



S.A. No.533 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.03.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.533 of 2018
and CMP No.14983 of 2018

V.Ponnambalam

.... Appellant

Versus

P.Palnivelu

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.13 of 2017 dated 03.04.2018 on the file of Principal District Court, Namakkal, reversing the judgment and decree dated 17.02.2017 in O.S.No.14 of 2012 on the file of Subordinate Court, Tiruchengode.

For Appellants

: Mr.M.S.Palaniswamy

For Respondent

: Mr.R.Marudhachalamurthy

JUDGMENT

The plaintiff filed a suit, claiming declaration that his title should be



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declared by adverse possession and for a consequential permanent injunction to restrain the defendant from interfering with his possession.

2. According to the plaintiff, the defendant was allotted Plot No.L62 to an extent of 1000 sq.ft and the defendant and his sister entered into a panchayat Muchalika on 20.07.1984, in and whereby, the defendant agreed to receive jewels and liquid cash, instead of a share in the suit property. Subsequently, on 19.05.1985, the defendant and his sister Sampooranam entered into an agreement of sale, in and whereby, the defendant's sister Sampooranam, had agreed to purchase the suit property for a sum of Rs.28,750/- and also paid an advance of Rs.2,000/-. It was also agreed that the instalments due to the Tamil Nadu Housing would be paid by the defendant's sister Sampooranam.

3. It appears that on 20.04.1988, the said Sampooranam had sold the said property to the sister of the plaintiff by name Chinthamani @ Thangammal under unregistered sale deed for a sum of Rs.34,000/- and the said Chinthamani had undertaken to pay the monthly instalments to the



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Tamil Nadu Housing Board. However, the said Chinthamani was unable to pay the monthly instalments and the plaintiff undertook to pay the monthly instalments to the Tamil Nadu Housing Board and get the sale deed registered in his name and accordingly, the plaintiff took possession of the suit property on 20.06.1988. Ever since, the plaintiff has been in possession and enjoyment of the suit property. According to the plaintiff, he has been paying property tax and water tax to the Municipality and he has been enjoying the suit property continuously and openly to the knowledge of the defendant, for over 23 years. In such circumstances, he instituted the suit to declare his title by adverse possession.

4. The defendant filed a written statement, denying the plaint allegations and also denied the Muchalika dated 20.07.1984 and also the alleged agreement of sale entered into between the defendant and his sister, Sampooranam dated 19.05.1985. The unregistered sale deed dated 20.04.1988 is also stoutly denied. According to the defendant, the payment of taxes and water charges was only in the name of the defendant and further, it was only in lieu of rent and not in order to confer ownership on the plaintiff.



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5. The parties went to trial and the trial Court accepted the plaintiff's case and decreed the suit. However, on appeal, preferred by the defendant, the first appellate court, finding that the payment of tax and water charges were all in the name of the defendant, prima-facie, came to the conclusion that the plaintiff is not entitled to succeed on his plea of adverse possession. However, relying on the decision of the Hon'ble Supreme Court in the case of *Gurudwara Sahib vs Gram Panchayat Village Sirthala and Another* reported in **2014 SAR (Civil) 33**, the first appellate court held that the plaintiff was not entitled to file a suit for declaration of his right and title by claiming adverse possession. Thereafter, the first appellate Court has proceeded to hold that the trial Court has erred in coming to the conclusion that the plaintiff has proved his case. Excepting finding that the documents stand in the name of the defendant, the first appellate Court has not discussed any other material evidence, oral and documentary, available on record.

6. In fact, before the trial court, the plaintiff examined himself as P.W.1 and one Vachaladevi was examined as P.W.2 and Exs.A.1 to A.12



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were marked on the side of the plaintiff. On the side of the defendant, the defendant examined himself as D.W.1 and the sale deed executed by the Tamil Nadu Housing Board in favour of the defendant was marked as Ex.B.1. The trial Court framed the following issues:-

1. Whether the alleged panchayat Muchalika dated 20.07.1984 is true and valid?

2. Whether the unregistered sale deed dated 20.04.1988 is valid and binding?

3. Whether the plaintiff is entitled to claim title by adverse possession and perfected his title by adverse possession over the suit property?

