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S.A. No.82 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.03.2024

Pronounced on: 22.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No. 82 of 2018

Meerabai

...Appellant

Vs.

1.V.Gnanamani

2.G.Thilak

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, to allow the Second Appeal and set aside the judgment and decree passed in A.S. No.24 of 2014 dated 29.07.2015 on the file of Subordinate Judge, Tiruttani confirming the judgment and decree made in O.S. No.198 of 2011 dated 08.07.2014 on the file of District Munsiff Court, Tiruttani.

For Appellant : Mr.R.Udayakumar

For Respondents : Dr.C.Ravichandran

JUDGMENT

The plaintiff who suffered concurrent findings before the Courts below is the appellant.



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2. The parties are described as per their litigative status before the trial Court.

3. The case of the plaintiff is that the suit property was purchased by the plaintiff under a sale deed dated 27.09.1972 and thereafter, she has been in possession and enjoyment of the suit property measuring 53 cents and paying kist for the suit property. According to the plaintiff, the total extent in the Survey No.136/4 was 2.33 acres and the same has been subdivided into 136/4A, 136/4B and 136/4C and the suit property was assigned S.F.No.136/4C. The plaintiff came to know that patta had been issued to the second defendant in respect of suit property and taking advantage of the same, the defendants attempted to trespass into the suit property on 25.10.2011 and that they were openly proclaiming that they would not allow the plaintiff to step into the suit property. The plaintiff therefore, instituted the suit to declare her right, title and interest over the suit property and also for a consequential permanent injunction.

4. The defendants resisted the said suit and filed a written statement



admitting the purchase of 53 cents by the plaintiff under sale deed dated 27.09.1972. However, the allegation that the plaintiff was in possession of the suit property and the defendants threatened to take over the suit property by trespass, were all denied. It is also stated that the plaintiff was never in possession and it was only the second defendant alone who was in possession and enjoyment, for over the statutory period and thereby, the second defendant acquired right by adverse possession also.

5. It is further contended by the defendants that the plaintiff's husband is none else than the brother of the first defendant's mother and even though the plaintiff purchased the suit property in 1972, she was never in possession and enjoyment at any point of time and it was only the first defendant's father, Jayarama Reddy, who was enjoying the suit property openly and to the knowledge of the plaintiff. According to the defendants, the plaintiff has no patta and was never paying taxes or kist and it was only the second defendant who has been in enjoyment and before him, Jayarama Reddy was in possession and enjoyment. In fact, second defendant claims to have been raising Paddy, Ground-nuts and Casurina crops in the suit property.



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6. The trial Court dismissed the suit finding that the plaintiff had not established her allegations in the plaint and though P.W.1 stated that she got patta and had paid kist receipts, she has never produced any of the documents before the Court. It was also found by the trial Court that the plaintiff herself admitted that the suit property was surrounded on all sides, by the property of the defendants and the defendants were in possession of the suit property. The trial Court also noticed that the revenue records produced by the defendants and held that the defendants established possession right from 1977 onwards and it was well over the statutory period of 12 years. The trial Court also found that though the plaintiff claimed to have mortgaged the suit property to the Bank and raised loan, the same was not proved by production of any documentary evidence in that regard. The trial Court also applied Section 27 of the Limitation Act, 1963 and found against the plaintiff for not filing suit for recovery of possession within 12 years and the suit filed after a lapse of 39 years from 1972 and 26 years from 1985 was held to be clearly barred by limitation.

7. The plaintiff preferred an Appeal in A.S. 24 of 2014 and the First Appellate Court also concurred with the findings of the trial Court and



dismissed the Appeal. Though the Second Appeal has not yet been admitted, the learned counsel for the appellant, Mr.R.Udayakumar, and the learned counsel for the respondents, Dr.C.Ravichandran, have argued for final disposal of the Second Appeal. I have gone through, the pleadings and the judgments of the Courts below.

8. The learned counsel for the appellant would submit that the suit was instituted only for declaration and injunction and not for recovery of possession. He further stated that under the 1972 sale deed, the plaintiff has got absolute right and the plaintiff was in possession till the date of decree in the suit. However, according to the learned counsel for the appellants, the defendants have obtained patta including the plaintiff's property insofar as 53 cents purchased by the plaintiff. The learned counsel for the appellant would contend that the defendants have not proved their possession and places reliance on the decision of the Hon'ble Supreme Court in the case of *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs and Others* reported in (2008) 4 SCC 594, and he contended that the Courts below have erroneously dismissed the suit, instead of granting a decree as prayed for, in the light of the plaintiff having established title



under sale deed dated 27.09.1972.

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9. Per contra, the learned counsel for the respondents Dr.C.Ravichandran, would submit that P.W.1, in her own evidence has admitted enjoyment of the suit property by the defendants and the defendants had produced Ex.B5 and also Ex.B8, computerized pattas and Ex.B6 kist receipts to establish that all along that the defendants have alone been in the possession. He would also refer to the findings of the Courts below and justifying the same, prayed for dismissal of the Second Appeal.

10. He would place reliance on the decisions of the Hon'ble Supreme Court in the cases of (i) *Parsinni (Dead) by LRs and others Vs. Sukhi and Others* reported in MANU/SC/0575/1993 and (ii) *Des Raj and others Vs. Bhagat Ram (Dead) by LRs and others* reported in MANU/SC/7153/2007.

11. In *Parsinni's* case, referred herein supra, the Hon'ble Supreme Court held that when the Courts had found that the parties had perfected their title by prescription by establishing possession for over 30 years and such possession and enjoyment being open, continuous and in assertion as



owner and revenue records have also been mutated, the plea of adverse possession has to be upheld and title can be perfected by prescription. In *Des Raj's* case, referred herein supra, the Hon'ble Supreme Court held that for establishing adverse possession, a mere assertion of title was not sufficient and *animus possidendi* had to be established. If hostile title had been proved to the knowledge of the owner, then plea of adverse possession can be accepted.

12. I have considered the rival submissions advanced by the learned counsel on either side.

13. On a reading of the plaint, it is seen that except for claiming purchase under sale deed dated 27.09.1972, plaintiff has not produced any other documents. The sale deed is of the year 1972, the kist receipts in the name of the plaintiff has been obtained three years prior to the filing of suit in 2009 and absolutely, no document has been filed to establish her possession or mutation of revenue records right from 1972 till atleast 2009. On the contrary, the defendants have clearly stated that right from 1972 and even prior to the defendants, the first defendant's father Jayarama Reddy



alone was in possession. Revenue records have been filed to establish hostile possession.

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14. In fact, on perusal of Ex.B7, I find that mutation is only in the name of the defendants in respect of the suit property namely S.No.136/4C. Even the documents filed to establish possession in the name of the plaintiff only reflects S.No.136/4, which is the survey number before the subdivision. Even in the Adangal Extract, insofar as the suit property S.No.136/4C, it is only in the name of Jayarama Reddy, the predecessors in title of the defendants. Thus, the plaintiff has miserably failed to show that she was in possession of the suit property in S.No.136/4C and on the contrary, the defendants have filed substantive evidence to establish their possession of the suit property. Both the Courts have applied the correct legal position and also discussed the pleadings and evidence in a proper manner, in coming to the conclusion that the plaintiff had not established her right and on the contrary, the defendants clearly proved their entitlement to a right by adverse possession and also found that such possession was open, continuous and hostile. No substantial questions of law arise for consideration in this matter.



15. In fine, the Second Appeal is dismissed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
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To

1. The Subordinate Judge, Tiruttani.
2. The District Munsiff Court, Tiruttani.

P.B.BALAJI, J,



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Pre-delivery Judgment in

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