



S.A. No.855 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 17.10.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.855 of 2016

Kesavalu Naidu (Died)

1.Lakshmikanthammal

2.Gunasekaran

3.Sumathi

4.Amutha

Gajendiran (Died)

5.Krishnamoorthy

... Appellants/Appellants/defendant

(Appellants 1 to 5 impleaded as Lrs. of Keslavalu Naidu as per order in I.A.No.4 of 2008 and amended as per order in I.A.No.8/2009 dated 13.07.2009)

Vs

Kuppusamy Naidu (Died)

1.Narasimhalu

Neelammal (Died)

Sarojini (Died)

... Respondents/ Respondents/ Plaintiffs

(The 1 st respondent died pending appeal and the 2nd respondent has been recognized as the only legal heir for 1st respondent as per memo dated 02.08.2010 and amended as per order in I.A.No.12 of 2010 dated 10.11.2010.)



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PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree in A.S.No.30 of 2005 dated 31.10.2013, on the file of the IV Additional District Judge, Ponneri confirming the Judgment and decree in O.S.No.398 of 1996 dated 27.10.2004, passed by the District Munsiff Court, Ponneri.

For Appellants : Mr. S.Parthasarathy, Senior Counsel
for Mr.R.Thiyagarajan
For Respondents : Mr.S.R.Raghunathan, senior counsel
for Mr.M.Baskar

JUDGMENT

The appellants have filed this Second Appeals against the Judgment and decree in A.S.No.30 of 2005 dated 31.10.2013, on the file of the IV Additional District Judge, Ponneri, confirming the Judgment and decree in O.S.No.398 of 1996 dated 27.10.2004 passed by the District Munsiff Court, Ponneri.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

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3. The original appellant, Kesavalu Naidu, is the defendant in suit O.S.No.398 of 1996 filed by the respondents, Kuppusamy Naidu and others, seeking declaration of rights in respect of the suit property and recovery of possession from the defendant, along with mesne profits. The first defendant contested the suit. The first plaintiff's claim is that the suit property was originally purchased by Subba Reddy on 04.08.1984. After his demise, his wife, Seethammal, possessed and enjoyed the property. Subsequently, she conveyed the property to one Subba Naidu, who was the maternal grandfather of the first, third, and fourth plaintiffs, under a registered sale deed dated 30.07.1926. After this, Subba Naidu enjoyed the property along with other properties. Upon his death, he left behind his only daughter, Rajammal, the mother of the plaintiffs. Both Rajammal and Chengammal pre-deceased him. As a result, the first plaintiff took care of the entire property along with his maternal grandfather, who died 11 years before the suit, leaving the first, third, and fourth plaintiffs, his grandsons, as his legal heirs. Upon the death of Nathalla Subba Naidu, the first, third, and fourth plaintiffs became the exclusive owners of the first item of the



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suit property.

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4. The plaintiffs' paternal grandfather, Pullama Naidu, had purchased 10.75 cents of land, which is shown as EFMRE in the rough plan. The first plaintiff and his father were members of a joint family. On 29.06.1966, the 10.75 cents of land marked as EFMRE in the rough map, was orally partitioned. In this partition, 5 cents of land were allotted to Pullama Naidu. Specifically, the Eastern 2.7 cents were allotted to the Sengammal Naidu branch (the defendants' branch), and the remaining portions were allotted to other branches. To support their claim, the plaintiffs relied on a sketch that detailed the partition. In this document, the defendant's father admitted that item No.1 which belonged to the plaintiffs.

5. Likewise, the entire 10.75 cents of land marked as EFMRE in the map, which included the 5 cents belonging to Pullama Naidu, was partitioned on 29.06.1966. Five sketches detailing the allotment, including measurements, were prepared on the same day by the village headman of Kodur village. The sketches were signed by the managing members of the five branches: Nagappa Naidu, Madhava Naidu, the first plaintiff, the

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defendants' father Chengama Naidu, and Chandrayya Naidu. Each branch was given one sketch, and in the document, the defendants' father categorically admitted that suit item No.1 belonged to the first plaintiff.

6. As per an oral partition between the first plaintiff and plaintiffs three and four, item No.1 was exclusively allotted to the first plaintiff. As a precaution, plaintiffs 3 and 4 were impleaded in the suit. For partition, the first item of the suit property has always been in the possession and enjoyment of the first plaintiff. The defendant, who worked for him, requested permission to occupy a portion of the first item of the suit property and put up a house, agreeing to vacate when required. Out of sympathy for the defendant's pitiable condition, the first plaintiff granted him permission to occupy 28 ft. from East to West and 70 ft. from North to South, marked as BCGHB in the map.

