IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 03 / 2024

JUDGMENT PRONOUNCED ON : 19 / 06 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.1064 OF 2005
AND
CMP NO.14582 OF 2005

1.Renganathan
2.Viswanathan
3.Venkatesan
4.Thangammal @ Thangayal
5.Kolanjiammal ... Defendants 1 to 5 / Respondents 1 to 5/ Appellants

Versus

1.K.G.Kaliyaperumal Chettiyar (died) ... Plaintiff / Appellant 1st Respondent

2.Government of Tamil Nadu
Rep. by District Collector
Cuddalore.

3.Inspector
Natham Alavai
Vridhachalam.

4.Rasathi
5.Selvam
6.Sarangapani
7.Murugan
8.Lakshmi
(R1 died. RR4 to 8 brought on record as
LRs' of the deceased R1 viz., KG Kaliyaperumal
Chettiyar vide Court order dated 22.04.2021
made in in CMPs 3337, 3339 and 3341 / 2010
in SA No.1064 / 2005) ... Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree of the Additional Subordinate Judge's Court at Vridhachalam, dated October 5th, 2004 in A.S.No.118 of 2003 reversing the judgment and decree of the District Munsif cum Judicial Magistrate at Neyveli, dated September 12th, 2003 in O.S.No.1 of 1998.

For Appellants : Ms.Gayatri
for M/s.Sarvabhauman Associates

For Respondent 3 : Mr.V.Ramesh
Government Advocate

For Respondents 4-8: Mr.T.Dhanasekaran

JUDGMENT

This Second Appeal is directed against the judgment and decree dated October 5 , 2004 passed in A.S.No.118 of 2003 by ‘the Additional Subordinate Court, Vridhachalam' [henceforth 'First Appellate Court'].

2.The appellants herein and the first respondent herein are the defendants 1 to 5 and the plaintiff respectively in O.S.No.1 of 1998 on the file of 'District Munsif cum Judicial Magistrate Court, Neyveli' [henceforth 'Trial Court'].

3.Since the plaintiff / first respondent herein died on August 5, 2018, his legal heirs were brought on record as respondents 4 to 8 vide order of this Court dated April 22, 2021, in CMP No.3341 of 2020 in S.A.No.1064 of 2005.

4.For the sake of convenience, the parties will be referred to as per their array in the Suit *i.e.,* the appellants 1 to 5 will be referred to as defendants 1 to 5; first respondent will be referred to as plaintiff; and respondents 2 and 3 will be referred to as defendants 6 and 7.

Case of the Plaintiff:

5.The Suit Property is an extent of 6 Cents in R.Survey No.318/14 which originally belonged to one Iyyakannu Chettiar

S/o.Ramasamy Chettiar. The plaintiff's paternal uncle - Uthandi Chettiar purchased the Suit Property along with some other properties from the said Iyyakannu Chettiar vide Sale Deed dated October 20,1938. The said Uthandi Chettiar and his wife passed away without any issues. After their demise, plaintiff's father - Govinda Chettiar acquired the Suit Property along with some other properties by way of survivorship. The plaintiff's father - Govinda Chettiar passed away in the year 1954. After his demise, the plaintiff and his brother - Subramaniam had orally partitioned the properties in the year 1962. The plaintiff's mother - Radhambal had informed that she did not want any share in the properties. Hence, she was not allotted any Property. The Suit Property fell to the share of the plaintiff.

5.1.The plaintiff's mother - Radhambal passed away in the year 1987. From the date of partition, the plaintiff is in possession and enjoyment of the Property by paying Kist to the Government. Patta stands in the name of the plaintiff. The first defendant had no title and right over the Suit Property.

5.2.The first defendant has Property on the northern and the western side of the Suit Property. Taking advantage of the same, the first defendant had encroached upon the Suit Property and has constructed a house two years ago. Hence, the first defendant is a trespasser. The plaintiff came to know the fact that the first defendant with a connivance of the defendants 6 and 7 had changed the Patta in his name. The defendants 6 and 7 without conducting any proper enquiry, had issued Patta in favour of the plaintiff and hence, it is not legally valid.

