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S.A.No.58 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.58 of 2012

and

M.P.No.1 of 2012,

C.M.P.Nos.19229 of 2017 & 3059 of 2019

1.Paramasivam

2.Santhi

3.Vimalarasan

4.Kutti @ Matheswari

5.Venkatesan

6.Sugumar

7.Mathu @ Matheswari

... Appellants

-Vs-

1.Udhayakumar

2.R.Vikkaramathithan

3.R.Thiraviyam

4.R.Ravishankar

...Respondents

Prayer:- Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 21.11.2011 in A.S.No.14 of 2011 passed by the learned Principal Subordinate Judge, Salem,



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confirming the judgment and decree dated 08.12.2010, in O.S.No.131 of 2010, passed by the learned Principal District Munsif, Salem.

For appellants : Mr.B.Bala Vijayan

For respondents : Mr.N.Umapathy

J U D G M E N T

The defendants in the suit are the appellants before this Court. This Second Appeal has been filed against the judgment and decree dated 21.11.2011 in A.S.No.14 of 2011 passed by the learned Principal Subordinate Judge, Salem, confirming the judgment and decree dated 08.12.2010 in O.S.No.131 of 2010, passed by the learned Principal District Munsif, Salem.

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

The brief facts, which give rise to the instant second appeal, are as follows:

3. According to the plaintiffs, the suit properties originally



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belonged to their grandfather Alagappa Udaiyar and one Perumal Boyar.

Both of them jointly purchased through a sale deed dated 12.03.1947/Ex.A1 from one Thadhappa Udaiyar. They were in joint possession and enjoyment of the suit properties and by sale deed dated 17.03.1958/Ex.A2, the said Perumal Boyar sold his share of 50% of the suit properties in favour of the plaintiffs' grandfather Alagappa Udaiyar. Further, Alagappa Udaiyar, by sale deed dated 26.08.1966/Ex.A3, sold 50% share of the suit properties purchased by him to one Muthusamy Udaiyar and again, by sale deed dated 05.03.1976/Ex.A4, the said Muthusamy Udaiyar sold his 50% share of the suit properties in favour of the plaintiffs' grandfather Alagappa Udaiyar. Thus, according to the plaintiffs, through the sale deeds in Exs.A1 to A4, the said Alagappa Udaiyar became the absolute owner of the entire suit properties. After the demise of Alagappa Udaiyar, his wife Rayammal and son Rajarathinam, along with the plaintiffs, were in joint possession and enjoyment of the suit properties. After the death of the plaintiffs' father Rajarathinam on 21.03.1996 and the grandmother Rayammal on 23.03.2005, the plaintiffs have inherited the suit properties and are having the possession and enjoyment of the same.



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4. The Revenue documents have been mutated in favour of the plaintiffs and the plaintiffs are in joint possession. According to the plaintiffs, the defendants are the legal heirs of Perumal Boyar, who had sold his 50% share of the suit properties as early as 1958. The defendants demanded the plaintiffs to sell their 50% share of the suit properties again to the defendants. When the plaintiffs refused to accept the demand, they unlawfully trespassed into the suit properties. Therefore, the plaintiffs came up with the suit prayed for bare injunction.

5. The said suit was resisted by filing the written statement by the first defendant and the same was adopted by the defendants 2 to 7. It is the case of the defendants that Perumal Boyar borrowed a loan from Alagappa Udaiyar and towards security, he had executed the sale deed in favour of Alagappa Udaiyar. Therefore, the sale deed dated 17.03.1958/Ex.A2 is sham and nominal and never acted upon.

6. According to the defendants, after the death of Perumal Boyar, his only daughter Jeyammal was in possession of the suit



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properties and thereafter, the defendants, who are the legal heirs, have been in possession of the suit properties.

7. According to the defendants, there are three houses in the suit properties and the defendants are paying taxes to the Government. Further, the defendants have been in possession and enjoyment of the suit properties for more than 63 years with the knowledge of everybody, including the plaintiffs and they have also perfected title by way of adverse possession. Hence, they prayed to dismiss the suit.

Evidence and documents:

8. During trial, on the side of the plaintiffs, the 4th plaintiff/Ravisankar examined himself as P.W.1 and marked documents in Exs.A1 to A8. On the side of the defendants, five witnesses viz., Paramasivam, A.K.Kasi, Chellakannu, V.Rajakannu and Vaithiyalingam, were examined as D.W.1 to D.W.5 and they marked documents in Exs.B1 to B13.



