3 are brought on record as Lrs of the deceased sole respondent vide Court order dated 15.04.2024 made in C.M.P.Nos.8156, 8158 & 8159 of 2024 in S.A.No.19858 of 2004)

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code to allow the above appeal with costs throughout, set aside the judgement and decree dated 25.10.2002 made in A.S.No.16 of 2002 on the file of the Fast Track Court-3, (Addl. District Court) Namakkal and also set aside the judgement and decree dated 15.03.1993 made in O.S.No.119 of 1987 on the file of the District Munsif Court, Rasipuram.



S.A.No.1958 of 2004

For Appellants : Mr. C.P.Sivamohan

For Respondents : Mr. K.Vasuvenkat

JUDGEMENT

The defendants are the appellants herein. The first respondent (since deceased) is the plaintiff before the Trial Court.

2. Since the first respondent died during the pendency of the Second Appeal, her daughters viz., Lakshmi and Rajammal were impleaded as the appellants 2 and 3 in the Second Appeal.

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

4. According to the plaintiff, the suit property originally belonged to her father-in-law, and she has been in continuous possession of the same for more than 40 years. The defendants, who are residents in D.No.87(A), are not concerned with the suit property, and have been doing weaving business. Only to take vengeance, they have attempted to interfere with the possession



S.A.No.1958 of 2004

WEB COPY

of the property and interfered in the plaintiff's avocation of manufacturing pottery. Hence, the plaintiff came forward with the suit for declaration and injunction.

5. The said suit was resisted by the defendants by contending that the suit property originally belonged to the plaintiff's father-in-law, and that one Chinna Kutty Gounder purchased the said property from the plaintiff's father-in-law by virtue of a document dated 17.06.1960. Thereafter, the said Chinna Kutty Gounder sold the property to one Palaniyappa Chettiyar on 12.12.1967, and thereafter, the said Palaniyappa Chettiyar's legal heirs sold the property to the defendants 1 and 2 vide document dated 12.12.1986. As such, it is the specific contention of the defendants that the suit property is their absolute property. They also further pleaded that, in the plaint, the plaintiff has referred to the door number of the suit property as 3/18, which is not at all in existence, and the correct door number of the suit property is 3/54, and that, the plaintiff has manipulated the documents with ulterior motive. Hence, they prayed to dismiss the suit.

6. After filing the written statement, the plaintiff filed a reply



S.A.No.1958 of 2004

statement, wherein she disputes the ownership of her father-in-law. On the other hand, it was stated that the suit property was a Sreethana property of her mother-in-law, and that her father-in-law had no right or title over the suit property, to execute any sale deed. Even if there is any sale deed in the name of the defendants, through which the defendants could not derive any title. Thus, it is her specific submission that she has been in possession and enjoyment of the suit property for more than 40 years. Hence, she had reiterated that, she is entitled to have declaration and injunction.

7. Before the Trial Court, the plaintiff has examined 5 witnesses as PW1 to PW5, and marked as many as 18 documents as Exs.A1 to A18. On behalf of the defendants, 3 witnesses were examined as DW1 to DW3, and 7 documents were marked as Exs.B1 to B7. Additionally, 2 documents were marked as Court Documents.

8. The Trial Court, after having considered the oral and documentary evidence, has ultimately found that, the plaintiff has established her title over the suit property through adverse possession, and decreed the suit. Not satisfied with the order of the Trial Court, the appellants preferred the First



S.A.No.1958 of 2004

Appeal in A.S.No.16 of 2002 before the Fast Track Court-3 (Additional District Judge), Namakkal. However, the Appellate Court, vide order dated 25.10.2002, has concurred with the findings of the Trial Court and ultimately dismissed the appeal.

9. Aggrieved with the judgment of the First Appellate Court, the appellants preferred the instant Second Appeal.

10. At the time of admitting the Second Appeal on 13.06.2024, this Court has formulated the following substantial questions of law:-

“1. Whether the findings of the Trial Court that the respondent/plaintiff has got title by adverse possession is erroneous in the eye of law and perverse against the evidence on record?