5.3.The Suit Property is a cultivable land. The plaintiff was cultivating Ragi and Kambu. Since the defendants 1 to 5 have encroached upon the Property and had constructed houses, the plaintiff could not get income from the Suit property. On July 12, 1997, the plaintiff issued notice to the defendants 1, 6 and 7 directing the first defendant to vacate and hand over the vacant site and calling upon the defendants 6 and 7 to cancel the Patta.

5.4.The first defendant issued reply notice on July 29, 1997 with false allegations. In the said reply, the first defendant has stated that his father had purchased the Suit Property from them and had constructed a house in the year 1983 itself. He has been in possession and enjoyment of the same and thus, he has prescribed title by adverse possession.

5.5.Therefore, the plaintiff filed a Suit for declaration, for recovery of vacant possession, for mandatory injunction against the defendants 6 and 7 to cancel the Patta in respect of the Suit Property and for *mesne* profits and costs.

Case of the defendants:

6.The defendants 1 to 5 filed written statement stating that the plaintiff's father owned R.Survey No.318/13 and R.Survey No.318/14 surrounded by the Cart Track on the East, Rangasamy Padaiyachi's land on the South and the West, and R.Survey No.318/11 on the North. After the demise of plaintiff's father, plaintiff's mother - Rajammal, for herself and for the minor plaintiff as a guardian, sold an extent of 55 Cents within the aforementioned four boundaries vide Sale Deed dated August 6, 1954, to Chinnasami, who is the father of D1 to D3 & D5 and husband of D4. Post the Sale, the plaintiff's family does not have any right in the said extent of 55 Cents. R.Survey No.318/13 was subsequently subdivided under Updating Registry Scheme (UDR Scheme). R.Survey No.318/12 and R.Survey No.319 are the Cart Track. On the western side of the Cart Track are the entire extent of land in R.Survey No.318/14 and a part of the land in R.Survey Nos. 318/13. Though R.Survey No.318/14 was over-sightedly omitted in the said Sale Deed, it is clear that the land surrounded by the aforementioned four boundaries forms the subject matter of the Sale Deed which includes R.Survey No.318/14 (Suit Property).

6.1.Further, the defendants 1 to 5 were in open and continuous possession and enjoyment of the Suit property, adverse to the plaintiff's family. The defendants 1 to 5 constructed a house occupying a major portion of the Suit Property in the year 1983 itself . The plaintiff was well aware of the said fact. Hence, the defendants 1 to 5 have perfected title by Adverse

Possession also and thus, the plaintiff has lost his title, if any over of the Suit Property.

6.2.Considering the continuous possession and enjoyment over the Suit Property by D1 to D5, D6 and D7 arranged Patta in the name of D1, in which there is no illegality or irregularity. Hence the Suit is liable to be dismissed.

7.The 7th defendant filed written statement which has been adopted by the sixth defendant. It is stated that the seventh defendant is not the competent authority to issue Patta. The seventh defendant can only measure the lands and send report to the higher officials. When the seventh defendant went to measure the lands, he came to know that the Suit Property was in possession and enjoyment of the defendants 2 and 3. There was no necessity to add 6th and 7th defendants as parties to the Suit. Hence, they sought to dismiss the Suit.

8.At trial, the plaintiff examined himself as P.W.1 and Ex-A.1 to Ex-A.39 were marked. The second defendant examined himself as D.W.1 along with D.W.2 to D.W.6 and Ex-B.1 to Ex-B.19 were marked. Ex-X.1 to Ex-X.4 were also marked through D.W.4. After hearing the arguments on both sides and perusing the evidence available on record, the Trial Court held that in a Suit for recovery of possession, the burden is upon the plaintiff to prove his title and he cannot take advantage of weakness of the defence side and that the plaintiff failed to prove his title over the Suit Property. Further held that the defendants nos.1 to 5 have perfected title by adverse possession *qua* Suit property. Accordingly, the Trial Court dismissed the Suit.

