



Second Appeal No.29 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.29 of 2019
and C.M.P.No.445 of 2019

1.Rayappan
2.Sagayam
3.Velankanni

.... Appellants

-Vs-

1.Ananthayee
2.The Special Tahsildar
Natham Survey Project
Chengalpet
Kancheepuram District.

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 15.07.2011 of Additional Subordinate Judge, Chengalpet made in A.S.No.4 of 2010 reversing the judgment and decree dated 30.12.2009 made in O.S.No.390 of 1996 by the District Munsif-cum-Judicial Magistrate at Thirukazhukundram.

For Appellants : Mr.P.G.Thiyagu

For Respondents : Mr.C.Vigneshwaran
for Mr.K.Goviganesan - for R1
Mr.M.Muthusamy
Government Advocate - for R2



Second Appeal No.29 of 2019

J U D G M E N T

WEB COPY

The present Second Appeal arises out of the judgment and decree of the Additional Subordinate Judge at Chengalpet in A.S.No.4 of 2010 dated 15.07.2011 in reversing the judgment and decree of the Court of the learned District Munsif-cum-Judicial Magistrate at Thirukazhukundram in O.S.No.390 of 1996 dated 30.12.2009.

For the sake of convenience, the parties will be referred to as per their rank in the suit.

2. O.S.No.390 of 1996 was filed by the respondent herein seeking for the relief of declaration of her title to the suit schedule mentioned property and for recovery of possession from defendants 1 to 4. The case of the plaintiff is that she had purchased the property from Father Thomas Vareegot on 07.09.1983 for a valid sale consideration of Rs.1500/-. She would state that on and from the date of purchase, she took possession of the property and she has been in enjoyment of the same. She had utilized the property for tying the cattle and to store hayrick. She would plead that the defendants who are utter strangers to the property, taking advantage of the plaintiff's helplessness had trespassed into the property in February 1994 and put up a hut over the same. She had pleaded



Second Appeal No.29 of 2019

that since the defendants have refused to vacate and hand over possession, she convened a Panchayat in January 1996 and in that Panchayat, the defendants had agreed that they will hand over possession. Yet they did not do so. Hence, being left with no other option, she came forward with the suit for the aforesaid reliefs.

3. Originally the suit was presented as O.S.No.356 of 1996 on the file of the learned District Munsif at Chengalpet. Subsequently, due to creation of a new Court at Thirukkazhukundram, the suit was presented to the said Court and renumbered as O.S.No.390 of 1996.

4. On service of summons, the defendants entered appearance in the suit. The original first defendant passed away and his legal heirs viz., his sons, who are defendants 2 to 4 filed a written statement. It is their case that the defendants 2 to 4 had been born in the suit property and their father had been in occupation of the same from the year 1960. They would state that during their Natham Survey, the Special Tahsildar and his subordinates had verified the physical possession and a Patta had been granted in their favour. They would state that the vendor of the plaintiff did not have title to the property and the said document had been created by Father Thomas Vareegot in collusion with the plaintiff. They would state that they had put up huts and the same had been



Second Appeal No.29 of 2019

assessed to property tax.

WEB COPY

5. On the basis of these pleadings, the trial Judge framed the following issues:

1. Whether the sale deed dated 07.09.1983 is valid and binding?
2. Whether the plaintiff is entitled for declaration of the suit property?
3. Is the suit maintainable for non-compliance of Section 80 CPC?
4. Whether the plaintiff is entitled to delivery of possession of the suit property from defendants 1 to 4?

Additional Issues

- 5, வழக்கு சொத்து இரண்டு முதல் நான்கு பிரதிவாதிகட்கு பாத்தியமானதா?
- 6, வழக்கு சொத்து இரண்டு முதல் நான்கு பிரதிவாதிகளின் சுவாதீன அனுபவத்தில் உள்ளதா ?
- 7, இவ்வழக்கிற்கு 5வது பிரதிவாதி தரப்பினரா ?
- 8, வழக்கு சொத்து வாதிக்கு பாத்தியமானதா ?

6. On the side of the plaintiff, she examined herself as P.W.1 and one Thambiran as P.W.2. She marked Exs.A1 to A4 viz., her original sale deed as Ex.A1 and the tax receipt as Ex.A2. She produced the Patta under Exs.A3 and A4.



