



S.A.No.285 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.285 of 2021
and
C.M.P.No.4057 of 2024

Anjalaiammal (Died)

1. Nallamuthu
2. Periyasamy
3. Amulu
4. Akilandam
5. Mayavathi

... Appellants

Vs.

1.Panchavarnam

2.The Thasildar,
Sendurai Taluk, Ariyalur District.

3.The District Collector,
Ariyalur District.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 31.10.2019 in A.S.No.5 of 2017 on the file of the Additional Sub Court, Ariyalur, confirming the judgment and decree dated 30.03.2016 in O.S.No.217 of 2008 on the file of the Principal District



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Munsif Court, Ariyalur.

For appellants	: Mr.C.Prakasam
For R1	: No appearance
For R2 and R3	: Mr.C.Selvam, Additional Government Pleader

JUDGMENT

This second appeal is filed challenging the judgment and decree passed by the Additional Sub Court, Ariyalur, in A.S.No.5 of 2017, in and by which, the learned Judge has confirmed the judgment and decree passed by the learned Principal District Munsif, Ariyalur, in O.S.No.217 of 2008. Originally, the plaintiff has filed the above referred suit for a declaration and consequential injunction in respect of the property measuring an extent of 0.18.5 ares comprised in S.F.No.254/6A, Anandavadi Village, Sendurai Taluk, Ariyalur District.

2. The parties, for the ease of understanding, are referred to as the plaintiff and the defendants and the appellants who are the legal



representatives of the sole deceased plaintiff who have been impleaded after the demise of the sole plaintiff are referred to as the appellants.

The facts of the case are set out hereinbelow.

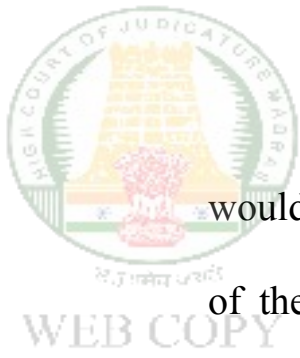
FACTS OF THE CASE:

2.1. The plaintiff would submit that the suit property originally belonged to the first defendant who is none other than her brother-in-law *viz.*, her sister's husband. The first defendant had enjoyed the suit property and had orally sold the same to the plaintiff for a valuable consideration. Considering the relationship between the parties, the plaintiff had not insisted upon a deed. However, from the date of the purchase, the plaintiff has been in enjoyment and possession of the suit property as its absolute owner and has been cultivating crops therein. The revenue records like patta, chitta and adangal stand in the name of the plaintiff and she has been paying the kists regularly in respect of the suit property.



2.2. The plaintiff would submit that there was a mistake in the patta, in which, her husband's name has been described as Nallamuthu Padaiyachi instead of Nallamuthu. The first defendant, with an intention of gaining illegal enrichment, had issued a legal notice to the plaintiff on 20.11.2007 claiming untenable right. The plaintiff had issued a suitable reply on 28.11.2007. After the receipt of the reply notice, the first defendant continued to make a claim over the suit property and disturbed the plaintiff's possession. He had also attempted to get a patta in his name. The plaintiff issued a legal notice to the second defendant and the V.A.O of the village on 20.06.2008 putting them on notice that they should not transfer the patta in the name of the first defendant. Therefore, the plaintiff had come forward with the suit in question.

2.3. The first defendant had filed a written statement *inter alia* denying that the suit was not maintainable and denying the oral sale in favour of the plaintiff. He had also denied that the plaintiff was in possession and enjoyment of the suit property. The first defendant



would submit that the plaintiff and her husband had entered possession of the property as they were taking care of the property for and on behalf of the first defendant. The first defendant was also paying them some amounts. The first defendant had come to know about the patta being transferred in the name of the plaintiff only in the year 2007 and he has immediately taken steps to correct the revenue records when the plaintiff had tried to assert an independent right to the property by filing the present suit. The plaintiff has no right or title to the suit property and has no right for injunction.

2.4. The second and the third defendants had filed a written statement, in which, they would submit that the plaintiff has to prove that she is in possession and enjoyment of the suit property. They would contend that the plaintiff who claims to be in possession of the property for several years and has had the patta in respect of the property transferred in her name has admitted that name of her husband has been described as Nallamuthu Padaiyachi which would clearly show that the patta does not relate to the plaintiff whose husband's is



Nallamuthu. Therefore, they would submit that the plaintiff has not proved her right to the property in question and would submit that the property is in possession of one Anjalaiammal, wife of Nallamuthu Padaiyachi and not the plaintiff. Therefore, they sought for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues and additional issues.

