



S.A. No. 849 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM:

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

S.A. No. 849 of 2024

1. Meenakumari

2. Palanisamy

3. Baskar

4. Indira

5. Pari

... Appellants

Vs.

1. The Idol of Arulmigu Oppillatha
Amman, rep. by its Hereditary Trustee,
K.R.Durai

2. The Assistant Commissioner,
H.R. & C.E., Ariyalur.

3. The State of Tamil Nadu,
rep. by its District Collector
Ariyalur.

4. The Tahsildar,
Taluk Office, Ariyalur.

... Respondents



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PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree made by Principal District Judge, Ariyalur in A.S.No. 2 of 2022 dated 30.10.2023 confirming the judgment and decree passed by Principal Subordinate Judge, Ariyalur, dated 04.03.2020 in O.S.No.48 of 2014.

For Appellants : Mr.R.N.Amarnath

JUDGMENT

Challenging the concurrent findings of the court below, the legal heirs of original plaintiff preferred this Second Appeal.

2. Before the trial court, originally one Sepperumal filed a suit in O.S.No.48 of 2014 on the file of Principal Sub-Court, Ariyalur praying for declaration to declare the suit property absolutely belongs to him and not to cause any interference in possession and enjoyment against defendants/respondents 1 to 4 herein. The said suit was contested by 1st defendant representing through its trustee and for defendants 2 to 4, learned Government Pleader appeared, but not contested the case. So, they were remain exparte.



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3. For the sake of convenience, the parties are referred as per the ranking in the suit.

4. The case of plaintiff is that the suit property originally belongs to one Thavasi Maruthuvar as his separate property. After his death, his son Venkatachalam was in possession and enjoyment of property by long interrupted possession and they perfected title by adverse possession also. While so, the said Venkatachalam adjudged as insolvent by Sub-Court, Trichy in I.P.No.56 of 1967 and all of his property including the suit property was taken possession by Official Receiver, Trichy, who sold the suit property along with other properties to one Ramasamy Padayachi by registered sale deed through auction sale in the year 1969. Eversince Ramasamy was in possession and enjoyment, thereafter, he sold the property to plaintiff Sepperumal for a valid consideration through sale deed dated 28.02.1976. Eversince the original plaintiff was in possession and enjoyment of suit property continuously for more than a statutory period and he paid kist and other revenues to the Government, but the defendants falsely claimed right over the property, for which they are not entitled. After the purchase, the plaintiff moved the 4th defendant, Revenue Tahsildar to



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grant patta in respect of suit property in his name but it was not considered.

By filing a writ petition, he sought direction from this court. Thereafter, enquiry was held by 4th defendant Tahsildar, Ariyalur and passed an order on 02.03.2012 by rejecting his claim holding that as per revenue records, the suit property stand in the name of 1st defendant. Therefore, he preferred an appeal before the Revenue Divisional Officer, who had also passed an order on 08.08.2012 confirming the order of 4th defendant. Thereafter, he came to know that the suit property stands in the name of 1st defendant under the control of H.R. & C.E. Department and temple is maintained by hereditary trustee. However, the hereditary trustee caused interference in the enjoyment of plaintiff. Hence, he filed a suit for declaration and permanent injunction.

5. The 1st defendant contested the case stating that the suit property is not belong to Thavasi Maruthuvar nor belongs to his son Venkatachalam and both of them have no right and title over the property. Though the property was brought for auction sale in insolvency proceedings initiated against the said Venkatachalam by official receiver, consequently the purchase made by Ramasamy Padayachi, vendor of plaintiff also not valid



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under law. At any point of time, the plaintiff's vendor and his vendor's vendor have no right and title over the property nor they perfected title by adverse possession. But, the 1st defendant submits that suit temple is the family deity of Zamindar of Ariyalur before 1948 and entire suit village was under the control of zamin, thereby temple was belong to erstwhile Zamindar about 150 years ago. After the Inam Abolition Act, patta was granted in the name of Idol, thereby the suit property is the Inam land now belong to Idol. Therefore, neither the plaintiff nor his vendor having right and title nor insolvency proceedings binding the 1st defendant, in order to grab the property, they came forward with false claim. Hence, he prayed for dismissal of suit.

6. Both parties contested the suit by adducing oral and documentary evidence. Before the trial judge, on the side of plaintiff, Ex.A1 to Ex.A15 were marked. P.W.1 and D.W.1 were examined. On the side of defendants, Ex.B1 to Ex.B4 were marked. Considering the evidence, the trial judge has framed the issue as follows:-

Whether the plaintiff was entitled for the relief of declaration?



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7. Considering the evidence on record, the trial judge held that as per the settlement 'A' register of the year 1924 marked as Ex.B1 reveals that the suit property stands in the name of suit temple, on the other hand, the plaintiff not produced any title deed nor any other material evidence to establish that the alleged original owner Thavasi Maruthuvar having title over the property nor produced any materials records to show that he along with his son uninterruptedly possessed and enjoyed the property. Therefore, the insolvency proceedings initiated against the said Venkatachalam and through which the suit property was auctioned as such is invalid, so also, the purchase made by Ramasamy Padayachi, auction purchaser. Therefore, he sold the property to the plaintiff as such is not valid under law for the reason that the vendors have no right and title over the suit property, thereby held that the sale deed stands in the name of plaintiff would not confer any right and title over the suit property. Therefore, he is not entitled for the relief of declaration and also held that the possession is with the defendant temple and not with the plaintiff at the time of filing the suit. Hence, the trial judge dismissed the suit. Challenging the said findings, the plaintiff preferred an