2. Whether the claim of the plaintiff is that he got title by adverse possession as well as by inheritance is legally maintainable?

3. To what relief?

11. I have heard Mr.C.P.Sivamohan, the learned counsel for the appellants and Mr. K.Vasuvenkat, the learned counsel for the respondents.



S.A.No.1958 of 2004

WEB COPY

12. The learned counsel for the appellants would vehemently contend that the Trial Court, as well as the First Appellate Court, did not take into consideration of the contradictory pleadings of the plaintiff. It is his specific contention that, when the plaintiff pleads for adverse possession, there is an indirect admission towards the ownership of the defendants title over the suit property. However, while filing the reply statement, the plaintiff took a inconsistent defence as if her mother-in-law was the owner of the property.

13. The learned counsel would further contend that the findings rendered by both the Courts below, that the plaintiff had been in possession since 1967, is contrary to the evidence. He would contend that according to the certified copy of DW2's evidence, who was the predecessor-in-title of the defendants/appellants, the plaintiff possession commences only from 1976 and not 1967. It is his further submission that if 1976 taken, the plaintiff had not been in possession of the suit property for more than the statutory period. It is further contended that, even the concurrent findings could be interfered with, when finding rendered by both the Courts below are perverse. To buttress his submissions, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court of India in *Nazir Mohamed Vs.*



S.A.No.1958 of 2004

J.Kamala and others, reported in **2020 (6) CTC 320**.

WEB COPY

14. Per contra, the learned counsel for the respondents/plaintiff would contend that, though there is a reference that the plaintiff's predecessor-in-title has sold the property to the defendants, the ultimate defence put forth by the plaintiff is that she has been in continuous possession of the suit property for more than the statutory period. It is their contention that the defendants, without having any title over the same, are interfering with her possession. The admission of the DW2 qua the defendants' predecessor-in-title, that the plaintiff had been in possession since 1967 would by itself is sufficient to confirm the decree of both the Courts below. Hence, he prayed to dismiss the Second Appeal.

15. I have given my anxious consideration of the submissions made on either side.

16. Before delving into the merits of the matter, I deem it appropriate to discuss the judgment of the Hon'ble Supreme Court of India, cited by the



S.A.No.1958 of 2004

learned counsel for the appellants in ***Nazir Mohamed Vs. J.Kamala and others***, reported in **2020 (6) CTC 320**. The Hon'ble Supreme Court of India has categorically held that, the substantial questions of law must be debatable, not previously settled by the law of the land, or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way. In paragraph 33 of the said judgment, the Hon'ble Supreme Court of India dealt with what constitutes a question of law. For ready reference, it is appropriate to extract the relevant portions of the judgment of the Hon'ble Supreme Court of India in ***Nazir Mohamed's case*** (cited supra), which reads as follows:-

“33. To be a Question of Law “involved in the case”, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that Question of Law for a just and property decision of the case.

*34. Where no such Question of Law, nor even a mixed Question of Law and fact was urged before the Trial Court or that First Appellate Court, as in this case, a Second Appeal cannot be entertained, as held by this Court in **Panchagopal Barua Vs. Vinesh Chandra Goswami**, AIR 1997 SC 1047.”*



S.A.No.1958 of 2004

WEB COPY

17. While summarizing the principles enunciated under various precedents, in paragraph 37 of the judgment in *Nazir Mohamed's case* (cited supra), held as follows:-

“37. The principles relating to Section 100, C.P.C. relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a Question of Law. Construction of a document, involving the application of any principle of law, is also a Question of Law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a Question of Law.

(ii) The High Court should be satisfied that the case involves a Substantial Question of Law, and not a mere Question of Law. A Question of Law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the Suit) will be a Substantial Question of Law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A Substantial Question of Law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents,



S.A.No.1958 of 2004

but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the Substantial Question of Law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the Courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

18. According to the above precedents, the High Court generally will not interfere with the concurrent findings of the Courts below, unless the Courts below have ignored material evidence, or the Courts below have drawn wrong inferences, or when the Courts below have wrongly cast the



S.A.No.1958 of 2004

burden of proof. With this in mind, let us proceed with the factual position of the instant appeal. The first point urged by the learned counsel for the appellants is that the plaintiff has taken inconsistency defence of, ownership on the one hand and perfecting title by adverse possession on the other hand. According to the appellants, the above defence will not go together.