9.Feeling aggrieved with the judgment and decree of the Trial Court, the plaintiff / appellant preferred an appeal in A.S.No.118 of 2003 before the First Appellate Court.

10.The First Appellate Court found that the Patta, Adangal and Kist receipts would show that the plaintiff alone is in possession and enjoyment of the Suit Property and that the claim of adverse possession has not been established by the defendants. Accordingly, allowed the Appeal and set aside the Trial Court's decree and judgment, and decreed the Suit as prayed for.

11.Feeling aggrieved with the judgment and decree passed by the First Appellate Court, the defendants 1 to 5 in the Suit filed this Second Appeal.

12.This Second Appeal was admitted on September 2, 2005 on the following substantial questions of law:

> *"1.Whether the Lower Appellate Court is correct in law in granting decree for possession and removal of construction of the building put up in the year 1983 in respect of the Suit filed in the year 1998, especially when such a relief is barred under Article 113 of the Limitation Act, 1963?*
>
> *2.Whether the Lower Appellate Court is correct in law in arbitrarily awarding mesne profits at the rate of Rs.1000/- per annum especially when it has to be relegated (*Sic. *related) to a separate proceedings under Order 20 Rule 12 of the Code of Civil Procedure?"*

<u>Arguments</u>

13.The learned counsel for the appellants / defendants 1 to 5 would argue that the First Appellate Court miserably failed to appreciate the defendants' side documents especially Ex-B.1 to Ex-B.3, which clearly establish that Chinnasamy, who is the father of D1 to D3 and D5, purchased an extent of 55 Cents in R.Survey No.318/13 and R.Survey No.318/14 within four specific boundaries. R.Survey No.318/14 was inadvertently omitted in the Sale Deed. But, the four boundaries stated in Ex-B.1 would show that the subject matter therein includes R.Survey No.318/14.

13.1.Further would submit that, it is a settled law that four boundaries will prevail over extent and survey numbers. The First Appellate Court failed to consider the said legal position.

13.2.Further would submit that, the defendants 1 to 5 are in possession and enjoyment over the Suit Property by paying Kist and the defendants had constructed a house in the year 1983 in the Suit Property. ExB.8 to Ex-B.14 are the House Tax Receipts. The revenue records also stands in the names of the defendants.

13.3.Further would submit that recognizing the title and possession of the defendants 1 to 5, Patta has been issued under Natham Land Tax Scheme for R.Survey No.318/14 in the name of the defendants. The said fact has not been considered by the First Appellate Court. Accordingly, he prayed to allow the Second Appeal and confirm the decree and judgment passed by the Trial Court.

14.The learned Government Advocate appearing for the respondents 2 and 3 would reiterate the averments made in the Written Statement filed by D7 and adopted by D6 and prayed to dismiss the Suit.

15.On the other hand, the learned counsel for the first respondent / plaintiff would contend that the plaintiff's mother did not sell the Property covered under R.Survey No.318/14 vide Ex-B.1. The Suit Property, namely R.Survey No.318/14, is in continuous possession and enjoyment of the plaintiff. The revenue records, namely Patta and Chitta, stand in the name of the plaintiff. In or about 1995, the defendants encroached the Suit Property and put up construction over the encroached portion. The First Appellate Court, after considering the oral and documentary evidence in proper perspective, allowed the appeal and hence, there is no warrant to interfere with the judgment of the First Appellate Court. Accordingly, he prayed to dismiss the Second Appeal.

Discussion and Decision:

16.This Court has considered the submissions made on either side and perused the evidence available on record in light of the Substantial Questions of Law.