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appeal in A.S.No. 2 of 2022 on the file of Principal District Judge, Ariyalur, wherein the first appellate judge analysed the evidence as well as documents on record and framed separate points for consideration and finally held that plaintiff has not produced any single document to show that Venkatachalam and his father was in long uninterrupted possession of suit property. Though the property was sold in insolvency proceedings initiated against Venkatachalam and the suit property was auctioned to one Ramasamy Padayachi would not convey title to the property, since the insolvent has no right over the same, but however as per Ex.B1 settlement 'A' register of the year 1924 proves that suit property belongs to 1st defendant idol and Patta also stands in the name of said idol Ex.B3. Therefore, neither plaintiff nor vendor has right and title over the property. Accordingly, the appeal was dismissed and confirmed the findings of trial judge.

8. Pending proceedings, original plaintiff Sepperumal died leaving behind his wife, children and they are added as legal heirs and they are contesting this second appeal herein.



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9. The learned counsel for appellants would submit that as per the recitals of sale deed Ex.A1 it was mentioned that originally the property was possessed by Venkatachalam, who was declared as insolvent in I.P.No.56 of 1967 and thereafter, the suit property was sold in the court auction by Official Receiver, in which the plaintiff's vendor participated and purchased, but the courts below failed to appreciate the court auction sale and erroneously held that the plaintiff's vendor has no right and title over the property as such is illegal and liable to be set aside. Further, he would also argues that the insolvency proceedings are right in rim, therefore, the sale in Ex.A1 upon adjudication of insolvency proceedings would bind all the persons including the 1st defendant, but the courts below failed to appreciate the said legal aspect and erroneously held that insolvent Venkatachalam has no right and title over the property as such is incorrect and liable to be set aside. Further he would also argue that the power vested with the Official Receiver in respect of suit property has not been considered by the courts below. Therefore, he prayed to admit this second appeal by raising following substantial question of law :-

(a) When the plaintiffs' predecessor in title acquired the title over



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the property by purchase in a sale upon adjudication under the Provincial Insolvency Act, 1920, whether the courts below are right in holding that the plaintiffs have no right over the property?

10. Heard and considered the submissions made by learned counsel for appellant and perused the materials available on record.

11. Considering his submissions and on perusal of records, it reveals that the appellants herein are the legal heirs of original plaintiff one Sepperumal, who filed the suit claiming to declare his right and title over the suit property stating that he purchased the property from one Ramasamy Padayachi through the sale deed Ex.A2 of the year 1976. He also relied on the sale deed stands in the name of Ramasamy Padayachi executed by the Official Receiver through auction sale marked as Ex.A1, which shows that the said Ramasamy Padayachi purchased the property from the Official Receiver in insolvency proceedings in I.P. No.19 of 1965 initiated against the said Venkatachalam. But, except these two documents, there is no parent title deed to establish that how Venkatachalam and his father Thavasi



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Maruthavar have got right over the property, but according to plaintiff, the said Venkatachalam and his father conferred right and title over the property by long uninterrupted possession and perfected title by adverse possession. But, to prove the same also, there is no revenue records adduced on the side of plaintiff. Therefore, the courts below rightly held that plaintiff's vendor's title has not been proved while deciding the issue of declaration as such needs no interference.

12. Furthermore, according to 1st respondent/1st defendant, Arulmigu Oppillatha Amman temple, represented by its hereditary trustee claims that originally the suit property and other lands were belong to Zamin of Ariyalur District and the temple was belong to Zamin family and after the settlement proceedings, the suit property was allotted in the name of idol of temple and the patta was also granted to that effect. To prove the same, they have relied the document Ex.B1 Settlement 'A' register and patta Ex.B3. On perusal of those documents, it would clearly reveals that from the year 1924 onwards, the suit property in survey No.53/1 stands in the name of A/m Oppillatha Amman temple. As per settlement proceedings, the original



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owner is A/o. Oppillatha Amman temple. But, after the alleged purchase, the original plaintiff attempted to get patta, but the same was rejected by the revenue authority stating that his vendor has no right and title over the property. As discussed above, the plaintiff has not produced any evidence to that effect. But, they relied the sale deed executed by Official Receiver in the name of vendor Ramasamy Padayachi, since because it is auction sale, it would not confer better title. To that effect, the ratio laid down in the authority reported in **2006 (3) CTC 702** in the case of ***Dr.T.Vijayendras and another vs. M.Subramanian and others***, wherein it has been held that *“It is elementary principle that in court auction sales, there is no warranty of title and the principle of caveat emptor will apply to such sales”* , which was relied on by the court below as such is squarely applicable to the facts of the case. Therefore, the sale deed stand in the name of Ramasamy Padayachi would not confer better title to the plaintiff's vendor and the same was rightly concluded by the courts below, which needs no interference.

13. It is also settled proposition that there is no adverse possession



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against the idol. To that effect, the findings rendered by the courts below needs no interference. Therefore, there is no question of law involved for consideration and this Second Appeal is dismissed as no merit. The findings rendered by the trial judge is confirmed. Consequently, the suit is dismissed as no merit. No costs.

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

1. The Principal Sub-Judge, Ariyalur.
2. The Principal District Judge, Ariyalur.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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