



S.A.(MD) No.394 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A. (MD) No.394 of 2008

1.Philominal

2.Harichandran

3.K.Ramkumar

... Appellants

-VS-

1.Tmt.Arokia Mary (died)

2.The State of Tamil Nadu,
rep.by its District Collector,
O/o.District Collector Office,
Office at Velunachiyar Valagam,
Thadikombu,
Dindigul.

3.The Tahsildar,
Dindigul,
Office at Taluk Office,
Dindigul Town.

4.Jeyalily

5.Albert



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WEB C 6.Messiyas

7.Betsi Clara

8.Jansirani

9.Saranya

10.Esther

... Respondents

(Respondents 4 to 10 are brought on record
as L.Rs.of the deceased 1st Respondent)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 21.08.2003, passed in A.S.No.227 of 1999 on the file of Principal District Judge, Dindigul, confirming the judgment and decree, dated 24.02.1999, passed in O.S.No.1535 of 1991 on the file of I Additional District Munsif Court, Dindigul.

For Appellants : Mr.S.Ramesh,
for Mrs.V.Srimathi.

Respondent 1 : Died
For Respondents 2 & 3 : Mr.SRA.Ramchandran,
Addl.Govt.Pleader.

For Respondents 4 to 10 : Mr.T.R.Subramanian



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JUDGMENT

The plaintiffs in the suit are the appellants. The suit was filed seeking declaration of title and for mandatory injunction to remove the staircase put up by the first defendant in the suit property. The plaintiffs also sought for injunction. The suit was dismissed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiffs are before this Court.

2. According to the first plaintiff, the suit property was a lane portion situated on the western side of her house. The said house property originally belonged to the husband of the plaintiff – K.S.Jose and he executed a settlement deed, dated 04.02.1971, in favour of the first plaintiff in respect of the house property, including the suit lane. It was claimed by the plaintiff that the suit lane as well as the eastern side portion was originally a poramboke land and the first plaintiff's husband occupied the same in the year 1954. The Dindigul Municipality passed a resolution, dated 17.09.1959, recommending to the Government for assignment of the land to him. It was claimed by the plaintiff that they have been in possession and enjoyment of the suit lane for



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more than 40 years with property tax assessment in their name and they acquired title by prescription. It was also claimed that the first defendant made an attempt to put up a staircase in the suit lane and hence initially the suit was filed for declaration and permanent injunction. Pending suit, the first defendant had put up a staircase in the suit lane portion. Therefore, the prayer for mandatory injunction was also included, seeking removal of the staircase put up by the defendant.

3. The defendant filed a written statement denying the right as well as possession of the plaintiff over the suit property. It is the case of the defendant that the suit property, which is on the eastern side of the defendant's house, as well as the property having the house of the plaintiff was originally under the occupation of the defendant and their predecessor-in-interest. In the year 1958, when the defendant's predecessor-in-interest -Amruthavannan was out of locality, the plaintiff's husband, using his influence, had put up a house without the knowledge of the said Amruthavannan. Even thereafter, the suit lane portion was under the exclusive possession and enjoyment of the defendant's predecessor-in-title. It was also claimed by the defendant that the plaintiff and her husband never used the said property for any purpose and that the suit lane portion had



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been under the exclusive possession and enjoyment of the defendant. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as P.W.1 and 13 documents were marked on her side as Exs.A-1 to A-13. The first defendant was examined as D.W.1 and another witness was examined as D.W.2. On behalf of the defendants, 11 documents were marked as Exs.B-1 to B-11. The Advocate Commissioner's Report and Plan were marked as Exs.C-1 and C-2.

5. The trial Court, on appreciation of the evidence available on record, came to the conclusion that the plaintiff failed to prove her exclusive possession and enjoyment of the suit property for more than the statutory period and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.227 of 1999 on the file of Principal District Court, Dindigul. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiff has come by way of this Second Appeal.

6. The learned counsel for the appellants vehemently contended that Dindigul Municipality passed a resolution on 17.09.1959, recommending



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assignment of suit site to the plaintiff and the said document has not been properly taken into consideration by both the Courts below. The learned counsel further submitted that an order for eviction of the plaintiff was passed by the revenue officials and on appeal filed by the plaintiff, the District Revenue Officer passed an order, allowing the appeal in favour of the plaintiff and had these documents been taken into consideration properly, the Courts below would not have come to the conclusion that the plaintiff failed to prove her continuous possession over the suit property.

7. As per the plaint averments, the plaintiffs are claiming right under the settlement deed, executed by the first plaintiff's husband under Ex.A-1. Though the plaintiff claimed right over the suit lane portion under Ex.A-1, in subsequent averments, the plaintiffs admitted that the suit property was a poramboke land and that they had been in possession and enjoyment of the same for more than the statutory period and they perfected title by adverse possession. In order to prove their right over the property, the plaintiffs marked the resolution, dated 17.09.1959, passed by Dindigul Municipality, recommending assignment of suit property to the plaintiff. However, no document has been produced before the Court to prove that the suit property was actually assigned to the plaintiff as per the recommendation of the



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Dindigul Municipality. Both the Courts below, on perusal of the resolution, found that the description of the property was not clearly mentioned in the document with measurements. Ex.A-7 is the recommendation passed by the Tahsildar and as per the said order, the Tahsildar recommended for assignment of land to the first plaintiff's husband to an extent of 898 sq.ft. However, there is no evidence available on record to suggest that the suit lane portion falls within the extent mentioned in the said order. Further, there is no evidence on record to show that the property mentioned in Ex.A-7 was assigned in favour of the plaintiff. The plaintiff also failed to produce the order passed by the revenue department for eviction of the plaintiff. Therefore, whether the order passed by the revenue department is in respect of the suit lane portion or not is not at all proved before the Court. In such circumstances, the order passed by appellate authority allowing the appeal in favour of the plaintiff will not support the case of the appellant. The trial Court also observed that the plaintiff failed to produce clean copy of Ex.A-9, the order passed by the District Revenue Officer. Therefore, there is nothing on record to show that Ex.A-9 was relating to the suit lane portion. The other documents, namely, house tax receipts, relied on by the plaintiff, as Exs.A-3 to A-5 were said to be of the year 1987 and 1988. The suit had been filed in the year 1991. Hence, there is no concrete evidence available on record to



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suggest that the plaintiff was in exclusive possession and enjoyment of the suit lane portion for more than the statutory period to claim adverse possession against the Government. In such circumstances, both the Courts below, on proper appreciation of evidence available on record, negated the claim of the plaintiff and dismissed the suit. I do not find any ground to interfere with the said factual findings, reached by the Courts below. Finding no substantial question of law arising for consideration, this Second Appeal stands dismissed. No costs.

12.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

- 1.Principal District Judge,
Dindigul.
- 2.I Additional District Munsif,
Dindigul.
- 3.Section Officer,
V.R. Section,
Madurai Bench of Madras High Court.



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