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Findings of the Courts below:

9. The Trial Court, after analyzing the documentary and oral evidences, decreed the suit. The Trial Court found that when the grandfather of the plaintiffs and the grandfather of the defendants purchased the properties in Ex.A1 and 50% share of Perumal Boyar was conveyed in Ex.A2 as early as 1958, the plaintiffs have established their title by filing the title deeds and also Revenue documents. Aggrieved by the same, the defendants filed the appeal in A.S.No.14 of 2011. The Lower Appellate Court, after re-appreciating the evidences, dismissed the appeal. Against the concurrent finding of fact, the defendants are before this Court with the above Second Appeal.

Substantial questions of law:

10. At the time of admission, this Court, by order dated 31.08.2012, framed the following substantial questions of law:

“1. Whether the Courts below have committed an error in deciding the plea of adverse proceedings against the defendants without even framing a specific



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issue in this regard?

2. Whether the Courts below have wrongly held that the defendants have not proved that the house regarding which Exhibits B1 to B10 were filed, are situated within the suit properties, despite the fact that the Village Administrative Officer examined on the side of the defendants spoke about the said facts, apart from casting of burden of proof in this regard on the defendants?"

Submissions on both sides:

11. The learned counsel for the plaintiffs/respondents submitted that the plaintiffs are the legal heirs as well as the grandchildren of the said Alagappa Udaiyar, who had inherited the property and they are the absolute owners of the suit properties. When the defendants' grandfather Perumal Boyar has sold his 50% share in the suit properties through the registered sale deed dated 17.03.1958/Ex.A2 for a valuable consideration, the respondents are precluded from raising any oral evidence or arguments against the said registered document.



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12. According to the learned counsel for the plaintiffs/respondents, the defendants have never challenged the sale deed or they have not raised even their little finger as against the sale deed executed by Alagappa Udaiyar in Ex.A3 and by his vendor again in his favour in Ex.A4. At this length of time, the plea of the defendants that the sale in Ex.A2 was only a loan transaction cannot be sustained and even the same has not been pleaded and proved.

13. Further, according to the learned counsel for the plaintiffs/respondents, the Revenue documents have been mutated in favour of the plaintiffs and they were all along in the possession and enjoyment of the suit properties. Therefore, both the Courts below have rightly considered the oral and documentary evidences and they have arrived at a finding of fact that the plaintiffs' possession and enjoyment of the suit properties have need not any interference by this Court, as no substantial question of law is involved in this Second Appeal.

14. The learned counsel for the defendants/appellants submitted



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that Perumal Boyar, after having purchased 50% of share along with Alagappa Udaiyar in Ex.A1/sale deed dated 12.03.1947, for want of urgent finance, the sale deed dated 17.03.1958/Ex.A2 was executed only as a security for that loan amount and the parties never intended that the document is to be a sale. Therefore, by this Court, on the strength of the sale deed dated 17.03.1958/Ex.A2, Alagappa Udaiyar cannot be construed as the absolute owner of the entire properties.

15. The learned counsel for the defendants/appellants further submitted that they have filed the house tax receipts in Exs.B1 to B10, which show that the defendants have paid taxes and are in possession of the properties and further, they have filed the statement of the Village Administrative Officer in Ex.B13, which would establish that the defendants are in possession and enjoyment of the suit properties.

16. Heard the learned counsel on either side and perused the documents available on record.



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Analysis of the submissions made on both sides:

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17. It is the admitted case of both the parties that the suit properties have been jointly purchased by Alagappa Udaiyar and Perumal Boyar from one Thadhappa Udaiyar, through the sale deed dated 12.03.1947/Ex.A1. Both of them, on the strength of purchase, had been in possession and enjoyment of the properties and Perumal Boyar by the registered sale deed dated 17.03.1958/Ex.A2, sold his 50% share in the suit properties in favour of Alagappa Udaiyar for a valuable consideration. Ex.A2/sale deed dated 17.03.1958 has confirmed that the consideration has been paid and the absolute ownership of the suit properties has been handed over to Alagappa Udaiyar.

18. Thus, after becoming the full owner of the entire suit properties, the said Alagappa Udaiyar, by sale deed dated 26.08.1966/Ex.A3, sold his 50% share of the suit properties to one Muthusamy Udaiyar and later, again, vide sale deed dated 05.03.1976/Ex.A4, the said Muthusamy Udaiyar sold back 50% share of the suit properties purchased by him, in favour of Alagappa Udaiyar



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itself. As such, as through the sale deeds in Exs.A1 to A4, Alagappa Udaiyar has become the absolute owner of the suit properties and after the death of Alagappa Udaiyar's wife and son, the plaintiffs, who are the grandsons of Alagappa Udaiyar, have inherited the suit properties and become absolute owners.