7. Subsequently, the defendant put up a thatched superstructure, while the remaining portion was occupied by the plaintiffs. Since



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November 1991, the plaintiffs have demanded the vacant portion by terminating the license, but the defendant evaded this and a notice was issued on 28.08.1992. In response, the defendant claimed title to the entire first item of the property. The defendant is, in fact, in unlawful possession of items 2 and 3 of the properties, leading to the filing of this suit.

8. The defendants have entirely denied the plaintiffs' right to the first item of the property, contending that the plaintiffs were never in possession of the property, nor was it owned by their maternal grandmother. They further claim that the first plaintiff was far away from the suit property and assert that they have been in possession of the entire property for about 30 years, without any interruption, and have even obtained electricity connection and built a cattle shed. Therefore, they denied the alleged permission granted by the plaintiffs and claimed title to the property by adverse possession.

9. By considering both submissions and reviewing the documents relied upon by the plaintiffs, the learned trial Judge, after examining Ex.A5



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(a xerox copy of the recorded partition details), as well as the admission made by the defendants that their father owned 10 cents of land lying to the East of the suit property, concluded that Ex.A5 was rightly brought into evidence. Therefore, the Trial Court found that the first item of the property differed. Further, the trial Court also determined that the defendant failed to prove that the suit property was joint family property or ancestral property. The remaining witnesses, DW.2 and DW.3, did not provide any testimony regarding the partition, nor did they produce any documents showing that the suit property was allotted to other sharers. Additionally, the defendants did not prove that the suit property was purchased by their father. Consequently, the trial Court concluded that the defendant failed to establish that the suit property belonged to the joint family property. On the other hand, the title deeds produced by the plaintiffs were marked as Ex.A1 and Ex.A2.

10. The learned trial Judge held that, as per Ex.A2, the maternal grandfather of the 1st plaintiff purchased the property, which fact was not denied by the defendant. The genealogy chart filed by the plaintiffs also



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proved that their grandfather had one daughter, Rajammal, who was the plaintiffs' mother, and this relationship was also not disputed by the defendant. Therefore, it was established that the plaintiffs and their mother derived title over the property from their maternal grandfather, and the suit property was allotted to the 1st plaintiff as part of the partition between the plaintiff and his sister. The sketch, Ex.A5, relied upon by the plaintiffs, also supported their claim. Thus, the learned trial judge concluded that the plaintiffs had proven their title to the suit property, and accordingly, the suit was decreed in plaintiffs' favour.

11. Furthermore, the learned trial Judge rejected the defendant's claim of adverse possession, noting that the defendant had inconsistently presented his title. Consequently, the Court concluded that the plaintiffs had proven his title to the property by producing the relevant title deeds. The Court also found that the defendant had been permitted to use the property, and therefore, directed the defendant to vacate and hand over the premises.



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12. Challenging this decision, the defendants filed an appeal in

A.S.No.30 of 2005 before the learned IV Additional District Judge, Ponneri. The appellate Court independently analyzed all the facts, circumstances, and documents produced before the trial Court, and ultimately concluded that the original property had been purchased by Subba Reddy through Ex.A1. After his death, his wife Seethammal had enjoyed the property and later executed a registered sale deed in favour of Nathalla Subba Naidu, the maternal grandfather of the plaintiffs (1, 3, and 4), through Ex.A2. After his demise, the property passed on to his only daughter, Rajammal, the mother of the plaintiffs. The suit property was then allotted to the plaintiffs as a part of partition, as evidenced by the sketch Ex.A5, which proved that there was a family partition between the sons of Pullama Naidu, and the paternal grandfather of both the 1st plaintiff and the 1st defendant. Other sharers also witnessed the relevant documents. Accordingly, the appellate Court held that the defendant's father was allotted a different property, and not the suit property. Although there was a discrepancy in the measurement as per the Commissioner's report, it did not affect the plaintiffs case, as they had proven their right and title over the



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property based on the title deeds. On the other hand, the defendants had failed to prove that they were the absolute owners of the property. Thus, the findings of the trial Court were confirmed, and the appeal was dismissed.

13. Challenging the above findings, the defendants have filed the present Second appeal. The defendants argue that the Courts below erred in relying on Ex.A1, which is only a registered copy of the sale deed alleged to have been executed by a Court Receiver, and that this document does not constitute primary evidence. Furthermore, the claim of the defendant that the Courts below failed to consider the discrepancies in the description of Items 2 to 5 of the suit properties, as well as the defendant's actual possession of the property as per the Commissioner's report, and that granting relief of possession in favour of the plaintiffs were illegal and it should be set aside.

