



S.A.No.1131 of 2013

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 29.02.2024

Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

Second Appeal No.1131 of 2013

R.Dakshina Moorthy

... Appellant

-Versus-

P.S.R.Srinivasan

... Respondent

Appeal filed under Section 100 of C.P.C. against the decree and judgment dated 14.08.2012 in A.S.No.12 of 2011 on the file of the Principal Subordinate Judge's Court, Tiruppur confirming the Judgment and Decree dated 03.12.2010 in O.S.No.309 of 2007 on the file of the District Munsif's Court, Tiruppur.

*For Appellant* : *Mr.C.R.Prasannan*

*For Respondent* : *Mr.V.Vijayakumar*

**JUDGEMENT**

This second appeal arises out of the judgment and decree of the court of District Munsif, Tiruppur in O.S.No.309 of 2007 dated 03.12.2010 as confirmed by the judgment and decree of the court of Principal Subordinate



*S.A.No.1131 of 2013*

Judge, Tiruppur in A.S.No.12 of 2011 dated 14.08.2012.

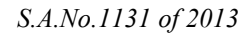
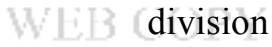
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2. For the sake of convenience, the parties will be referred as their ranks in the suit.

3. The plaintiff filed a suit for declaration that insofar as the second item of the property is concerned, he has prescribed title by adverse possession and for consequential relief of injunction restraining the defendant from interfering with his possession and enjoyment of the property.

4. The undisputed facts leading to this appeal are as follows:

4.1. There was one Ramasamy Chettiyar, who had purchased the suit schedule mentioned property and had passed on. He left behind his wife/Ramathal and his sons viz., Srinivasan, Dakshina Moorthy and Kulanthaivelu as his legal heirs. The family of Ramasamy Chettiyar entered into a partition deed on 11.04.1998. To this partition deed, all the legal heirs of the late Ramasamy Chettiyar were parties. A schedule mentioned property of the partition deed fell to the share of Ramathal, B schedule mentioned property fell to the share of Srinivasan, C schedule property fell to the share of Dakshina



5. The suit C schedule mentioned property is item 1 to the present suit and item 2 is the property, which fell to the share of Kulandaivelu. Kulandaivelu alienated the property in favour of the defendant by way of a registered sale deed 14.06.2001. At the time of division, it was specifically agreed that each of the parties shall enjoy the properties divided in the document individually. The plaintiff claims that since his brother did not stake a claim over the property from 11.04.1988 and thereafter, as the defendant did not stake a claim till the presentation of the plaint, he had perfected title by adverse possession.

6. The defendant entered appearance and denied the right of the plaintiff. It is his specific case that whatever that was allotted to Kulandaivelu was purchased by him and the plea of adverse possession does not deserve a moment's consideration. The learned trial judge as well as the learned lower appellate judge rejected the case of the plaintiff, against which the present



S.A.No.1131 of 2013

Second Appeal.

WEB COPY

7. Initially notice regarding admission had been ordered by this Court on 20.11.2013 and by an order dated 26.04.2022, the Second appeal was admitted on the following substantial questions of law:

*“ a) Whether both the Courts below erred in holding that the plaintiff did not prove his case of prescription of title through adverse possession?*

*b) Whether the findings rendered by both the Courts below can be held to be perverse due to improper appreciation of oral and documentary evidence?*

*c) Whether both the Courts below ought to have sought for a Report from the Advocate Commissioner to understand that topography of the building and the roof that is resting on Item II of the suit property?”*

8. I heard Mr.C.R.Prasanan for the appellant and Mr.V.Vijayakumar for the respondent.

9. Mr.C.R.Prasanan would submit that no action has been taken by Kulandaivelu to take possession of 3 ½ ft x 57 ½ ft from the date of execution



*S.A.No.1131 of 2013*

of the partition deed dated 11.04.1988. He would further state that there had been a wall in existence, even on the date of the partition deed and that, it continued to remain through the period till the share of Kulandaivelu was purchased by the defendant on 14.06.2001. It is his case that by the time the purchase had been made, the plaintiff had perfected his title to the property, since the wall had been in existence without any disturbance in any quarter including Kulandaivelu.