Second Appeal No.29 of 2019

7. On the side of the defendants, the third defendant examined himself as D.W.1 and marked Exs.B1 to B29. In addition, he examined two other witnesses.

8. On consideration of the oral and documentary evidence let in before him, the learned District Munsif came to a conclusion that the plaintiff has not proved her title to the property and therefore dismissed the suit. While dismissing the suit, the learned Judge also held that the defendants have filed documents which only came into existence after the presentation of the plaint.

9. Aggrieved by the dismissal, the plaintiff preferred a regular appeal before the learned Subordinate Judge at Chengalpet. This was heard by the Additional Subordinate Judge in A.S.No.4 of 2010. In and by way of a judgment dated 15.07.2011, the learned Subordinate Judge took a diametrically opposite view from the one taken by the learned trial Judge and came to a conclusion that the plaintiff had proved her title to the property and therefore decreed the suit as prayed for.

10. Aggrieved by the reversal of the decree, the defendants 2 to 4 are on appeal before me. This Second Appeal was admitted on 10.01.2019 on the following substantial questions of law:

1. Whether the lower appellate Court was correct in law in



holding that the plaintiff was entitled to a declaration without the plaintiff proving that she had got a valid sale deed?

2. Whether the lower appellate Court is correct in law in overlooking the revenue receipts produced by the defendants / appellants herein to show their continuous possession from much before the alleged purchase by the plaintiff?"

11. On issuance of notice, Mr.K.Goviganesan entered appearance on behalf of the respondents.

12. Heard Mr.P.G.Thiyagu for the appellants and Mr.C.Vigneswaran for Mr.Goviganesan for the respondents.

13. Mr.Thiyagu would submit that the plaintiff had not proved the validity of the sale deed by examining the witnesses connected with the document or the executant. He would further submit that the revenue receipts which had been produced by the defendants would point out that, being a Grama Natham, they are in possession and enjoyment of the same and therefore the Court below ought not to have decreed the suit but should have dismissed the appeal. He would also invite the attention of this Court to Ex.A8 viz., the copy of the Natham Settlement Register and would state that there is no endorsement as against the



Second Appeal No.29 of 2019

said subdivision viz., with respect to Survey No.198/15 showing the plaintiff as being in possession.

14. Mr.C.Vigneshwaran would submit that the plaintiff had substantiated her right over the property by producing Ex.A1 ie., the original sale deed executed by Father Thomas Vareegot in her favour. He would draw the attention of the Court to Ex.A2 the revenue receipt issued by the concerned Municipality to the effect that the property is under the occupation of Vedachalam who is none else than the husband of Anathayee. He would state that the lower appellate Court had correctly appreciated the evidence of the parties and would seek for the dismissal of the appeal.

15. I have carefully considered the submissions of both sides. I summoned the original records from the learned District Munsif, Thirukkazhukundram and from the learned Additional Subordinate Judge, Chengalpet and have gone through the same.

16. At the outset, I have to point out that Ex.A8 which is the certified copy of the Natham Settlement Register issued by the District Collector had been received in the appellate Court pursuant to the orders in I.A.No.227 of 2011 in A.S.No.4 of 2010 dated 15.07.2011. The defendant though is entitled in terms of Section 105(1) of Civil Procedure Code to plead about the validity or correctness



Second Appeal No.29 of 2019

of the order passed by the lower appellate Court in receiving the documents in terms of Order XL1 Rule 27, he has not agitated the same.

Proof of sale deed

17. The plaintiff, in order to prove that she has title to the property, has marked Ex.A1. This is the original of the sale deed executed by Father Thomas Vareegot, the then custodian of the Church in Nerumbur in favour of the plaintiff. The trial Court had erred in stating that, for the purpose of the proving the sale deed, the attesting witnesses of the said sale deed have to be examined. Neither the Transfer of Property Act nor the Evidence Act require an attesting witness to be examined in order to substantiate the proof of the sale deed. The sale deed is neither a last will and testament nor it is a settlement deed for it to be proved by examining at least one attesting witness. It is a document evidencing title to the property in terms of Section 54 of the Transfer of Property Act. The said Act does not require such a mode of proof.

