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S.A.No.414 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 07.02.2024	Judgment Pronounced on 01.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.414 of 2017
and C.M.P.No.16629 of 2017

Indira Deviammal (Died)

..Appellant

Vs.

A.C.Lakshmipathy (Died)

A.C.Kulasekara Reddiar (Died)

1.Venkataraman

2.Sarojini

3.Ramachandran

4.Navaneetham

5.A.J.Saraswathy

6.Kuppabai

7.Seetharaman (Died)

8.Ramachandran

9.Seethalakshmi



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10. Anusuya

11. Kanchana

12. Manjula

13. Hemalatha

14. Venkatachalam

15. Muthamizhselvi

16. P. Varadharajan

17. P. Veeraraghavan

18. Hema Srivathsan

19. Kamala

20. Banumathi

21. Lakshmi

22. Venkatesa Prasad

..Respondents

[R7 died, RR19 to 22 are B/R as LR's of the deceased R7 vide Court order dated 26.09.2023 made in C.M.P.Nos.22234, 22237 & 22240 of 2023 in S.A.No.414 of 2017]

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 03.01.2017 passed in A.S.No.37 of 2013 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu, confirming the judgment and decree dated



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12.07.2013 made in O.S.No.94 of 2009 on the file of the Subordinate Judge,
Tambaram.

For Appellant : Mr.C.Manishankar
Senior Counsel for
Mr.SDS.Phillip

For Respondents
For RR2 & 13 : Mr.A.K.Kumarasamy
Senior Counsel for
Mr.P.Asokan

For RR16 to 22 : Mr.M.Balasubramanian

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 03.01.2017 passed in A.S.No.37 of 2013 on the file of the Principal District Judge, Kancheepuram District at Chengalpattu, confirming the judgment and decree dated 12.07.2013 made in O.S.No.94 of 2009 on the file of the Subordinate Judge, Tambaram.

2.The unsuccessful plaintiff before the Courts below is the appellant herein.



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3.The parties are described as per their litigating status before the Trial

Court.

4.The case of the plaintiff is that the suit property originally belonged to Ragava Reddiyar and it was situate in Adhambakkam village, Ramnad District. The Ragava Reddiyar died, leaving behind his two daughters, namely Vijayalakshmi Ammal and Loganayaki Ammal, as his only legal heirs, who inherited the suit properties. According to the plaintiff, the daughter Loganayaki Ammal died, without leaving any legal heir, but leaving a Will bequeathing her $\frac{1}{2}$ share in favour of the plaintiff/the other daughter of Ragava Reddiyar. Thus, the plaintiff became the owner of the entire property comprising in Paimash No.585/3 of an extent of 46 cents. The plaintiff claims to be in exclusive possession and enjoyment of the suit property, by fencing the suit land on all the four sides, in order to prevent encroachment by the third parties.

5.It is the further case of the plaintiff that in 1982, the plaintiff came to know that some unknown persons had entered into portions of the suit land and attempted to put up construction and denying the plaintiff's title to the



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suit land. On making enquiries, the plaintiff came to know that the 9th defendant's agents and men had trespassed into the suit property and that the Inamdar of Adhambakkam Village, Atheenakartha of Sri Kundrakudi Tiruvannamalai Mutt., Ramnad District, had claimed patta for all the lands of the minor Inam, on the basis that both the Warams namely Kudiwaram and Melwaram belong to him. The Assistant Settlement Officer, Chengalpattu, held that the Inamdar was only entitled to Melwaram and the Kudiwaram belongs to ryots, occupying the land. In the said proceedings for Paimash No.595/3 correlated to S.No.89/15 measuring 46 cents, being the disputed property, it was recognized to be the property of the 3rd defendant and patta was also issued to him.

6.It is the grievance of the plaintiff that the said proceedings are behind the plaintiff's back and on coming to know of the purchase of the suit property by the 3rd defendant from the defendants 1 and 2 and there was a wrong description of Paimash number, the plaintiff filed the suit for declaration, to declaring herself as sole and absolute owner of the property and for recovery of possession and with a claim for past damages for use and occupation. Pending the suit, the plaintiff died and her son, namely the 2nd



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plaintiff has been impleaded, being the sole surviving legal heir of the deceased 1st appellant.