“ISSUES:

1)Whether the plaintiff is entitled to get the relief of declaration and consequential relief of permanent injunction as prayed for?

2)To what other reliefs the plaintiff is entitled?

ADDITIONAL ISSUES:

1)Whether the plaintiffs have perfected titled by adverse possession over the suit property?



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2)Whether the oral is sustainable in law?”

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4. Pending the suit, the plaintiff had died and the appellants were impleaded as plaintiffs. The first appellant herein has adduced evidence as P.W.1 and one Palanivel as P.W.2 and marked Exs.A1 to A20. The first defendant had submitted oral evidence as D.W.1 and had not marked any documents in support of the defendants case.

5. After referring to a series of judgments, the Trial Court has held that the plaintiff had proved her possession of the suit property. However, the plaintiff was not entitled to declaration and consequential injunction as she has not proved the time from which she has been in possession of the suit property and that such possession was adverse to that of the original owner. The learned Judge therefore, held that the oral sale was invalid and also that the plaintiff had not prescribed title to the suit property through adverse possession. Therefore, the learned Judge dismissed the suit for both declaration as well as for possession.



LOWER APPELLATE COURT:

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6. Challenging the said judgment and decree, the appellants had taken up an appeal in A.S.No.5 of 2017 before the Additional Sub Court, Ariyalur.

7. The Lower Appellate Court, despite disagreeing with the Trial Court judgment that the plaintiff cannot claim title on the basis of adverse possession, held that appellants had failed to prove the adverse possession in the manner known to law. The Lower Appellate Court held that the plaintiff has not proved that her possession was hostile to that of real owner. The Lower Appellate Court held that the plaintiff was not entitled to declaration or injunction though possession was found with the plaintiff.

8. Aggrieved by the same, the appellants are before this Court.

9. In the above second appeal, this Court had ordered notice



to the respondents and the first respondent though served has not entered appearance and the other respondents are represented by the learned Additional Government Pleader, Mr.C.Selvam.

10. Heard the learned counsel on either side and perused the materials available on record.

11. After hearing the arguments, the only substantial question of law that arises for consideration is as follows.

“Whether the Courts below is correct in law in rejecting the claim of the plaintiff for permanent injunction despite concurrent by holding that the plaintiff was in possession of the suit property?”

DISCUSSION:

12. The case of the deceased plaintiff was that she had orally purchased the suit property from the first defendant who was her



brother-in-law and that she has been in possession and enjoyment of the same from the date of the purchase and therefore, she had perfected title by adverse possession. However, there is no pleading as to the date on which this oral sale had taken place.

13. The first defendant had filed a written statement that he had permitted the plaintiff to enter into possession of the property as they were taking care of his lands. Therefore, the possession of the plaintiff has been admitted by the first defendant. The first defendant had contested the declaration of title on the ground that the property belongs to him and he had put the plaintiff in possession of the property and that the first defendant is the owner of the property which was admitted by the plaintiff herself. The plaintiff has also put forward plea of adverse possession. However, the plaintiff has not let in proof to show the point in time when the plaintiff and her husband's possession had become open and hostile to that of the first defendant and that the first defendant was aware that they had set up title hostile to the defendants to the suit property. Both the Courts below have



rightly dismissed the suit for declaration.

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14. Having admitted the possession of the plaintiff and that the first defendant was disturbing the possession of the plaintiff, the Courts below ought to have decreed the suit at least with reference to possession. However, the learned Judges dismissed the suit even with reference to this relief. The appellants have filed documents to show their possession of the property at least from the year 1987 onwards. The Courts below ought to have decreed the suit for injunction. Therefore, the substantial question of law is answered in favour of the appellants and the judgments of the Courts below are modified to the extent of granting the injunction restraining the defendants, their men and agents from disturbing the appellants' peaceful possession and enjoyment of the property which is the subject matter of the suit in O.S.No.217 of 2008 on the file of the Principal District Munsif Court, Ariyalur except by due process of law.



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Accordingly, this second appeal is partly allowed. Consequently,
the connected C.M.P. stands closed. No costs.

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Index : Yes/No

Speaking order/non-speaking order
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To

1. The Principal District Munsif, Ariyalur.
2. The Additional Sub Judge, Ariyalur.
3. The Section Officer, V.R. Section, High Court, Madras.



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P.T.ASHA, J.,

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