19. On a wholesome reading of the plaint pleadings, it reveals that, though the plaintiff pleaded as if she has been in possession of the suit property for more than 40 years, in the reply statement, she had stated that the suit property originally, Sreethana property of her mother-in-law, and ultimately, after her demise, it devolved upon her father-in-law and their two sons. She had also admitted the execution of a sale deed [Ex.P3] that stands in the name of the defendants' predecessor. However, the ultimate contention of the plaintiff is that she has been in possession of the property for more than 40 years. Therefore, this Court could not find any dichotomy in the plaint pleadings as her ultimate defence is that she has been in continuous possession for more than 40 years.

20. In order to substantiate such contention, the learned counsel for the



S.A.No.1958 of 2004

plaintiff would rely upon the findings rendered by the Trial Court, wherein the Trial Court, in paragraph 12, had referred to the fact that the appellants' predecessor-in-title had admitted to the effect that the plaintiff has been in possession since 1967. In this regard, the learned counsel for the plaintiff would invite the attention of this Court to the admission made by the defendants' predecessor in title qua DW2. According to him, the plaintiff has been in possession even while the suit property was purchased by the defendants through Ex.B1. He would also admit that, since 1967, the plaintiff has been in the possession of the suit property. However, this contention was strongly objected to by the learned counsel for the defendants and to contradict this observation relied upon the certified copy of DW2's deposition. Based upon the said deposition, the learned counsel would submit that the evidence of DW2 refers only the year 1976.

21. Though the learned counsel produced a certified copy across the bar, this Court handicapped to cross-check the veracity of the same, as the original deposition have already been destroyed by the Trial Court. Here, the Trial Court, as well as the First Appellate Court, has recorded that, the DW2



S.A.No.1958 of 2004

had admitted the plaintiff's possession since 1967. In view of the above categorical findings of fact rendered by both the Courts below, this Court is not in a position to concur with the submission made by the learned counsel for the defendants. Further, curiously no grounds of appeal raised on the above point, either before the First Appellate Court or before this Court. Therefore, this Court is of the view that the findings of fact rendered by both the Courts below, that the plaintiff had been in possession since 1967 onwards, has to be upheld.

22. It is a well-settled principle of law that the mere possibility of an alternative view cannot be a ground to interfere with the findings rendered by both the Courts below. The learned counsel for the appellants would rely upon the judgment of the Hon'ble Supreme Court of India in ***Brijesh Kumar Vs. Shardabai (Dead) by L.Rs***, reported in ***2021 (1) CTC 123***, and would contend that the plaintiff did not plead as to from when her possession became adverse. But, while reading the plaint, it has been categorically mentioned that for about more than 40 years, she had been in continuous possession, and this fact was admitted by DW2. Therefore, there is no scope to apply the above precedent in this case, as the facts of the reported case are



23. In yet another judgment relied upon by the learned counsel for the appellants in ***Karnataka Board of Wakf Vs. Govt. of India***, reported in ***(2004) 10 SCC 779***. the Hon'ble Supreme Court of India held that the proof of adverse possession cannot be based upon the historical background, without even having any revenue records. Whereas, in this case, the plaintiff had submitted house tax receipts since 1967 onwards, and which factum had been vindicated by DW2's evidence. Therefore, this Court is of the firm view that the plaintiff has established his right over the suit property. In view of what have been stated herein above, this Court could not find any perversity in the findings of both the Courts below. Thus, the substantial questions of law are answered in favour of the respondents/plaintiff.

24. In the result, this Second Appeal is dismissed. No costs.

13.12.2024

kv



S.A.No.1958 of 2004

Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No

To

1. The Fast Track Court-3, (Addl. District Court),
Namakkal.
2. The District Munsif Court, Rasipuram.



WEB COPY



S.A.No.1958 of 2004

C.KUMARAPPAN, J.

kv

S.A.No.1958 of 2004

13.12.2024