7.The suit was resisted by the defendants stating that the suit was barred by limitation and having purchased the property way back in 1970's, the title of the defendants, cannot be called in question at this length of time i.e., 1987 when the suit came to be filed.

8.Similar written statements were filed by all the contesting defendants, primarily attacking the maintainability of the suit, on the ground of law of limitation and that the Government had, through a Settlement Officer, fixed a date of enquiry and thereafter, granted settlement patta in their names and that the defendants have been in enjoyment and uninterrupted possession for more than the statutory period of limitation and the suit was therefore sought to be dismissed.

9.The Trial Court dismissed the suit as barred by limitation and as against the same, an appeal was preferred by the plaintiff and same also came to be dismissed, confirming the findings of the Trial Court. It is as against



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these findings rendered by the Courts below, the plaintiff is before this Court.

10.It is seen that the above Second Appeal has not yet been admitted. However, Mr. C.Manishankar, learned Senior Counsel for Mr. S.D.S.Phillip, learned for the appellant, Mr. A.K.Kumarasamy, learned Senior Counsel for Mr.P.Asokan, learned counsel for the respondents 2 and 13 and Mr. M.Balasubramanian, learned counsel for the respondents 16 to 22 have argued the Second Appeal for final hearing.

11.I have gone through the entire records, including the report called for by this Court regarding the original land registers pertaining to Paimash No.585/3 and 590/5.

12.Mr.C.Manishankar, learned Senior Counsel for the appellant would submit that the specific case of the plaintiff was that the lands belonged to the plaintiff alone and even in the year 1973, in the Assistant Settlement Officer's proceedings, patta was granted to the 3rd defendant and in the said patta in Paimash No.585/3, which is the plaintiff's property, was wrongly mentioned instead of S.No.595/5. The learned Senior Counsel would further



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submit that when these proceedings were without notice to the plaintiff, the same would not bind the plaintiff in any manner. In so far as the sale deeds, under which the defendants 5, 6, 7 and 12 purchased various plots, they all correlate to Paimash No.590/5 and not the plaintiff's property in Paimash No.585/3. Therefore, according to the plaintiff, the defendants had no iota of right, title and interest over the lands in Paimash No.585/3, to which the plaintiff has clearly established his right, title and entitlement by production of Ex.A1 to Ex.A17.

13.The learned Senior Counsel for the appellant would also invite my attention to the findings in the settlement proceedings before the Revenue Authorities, especially, Ex.A9, where the Special Commissioner, Land Acquisition, has allowed the revision filed by the plaintiff and remitted the matter back to the Assistant Settlement Officer. Therefore, according to the learned Senior Counsel for the appellant, the original proceedings before the Assistant Settlement Officer stand set aside and quashed and no rights can flow under the said proceedings. Moreover, he would also bring to my notice that in Ex.A10, in and by which the Assistant Settlement Officer has kept the matter alive, by stating that in view of the suit pending (subject matter of the



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Second Appeal), no orders were passed subsequent to the remand. He would therefore pray that the Second Appeal be allowed as the plaintiff has clearly established independent and absolute right in and over the suit property, comprising in Paimash No.585/3 and on the contrary, all the claims of the defendant were only flowing from the original proceedings of the Assistant Settlement Officer on 24.05.1973, which have been admittedly set aside under Ex.A9 on 31.05.2000.

14.Per contra, Mr.A.K.Kumarasamy, learned Senior Counsel for the respondents 2 and 13 and Mr.M.Balasubramanian, learned counsel for the respondents 16 to 22 would submit that the plaintiff has miserably failed to satisfy the Court with regard to the plea of limitation and would also submit that even assuming that the plaintiff was able to establish her right, title and interest in and over the suit lands comprised in Paimash No.585/3, when the defendants are bonafide purchasers, who have been put in possession subsequent to their purchases, and admittedly, after a layout was formed and approved by the appropriate authority, their rights cannot be disturbed in any manner whatsoever. The learned Senior Counsel would also refer to the cross-examination of P.W.1, where the plaintiff has admitted that several



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houses have been constructed in the suit property and therefore, the learned Senior Counsel for the respondents would pray for dismissal of the Second Appeal, as the Courts below have rightly found that the suit was hopelessly barred by limitation.