4. Whether the plaintiff is entitled for the relief of declaration as prayed for?

5. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

6. To what other relief is the plaintiff entitled?

7. Excepting for holding that the plaintiff would not be entitled to file a suit for declaration of his adverse possession, the first appellate Court has not discussed any of the issues which were elaborately discussed and



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decided by the trial Court.

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8. However, Mr.R.Marudhachalamurthy, learned counsel for the respondent would submit that insofar as the alleged panchayat Muchalika dated 20.07.1984 and the unregistered sale deed dated 20.04.1988, the plaintiff did not even mark the above said documents before the trial Court and the trial Court has negatived the claim of the plaintiff. In any event, I feel that being the final court of fact, the first appellate court has decided the matter in a cryptic manner and the same is not desirable, especially holding that the suit was not maintainable since the plaintiff was seeking a declaration that the plaintiff was the title holder by way of adverse possession.

9. No doubt, on the said day, the law laid down by the Hon'ble Supreme Court in the case of ***Gurudwara Sahib vs Gram Panchayat Village Sirthala and Another***, reported in ***2014 SAR (Civil) 33*** was holding the field. However, in the case of ***Ravinder Kaur Grewal and Others vs Manjit Kaur and Others***, reported in ***(2019) 8 SCC 729***, the larger Bench of the



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Hon'ble Supreme Court has held that a person, seeking claim by adverse possession can also file a suit and establish his title by way of adverse possession.

10. In view of the ratio laid down by the Hon'ble Supreme Court, the old theory that adverse possession can only be used as a shield and not as a sword is no longer good law and it is open to a person, who pleads adverse possession, to also come before the Court to declare his title, provided he establishes his case of adverse possession by adducing satisfactory oral and documentary evidence for being in possession, for over the statutory period of 12 years and such possession being open, continuous, hostile and also to the knowledge of the lawful owner of the property. Thus, the cryptic judgment of the first appellate court mainly relying on the case of ***Gurudwara Sahib vs Gram Panchayat Village Sirthala and Another*** reported in ***2014 SAR (Civil) 33*** has to be side aside on such limited score, since the first appellate court has not tested the judgment and decree of the trial court with regard to other factual aspects. I am also informed that the respondent has already filed a suit in O.S.No.269 of 2018 for recovery of



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possession and the same is pending before the Subordinate Court, Thiruchengode.

11. Learned counsel for the respondent submits that the respondent is a senior citizen and directions, if any, being issued in the Second Appeal, the age of respondent may be considered and taken into account.

12. In view of the above discussions and in view of the present position of law regarding the law of adverse possession, I deem it fit to remit the matter back to the first appellate court to decide the appeal afresh, in accordance with law and in any event, dispose of the same within a period of three months from the date of receipt of a copy of this judgment.

13. It is hereby clarified that the suit is held to be maintainable and in all other aspects, the first appellate court shall go into the pleadings, oral and documentary evidence, available on record, and decide the case on merits. It is made clear that any observations made in this judgment shall not in any way prejudice the first appellate Court. It is also made clear that merely



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because the suit is held to be maintainable, it does not confer any right on the plaintiff to seek for declaration, citing the observation in this judgment as it is only pertaining to the entitlement to file a suit and not regarding an entitlement to a decree and it is open to the parties to independently canvass their respective contentions based on the available oral and documentary evidence.

14. With the above direction, the judgment and decree passed in A.S. No.13 of 2017 dated 03.04.2018 on the file of Principal District Court, Namakkal is set aside and second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To

1. The Principal District Court, Namakkal
2. The Sub Court, Tiruchengode

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3. The V.R.Section, High Court, Chennai.

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P.B.BALAJI,J.

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