17.There is no dispute that, originally the plaintiff's forefather purchased an extent of 58 Cents in R.Survey No.318/5, 6 Cents in R.Survey No.318/14 and 12 Cents in R.Survey No.318/13 under Ex-A.1 - Sale Deed.

18.According to the plaintiffs, the plaintiff's mother - Rajammal executed a Sale Deed in favour of Chinnasamy Padayatchi, who is the father of the D1, D2, D3 and D5 and husband of the D4, in respect of an extent of 55 Cents in R.Survey No.318/13 within specific four boundaries. The plaintiff's mother - Rajammal has not executed any Sale Deed in respect of R.Survey No.318/14. Patta, Chitta and Adangal stands in the name of the plaintiff. According to the defendants, R.Survey No.318/14 is also covered under ExB.1 - Sale Deed.

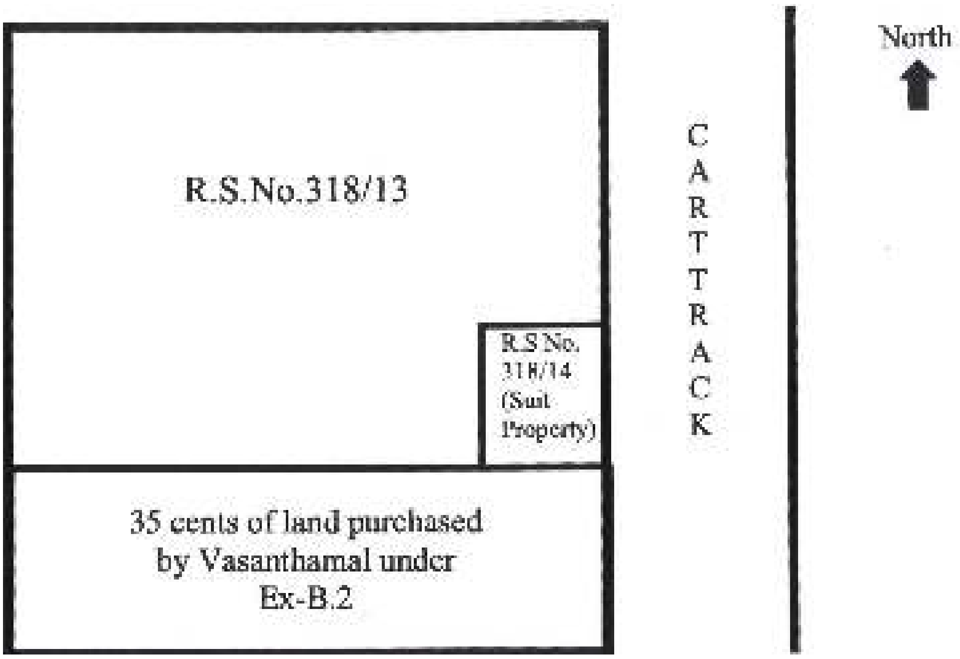
19.Though revenue records are not documents of title, Cultivation Adangal Records along with Kist Receipts and other revenue records can be relied on for the purpose of proof of possession when there is no evidence to suggest the contrary. The plaintiff filed Ex-A.3 - Adangal Extract for the Fasli years 1380 to 1387, 1389, 1390, 1391 and 1395 and Ex-A.37 Adangal extract for the Fasli year 1400 which show that the plaintiff was in possession and enjoyment of the Suit Property until the year 1990. Further, the Kist Receipts and other revenue records would also establish the plaintiff's possession and title over the Suit Property.

20.The defendants 1 to 5 contended that, in recognition of their possession and title, D6 and D7 had issued Ex-B.18 - Patta. This Court has perused Ex-B.18 which is a Patta issued under Natham Land Tax Scheme in the year 2000 *i.e.,* after filing of the Suit. D.W.5, who is the Surveyor, has deposed that no notice was issued to the plaintiff while issuing Natham patta to the defendants 1 to 5. Hence, Ex-B.18 was issued without proper notice to the plaintiff and thus, without following the principles of natural justice.

