



S.A.(MD).No.264 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.08.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.264 of 2007

and

C.M.P.(MD)No.7079 of 2024

1.Avudaiammal
2.K.Pandiarajan
3.K.Gunasekaran
4.K.Chandrasekaran
5.K.Gnanasekaran

... Appellants

/Vs./

1.Andalammal
2.Prema
3.S.Ramakrishnan
4.Bhuvaneswari
5.S.Subbaraj

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, aggrieved by the Judgment and Decree dated 29.06.2006 made in A.S.No.52 of 2004 on the file of the Subordinate Judge, Sivakasi, confirming the Judgment and Decree dated 27.07.2004 made in O.S.No.46 of 2003 on the file of the District Munsif Court, Sattur.

1st Appellant : Died
For Appellants 2 to 5 : Mr.J.Barathan
For R2 to R5 : Mr.M.Micheal Bharathi



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JUDGMENT

The suit is filed for declaration and injunction. It is a concurrent finding. Aggrieved over the same, the present second appeal is preferred.

2. The brief facts of the case are that one Azhagarsamy married Koodammal and they had three children namely Krishnasamy, Gurusamy and Subbaraj. The said three persons partitioned the family properties. The A scheduled property was allotted to Krishnasamy, B scheduled property was allotted to Gurusamy and the C scheduled property was allotted to Subbaraj. The contention of the Krishnasamy is that the said Subbaraj had married one Andalammal and he left the place and settled in his wife's place Thailpatti. The said Subbaraj has also given the properties shown in the C scheduled properties to Krishnasamy under oral sale deed. Further, the said Subbaraj had mortgaged certain properties and the mortgage was redeemed by the Krishnasamy. After paying the amount, the said Subbaraj has executed a pro-note to prove that he had borrowed money from Krishnasamy. Based on these transactions, the C scheduled property was given to Krishnasamy. While filing the suit, the said Krishnasamy has produced the kist receipts, property tax receipts, electricity bills and telephone bills. However, the



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Trial Court and the First Appellate Court has disbelieved the case of the plaintiffs.

3. Pending second appeal, the appellants herein / plaintiffs have filed additional documents wherein the pro-note and patta passbook, chitta, kist receipts and proceedings of Agricultural Income Tax Officer, Virudhunagar showing income from agriculture and various other 124 documents are produced before this Court. The plaintiffs have also taken a plea of adverse possession. Even though the plaintiffs had not used the phrase “adverse possession” but had taken the plea of adverse possession by stating that the plaintiffs have been in interrupted upon any exclusive possession and enjoyment of the suit property for more than 40 years. But the Trial Court failed to frame the issue regarding adverse possession.

4. Therefore, this Court is of the considered opinion that the case ought to be reconsidered by the Trial Court. Hence, this Court is remitting the case back to the Trial Court. This Court is not admitting the additional documents which are produced before this Court. However, liberty is granted to the plaintiffs to produce the same before the Trial Court. The Trial Court may consider the



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additional documents as per law, after giving opportunity to the defendants. The plaintiffs and the defendants are at liberty to amend the pleadings, to produce additional evidences and contest the case. The suit shall be completed by the Trial Court within a period of eight months from the date of receipt of a copy of this judgment.

5. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed. Registry is directed to return the original documents filed in C.M.P.(MD)No.7079 of 2024 to the concerned party.

28.08.2024

Index : Yes / No
NCC : Yes / No

Tmg



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1. The Subordinate Judge,
Sivakasi.
2. The District Munsif Court,
Sattur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.264 of 2007

Dated:
28.08.2024