Inference can be only drawn on those matters specifically pleaded

18. The trial Judge further went on to hold that the defendants' father who was a washerman in the neighbouring village had been invited by the villagers of Nerumbur to come and occupy the village Natham that had been set apart. It is the fundamental principle of civil law that no amount of evidence can



Second Appeal No.29 of 2019

be looked into unless and until there is a specific plea. A line by line reading of the written statement does not point out to such a plea having been raised by the defendants. The defendants have no doubt pleaded that the deceased Gnanaprakasam, the first defendant had occupied the property in the year 1960. But, the story of the invitation from the villagers to come over to the village of Nerumbur in order to occupy the suit schedule property is nowhere pleaded. In a suit for declaration of title and for recovery of possession, the Court does not declare the right of the property as against the entire world. It only looks into who has "better title" to the suit schedule property.

Title deed and revenue receipts - proof of better title

19. As against the sale deed under Ex.A1 and the revenue record under Ex.A2, what has been projected by the defendants are a series of revenue receipts. These revenue receipts commence with the year 1998-99 and end with the year 2007. They have come into existence after the filing of the suit. Revenue records do not confer title to suit property. They can at best point out to a person being in possession of the property. The question of possession of the defendants in this case is irrelevant because the suit itself is one for recovery of possession. The fact that the plaintiff pleads recovery of possession denotes that the defendants are in possession and occupation.



Second Appeal No.29 of 2019

WEB COPY

20. Continuing my narration as against the title deed and revenue records, all that is presented before me by Mr.Thiyagu are a bunch of revenue receipts and those which have come *post litem motam*. If I were to apply the principle stated above to the facts of the present case in order to decide who has the better title, I necessarily have to conclude that the plaintiff having better title to the property by virtue of Exs.A1 and A2, is entitled to succeed.

21. Turning to Ex.A8, this is a certified copy of the record issued by the District Collector for this village on 28.12.2010. The settlement register shows that this is "சேரி நத்தம்" or "கிராம நத்தம்" that has been set apart for occupation by those belonging to the depressed classes of the society. A perusal of Ex.A1 shows that the plaintiff is a person who belongs to Scheduled Caste community and she belongs to depressed class. Ex.A8 is a public record as it is a record of the acts of a public officer / District Collector of Kancheepuram District. This becomes a public record in terms of Section 74(1)(iii) of the Evidence Act. A perusal of Ex.A8 reflects that it reads about the sale that had been made by Father Thomas Vareegot in favour of Ananthayee in Document No.2089 on 08.09.1983. This corresponds to Ex.A1. Therefore, reading Exs.A1, A2 and A8 together, I am able to come to a conclusion that the plaintiff not only has better



Second Appeal No.29 of 2019

title to the property, but was in occupation thereof.

WEB COPY

22. Being a Grama Natham (கிராம நத்தம்) property, I cannot expect a title deed in all cases. In this case, there is a title deed which points out to the ownership of the plaintiff. The principles relating to Grama Natham (கிராம நத்தம்) are that it belongs to the first occupant of the property. Ex.A8 would show that the first occupant was Father Thomas Vareegot and succeeded by Ananthayee. Ananthayee has pleaded that the defendants had dispossessed her in and around 1994 and the suit having been filed in the year 1996, it is well within time. Had the defendants produced any document to substantiate prior possession from 1960, I would have certainly thrown out the case of the plaintiff as the plaintiff should have shown her prior possession of the property. Unfortunately, the defendants have failed to prove the same.

Decision

23. The lower appellate Court has rightly appreciated this position of law as is seen from Paragraphs 6 and 8 of the said judgment. Despite the valiant and vehement efforts of Mr.Thiyagu, the questions of law are answered against the appellants and in favour of the respondents. The Second Appeal stands



Second Appeal No.29 of 2019

dismissed. Consequently, connected miscellaneous petition is also dismissed.

Taking into consideration the defendants have been in occupation of the property for over 20 years, time for eviction is granted by six months. As both the plaintiff and the defendants come from economically weak background, I am not inclined to impose costs in the appeal.

20.06.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

KST



Second Appeal No.29 of 2019

To

WEB COPY

- 1.The District Munsif-cum-Judicial Magistrate
Thirukazhukundram.
- 2.The Additional Subordinate Judge
Chengalpattu.



WEB COPY



Second Appeal No.29 of 2019

V.LAKSHMINARAYANAN, J.

KST

S.A.No.29 of 2019

20.06.2024