21.It is true that, Kist Receipts and the House Tax Receipts stand in the names of defendants since 1985-1986 (Ex-B.8). But the Kist Receipts are related to R.Survey No.318/13. The defendants failed to produce the plan to show in which Survey number the house has been constructed and that the House Tax Receipts are related to R.Survey No.318/14. Hence, the House Tax Receipts and Kist Receipts would not lend any support to the defendants' case. The said documents would not confer any title or right to the defendants 1 to 5 over the Suit Property.

22.According to the plaintiff, the defendants encroached the Suit Property and put up construction therein in the year 1995. The Suit Property is an extent of 6 Cents in R.Survey No.318/14. In the revenue records, the Suit Property has been classified as Ryotwari Punja Land. As stated *supra*, Patta has been issued to the defendants under Natham Land Tax Scheme, that too, without notice to the plaintiff. The defendants 1 to 5 contended that though R.Survey No.318/14 was inadvertently omitted in Ex-B.1, the description of four boundaries therein would clearly prove that R.Survey No.318/14 was covered under Ex-B.1. They also relied heavily on the boundaries stated in Exs-B.2 & B.3 - Sale Deeds.

22.1.For better appreciation of the facts, a rough sketch describing the location of Suit Property is drawn hereunder:



22.2.As stated *supra*, under Ex-B.1, an extent of 55 Cents in

R.Survey No.318/13 were sold to the defendants by the plaintiff's mother. The Suit Property is only a meagre portion of land measuring 6 Cents in R.Survey No.318/14 situated in the eastern portion of the said 55 Cents land in R.Survey No.318/13. The said 55 Cents land in R.Survey No.318/13 surrounds the 6 Cents land in R.Survey No.318/14 on the 6 Cents land's North, South and West sides while the Cart Track borders its east side. Major portion of the said 55 Cents land in R.Survey No.318/13 adjoins the Cart Track. In such a scenario, given the facts and circumstances of the case, merely describing the cart track, located to the east of the 6 cents in R.Survey No.318/14 and the 55 cents in R.Survey No.318/13, as the eastern boundary of the 55 cents of land does not imply that the 6 cents in R.Survey No. 318/14 is also included under Ex-B.1.

22.3.As far as Ex-B.2 - Sale Deed is concerned, one Vasanthamal purchased 35 Cents of land from one Rangasamy under Ex-B.2. The said land is situated in R.Survey No.318/13 on the southern side of the 55 Cents land belonging to the defendants in the same Survey Number *i.e.,* R.Survey No.318/13. The contention of the defendants is that, in Ex-B.2, northern boundary of the land purchased thereunder has been described as defendants' land; and that R.Survey No.318/14 adjoins the northern boundary of the land purchased thereunder and therefore, it shows that R.Survey No.318/14 belongs to the defendants.

22.4.As far as Ex-B.3 - Sale Deed is concerned, the said Vasanthamal sold a portion in the eastern side of the 35 Cents land she purchased *viz.,* 10 Cents to one Ramadass under Ex-B.3. In Ex-B.3, defendants' land has been described as the northern boundary of the subject matter *viz.,* 10 Cents. The contention of the defendants is that, R.Survey No.318/14 adjoins the northern boundary of the subject matter *viz.,* 10 Cents and hence, it shows that R.Survey No.318/14 belongs to the defendant.

22.5.It is true that when an extent has been described approximately, the four boundaries will prevail over extent and even survey number. In the instant case, as shown in the rough sketch, both the 55 Cents land in R.Survey No.318/13 and the 6 Cents land in R.Survey No.318/14, lies on the northern boundary of the land covered under Exs-B.2 and B.3. As stated *supra*, the 6 Cents land in R.Survey No.318/14 is a meagre extent of land compared to the 55 Cents land in R.Survey No.318/13. Hence, it is highly probable that Exs-B.2 and B.3 refer to R.Survey No.318/13 and not the meagre extent in R.Survey No.318/14. Notably, the plaintiff was not a signatory to the said Sale Deeds. Further, R.Survey No.318/14 is a separate Survey Number since the execution of Ex-A.1 - Sale Deed *viz.,* 1938, whereby the plaintiff's paternal uncle purchased the Suit Property along with some other Property. Hence, in the facts and circumstances of the instant case, the general proposition of law that four boundaries will prevail over extent and survey number will not be applicable. This Court is of the view that the evidence available on record is not sufficient to prove that R.Survey No.318/14 belongs to the defendants.