14. Additionally, the defendants argue that Ex.A5 was not properly proved by the plaintiff, as no proper witnesses were examined regarding it. They also claim that relying on Ex.A5 to conclude that the property

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belonged to the 1st plaintiff, as shown by the Western boundaries, was erroneous. The defendant further argued that the trial Court failed to consider that the defendant was not a party to Ex.A5 and that only a xerox copy of Ex.A5 was produced along with the plaint, with the original being introduced at the time of trial. As a result, the defendant was not given a proper opportunity to deny Ex.A5 when filing the written statement. The Court also allegedly failed to appreciate the defendant's claim of adverse possession, which was supported by tax receipts, and had not properly considered the defendant's long-standing possession of the property. Therefore, the defendants pray for the findings of the first appellate Court to be set aside.

15. The Second Appeal is hereby admitted on the following Substantial Questions of Law.

“(i). Whether the appellate Court is right in rendering the finding with respect to adverse possession based on the possession of the property for more than the statutory period, even without admitting the title of the respondents ? and

(ii). Whether the appellate Court is right in not accepting the



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documents filed by the defendants in proof of their possession of the suit property for more than the statutory period and on the other hand, failed to consider that the plaintiffs have not filed any other documents in proof of their alleged possession of the suit property during the relevant period ?”

16. By way of reply, the learned counsel appearing for the respondents/plaintiffs submitted that, before the trial court, the respondents/plaintiffs prayed for declaration of title in respect of the suit property and also prayed for recovery of possession. The defendants were permitted to reside on the property, but this permission was terminated by issuing a notice, as proven by Ex.A1. The plaintiffs relied on an exhibit from 2014 to prove their title to the suit property, and this was not denied by the defendants. Furthermore, Ex.A2 shows that the vendor, the maternal grandfather of the 1st plaintiff, purchased the property in 1926. The mother of the plaintiff, being the sole legal heir, succeeded to the said property from her father. After her death, the plaintiffs and his sister inherited the suit property, but the sister released her share. Thereafter, a partition took place between the plaintiffs and their sister, in which, the property was

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allotted to the plaintiff. The defendants did not deny the parent document, Ex.A1, relied upon by the plaintiffs. Therefore, the title of the plaintiffs was rightly confirmed by the trial court and does not require any interference by this Court.

17. Furthermore, Ex.A4 and Ex.A5 show that the paternal grandfather of 1st defendant, along with his brother and parents, divided 10.75 cents of the land among themselves. The division was evidenced by Ex.A5, which included a record sketch showing the partition among the sharers. The plaintiffs did not deny this division, though there was a slight discrepancy in the measurement based on Ex.A5 and the Commissioner's report. Almost the entire 10.25 cents of land had already been divided, and this was rightly appreciated by the courts below, requiring no interference. Moreover, the adverse possession claimed by the defendants was inconsistently argued and was rightly rejected by the Courts below. The Courts below relied on the title deed, while the defendant failed to prove their claim. Therefore, there is no merit in this appeal, and it should be dismissed.

18. After considering the submissions of both sides, it is admitted



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that the plaintiffs filed a suit for declaration and recovery of possession concerning the suit property, specifically stating that the first item of the suit property, includes other items. The defendant denied the plaintiffs' title, and to prove their title, the plaintiffs relied Ex.A2 sale deeds. According to Ex.A2, from the original owner maternal grandfather of the plaintiffs, Subba Naidu, who had purchased the property in the year 1926. During life time of the death of Subba Naidu, his daughter was the plaintiffs' mother died predeceased him, leaving her children plaintiffs 1, 2, and 3 as the rightful heirs on the death of Subba Naidu children his predeceased daughter became lawful owner of suit property. Following a partition, the first item of the property was allotted to the 1st plaintiff and not to plaintiffs 2 and 3. The defendant claimed title based on adverse possession, asserting themselves as the absolute owners of the property, while denying the plaintiffs' right and title over it. However, before the trial Court, the defendants failed to produce any relevant documents that they perfected title over the property.

19. Furthermore, the defendants' claim of adverse possession had not



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been sufficiently proved. There were no specific details indicating from which date they allegedly enjoyed the property adversely to the knowledge of the true owner. In all respects, they failed to prove their claim, which requires no interference by this Court. Moreover, as per Ex.A5, the paternal grandfather of the defendants' branch divided the property, and Ex.A5 proves that the property belongs to the defendant branch. However, the suit property is from the maternal grandfather of the plaintiffs, which is entirely distinct from the property covered under Ex.A5. The trial Court rightly appreciated this distinction, and no interference is required. Furthermore, the plaintiffs have a better title than the defendants, and the Courts below rightly granted relief in favor of the plaintiffs, which requires no interference by this Court. Therefore, the substantial questions of law 1 and 2 are answered accordingly.

20. Accordingly, the Second Appeal is dismissed as devoid of merits, confirming the judgement and decree passed by the first appellant Court. There shall be no order as to costs.



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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The IV Additional District Judge, Ponneri.
2. The District Munsiff, Ponneri.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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