10. Mr.V.Vijayakumar rejecting this argument would submit that till 11.04.1988, the construction stood as it is, and on that date, the mother and three sons were allotted separate shares. The fact that one brother did not object, does not infer ouster. Apart from that, he had purchased the property in the year 2001, and the litigation commenced in the year 2007. He would state that unless and until the plaintiff is able to show that he had perfected title by ousting his brother Kulandaivelu from possession of the property as early as 11.04.1988 onwards, he cannot plead adverse possession against the purchaser.

11. I have carefully considered the argument on either side.

12. As pointed out above, there is no dispute that on 11.04.1988, the



*S.A.No.1131 of 2013*

plaintiff had been allotted the western portion of the suit schedule mentioned property. This property has been shown as Item No.1. Insofar as item No.1 is concerned, there is no dispute between the parties that it belongs to the plaintiff Dakshinamoorthy. The entire dispute arises only with respect to the portion of 3 and 3/4<sup>th</sup> feet wedged between the property under the physical possession of the defendant and the claim of the plaintiff.

13. As rightly pointed out by the learned counsel for the respondent, if the plaintiff has to be declared as being in adverse possession of the suit second item, he necessarily has to prove that he had ousted his brother from the extent which is under dispute. It is not a vacant space, but a constructed area which was being shared in common by the brothers till 11.04.1988.

14. From 11.04.1988 till the sale on 14.06.2001, there was absolutely no evidence to show that the plaintiff had ousted his brother Kulanthaivelu. Mere long possession of the property does not fortify adverse possession or ouster. There must be open, hostile, continuous and uninterrupted possession of the property in order to make a claim for declaration by adverse possession. May be the existence of the wall prior to 11.04.1988 would show that the possession



S.A.No.1131 of 2013

was continuous, but there is no evidence to show hostility, openness or intention to oust Kulandaivelu from possession of the property.

15. The position of law has been settled and has been reiterated by the Supreme Court in the case of ***Government of Kerala and another vs. Joseph and Others*** reported in ***2023 SCC Online SC 961***. The principle being clear, the mere fact that the plaintiff has been in long possession of the property does not mean he is entitled to the benefit of declaration by adverse possession.

16. Kulandaivelu had exercised his right by alienating the property on 14.06.2001 in favour of the defendant. Whatever right Kulandaivelu obtains by virtue of partition deed dated 11.04.1988 stands transferred to the defendant/ P.S.R.Srinivasan. Therefore, in the absence of positive proof required to declare the adverse possession, I am not in a position to reverse the orders of the courts below.

17. In the light of the above, the questions of law are answered against the appellant and in favour of the respondent. Consequently, the judgment and decree of the court of Principal Subordinate Judge at Tiruppur in A.S.No.12 of 2011 dated 14.08.2012 in confirming the judgment and decree of the court of



S.A.No.1131 of 2013

the District Munsif, Tiruppur in O.S.No.309 of 2007 dated 03.12.2010 stands confirmed. The second appeal is **dismissed**. No costs.

18. At this stage, Mr.C.R.Prasanan, would submit that the wall being in existence for a long time and in case it is pulled down, serious prejudice would be caused to the existing superstructure of the plaintiff. Mr.V.Vijayakumar would fairly state that in case the plaintiff wants to construct a supporting wall within the boundaries of his property, the cost thereof will be borne by the defendant. The said undertaking is recorded.

29.02.2024

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Index : Yes / no

Neutral Citation : Yes / no

Speaking / Non Speaking Order

To

- 1.The Principal Subordinate Judge at Tiruppur
- 2.The District Munsif, Tiruppur



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*S.A.No.1131 of 2013*

V.LAKSHMINARAYANAN, J.

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S.A.No.1131 of 2013

29.02.2024