23.As far the plea of adverse possession goes, the defendants 1 to 5, at the time of trial, stuck to the plea of title alone. Even while assuming that the defendants 1 to 5 had elected the plea of adverse possession, the said plea has not been established. This Court finds it appropriate to summarize the law on this subject. Adverse Possession begins with wrongful possession and is claimed against rightful ownership. Key requirements include actual, conclusive, open, and uninterrupted hostile possession with a clear intent to assert ownership of the Property in question, adverse to the true owner's rights. To establish a claim of adverse possession, specific allegations regarding when and how the possession turned adverse to the true owner are essential for determining the limitation period from that point onward. Adverse possession is primarily a matter of fact and must be pleaded with specificity and substantiated with legal evidence. Mere long-term possession alone is insufficient to establish adverse possession. *Animus Possidendi* against the true owner is also required. Furthermore, permissive possession can never be considered adverse. As stated *supra*, documentary evidence is available to prove that the plaintiff was in possession of the Suit Property until 1990. The Suit was filed on December 24, 1997. Though the defendants have pleaded that he constructed house in the Suit Property in the year 1983 and that the plaintiff was aware of the same, they have failed to establish the same. There is no evidence to show that the defendants were in open and continuous enjoyment of the Suit Property for the statutory period which is 12 years. Hence, the plea of adverse possession has not been established by D1 to D5.

24.The defendants failed to establish that they had perfected title by adverse possession. The Suit is filed well within three years from the date of knowledge of the plaint. The Suit is not barred under Article 113 of the Limitation Act, 1963. Further, as per Article 65, the plaintiff as a title holder is entitled to recover possession or interest therein within 12 years from when the possession of the defendant becomes adverse to the plaintiff. The Substantial Question of Law No.1 is answered accordingly, in favour of the plaintiff and against the defendants.

25.As far as *mesne* profits are concerned, the First Appellate Court without any enquiry or evidence, ordered the defendants to pay a sum of Rs.1,000/- per annum from the year 1995 till recovery of possession, which is not in accordance with law. There is no sufficient evidence available on record to quantify the *mesne* profits. Hence, *mesne* profit can be decided in a separate enquiry. Accordingly, Substantial Question of Law No.2 is answered in favour of the defendants and against the plaintiff.

26.For the above reasons, **this Second Appeal is partly allowed** in the following terms :

(i)It is hereby declared that the plaintiff / **respondents 4 to 8 (legal representatives of the plaintiff)** are the owners of the Suit Property and the defendants 1 to 5 are directed to hand over vacant possession after removing the superstructures, if any, to the plaintiff within three months from today i.e., **on or before September 19, 2024.**

(ii)In case, if the defendants / appellants failed to handover vacant possession, the plaintiff / respondent 4 to 8 are entitled to recover possession through the process of court.

(iii)The respondents 2 and 3 are directed to cancel the Patta issued in the name of the defendants and restore its original position.

(iv)The plaintiff / respondents 4 to 8 are entitled to *mesne* profits and the same shall be decided in a separate enquiry subject to payment of Court Fee.

(v)No costs.

(vi)Consequently, connected Civil Miscellaneous Petition is closed.

19 / 06 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

1.The Additional Subordinate Judge
Vridhachalam.

2.District Munsif cum Judicial Magistrate
Neyveli.

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN S.A.NO.1064 OF 2005

19 / 06 / 2024