15.I have paid my anxious and careful consideration to the arguments advanced by the learned Senior Counsel for the appellant as well as the learned Senior Counsel for the respondents 2 and 13 and the learned counsel for the respondents 16 to 22.

16.I have also independently gone through the entire pleadings, oral testimony of the parties and the documentary evidence adduced by the plaintiff and the defendants before the Courts below. If I am able to decide the issue of limitation as the first issue, then there will be no necessity to probe further, if it is found that the findings of the Courts below regarding limitation, do not call for any interference.

17.On a reading of the plaint, it is clear that the plaintiff states that in the year 1982, the plaintiff's husband came to know about some unknown



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persons having entered into the portions of the suit land. The suit has admittedly been filed only in August 1987 and subsequently, it was transferred and re-numbered as O.S.No.132 of 2002 and again in O.S.No.94 of 2009 before the Sub-court, Tambaram. In order to establish that the plaintiff came to know about the alleged encroachment in the year 1982, the plaintiff has not been able to adduce any satisfactory documentary evidence. If really the plaintiff's husband had come to know about the alleged encroachment, the plaintiff would not have chosen to remain silent and atleast, a police complaint or lawyer's notice would have been lodged/issued. However, admittedly, the plaintiff does not disclose any such action taken by the plaintiff's husband.

18. On the contrary, the defendants have categorically claimed that the property was laid out and approval was also granted in D.T.P.No.13 of 1974, which layout was formed by the 3rd defendant, A.S.L.Rajan and subsequently, various defendants have purchased individual plots in the said layout. The defendants have been able to show that the plot has been laid out even in the year 1974, under Ex.B1 to Ex.B52 and clearly established that the defendants alone have been in possession of the suit lands as early as



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from 1974 and then onwards. Unfortunately, the plaintiff's case, as set out in the plaint, totally goes against the admitted possession that the suit lands were laid out even in the year 1974, from when the plots in the layout have been sold to various defendants. This clearly falsifies the case of the plaintiff that her husband came to know about the encroachments into the suit land in the year 1982. Even otherwise, under the law of limitation, the right to recover possession of suit property is 12 years from the date of such possession becoming adverse to that of the plaintiff. The plaintiff cannot even take shelter under the plea of date of knowledge of the encroachment or trespass.

19. Admittedly, the defendants have shown that the plaintiff has been out of possession atleast right from 1974 onwards. The suit had been filed 13 years long after the layout has been sanctioned by the Statutory Authorities, which is clearly beyond the period of 12 years. Further, the plaintiff as P.W.1, has admitted that the property has been laid out and several houses have been constructed. The Trial Court as well as the First Appellate Court have rightly relied on the admissions of P.W.1 as well as the documentary evidence to negate the plaintiff's version pleaded before the Court. I do not



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find that the findings arrived at by the Trial Court and confirmed by the First Appellate Court are either illegal or perverse, warranting interference under Section 100 of Code of Civil Procedure.

20. Even though the plaintiff may be correct in stating that she would be entitled to declaration, insofar as her lands in Paimash No.585/3 is concerned, considering that the suit itself has not been filed within a period of 12 years to declare the plaintiff's right, even though there may have been misdescription of Paimash numbers, resulting in the plaintiff losing possession of the property, the relief of declaration also has to fail. Unfortunately, the law of limitation is stringent and does not come to the support of the litigant who sleeps over his rights. Thus, I am unable to accept the submission of the learned Senior Counsel for the appellant that since the defendants' case were totally based on a different Paimash number, the plaintiff is entitled to a declaratory decree as prayed for.

21. In fine, I do not find any substantial question of law arising for consideration in the above Second Appeal. The Courts below have rightly applied the law of limitation and non-suited the plaintiff.



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22.In fine, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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

- 1.The Subordinate Judge, Madurantakkam, Kanchipuram District.
- 2.The District Munsif, Madurantakkam, Kanchipuram District.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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P.B.BALAJI, J.

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Pre-delivery judgment made in

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