19. The plaintiffs have also filed the Revenue documents in Exs.A7 and A8, which have been issued in their favour. Ex.A7 is the patta issued in favour of the plaintiffs and Ex.A8 is the kist receipt issued in favour of the plaintiffs for paying the taxes. Therefore, the plaintiffs proved their title to the suit properties and established their possession.

20. The claim of the defendants that the sale deed dated 17.03.1958/Ex.A2 was only executed as a security for the loan transaction, cannot be accepted for two reasons:

(i)When Perumal Boyar executed the registered sale deed dated 17.03.1958/Ex.A2 for a valuable consideration for the suit properties, the parties are bound by the terms contained in the registered documents and



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they are barred from making any oral plea as against the registered documents.

At this juncture, it is useful to extract Sections 91 and 92 of the Indian Evidence Act, 1872:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. —

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills 3 [admitted to probate in 4 [India]] may be proved by the probate.

Explanation 1.—This section applies equally to



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cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.— Where there are more originals than one, one original only need be proved.

Explanation 3. — The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

92. Exclusion of evidence of oral agreement. — *When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want



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of capacity in any contracting party, I [want or failure] of consideration, or mistake in fact or law.

Proviso (2). —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). —The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:



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Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

Therefore, the defendants cannot place any plea contrary to the registered documents contained in Ex.A2.

(ii) Secondly, when Perumal Boyar has sold the properties *vide* sale deed dated 17.03.1958/Ex.A2, the defendants have never taken any step either to challenge the sale deed or to establish their title and it is only the document executed for loan transaction and to record the property. Only when the above suit is filed by the plaintiffs, the defendants have come with the plea that the sale deed executed by their grandfather was not intended for sale, but executed only as a security for the loan transaction.

21. As far as the documents filed by the defendants in Exs.B1 to



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B10 are concerned, Ex.B1 to B7 are the house tax receipts and on perusal of the house tax receipts, it is seen that they do not co-relate with the suit properties. Further, as far as the reliance made by the defendants on the certificate dated 09.12.2004 executed by the Village Administrative Officer in Ex.B13 is concerned, it has been found by both the Courts below that the certificate is not supported. Therefore, the defendants have failed to establish that they have been in possession and enjoyment of the suit properties.

22. Even though the defendants have primarily resisted the suit on the ground that they have continued to be the owners of the 50% share of the suit properties on the ground that the sale deed executed by their grandfather Perumal Boyar on 17.03.1958/Ex.A2 was only the document for security towards the loan transaction and therefore, the defendants have asserted their ownership, on the contrary, they also pleaded that they have been in possession and enjoyment of the suit properties for a long period, *i.e.*, nearly 63 years and they have also perfected title on the suit property by way of adverse possession.



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23. In order to claim the relief of adverse possession, the defendants have to plead and prove their case. First, the defendants have to admit the ownership of the plaintiffs in respect of the suit properties and thereafter, they have to plead as to from when onwards they have been in possession and enjoyment with the knowledge of the plaintiffs. They have to prove their case and then only, they are entitled to the relief on the ground of adverse possession.

24. From a perusal of the pleadings and the case resisted by the defendants, it is seen that the case does not come within the parameters for sustaining the claim of adverse possession.

25. The plaintiffs have established their title by filing the registered sale deeds in Exs.A1 to A2 and also by filing Revenue documents in Exs.A7 and A8. Once the plaintiffs established their title, it goes without saying that they are entitled to possession. As the possession is always followed by the title, the plaintiffs are entitled to the relief of



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injunction.

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26. Both the Courts below, after analyzing the evidences and documents, have arrived at a finding of fact that the plaintiffs are in possession and enjoyment of the suit properties, which is based on materials available on record and are not perverse.

27. Under these circumstances, the substantial questions of law are answered against the appellants and in favour of the defendants.

28. In the result, this Second Appeal is dismissed by confirming the judgment and decree passed by both the Courts below. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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To

1. The Principal Subordinate Judge, Salem.
2. The Principal District Munsif, Salem.
3. The Section Officer, V.R. Section, High Court, Madras.



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G.ARUL MURUGAN, J.

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