



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.695 OF 2008

1.Veluchamy(died)

2.V.Parthasarathy

3.V.Ilankumaran

(Appellants 2and 3 are brought on record as legal representatives of the deceased first appellant as per order of this Court made in M.P.No.1 of 2009 in S.A(MD)No.695 of 2008, dated 18.1.2010)

:Appellants/Appellants/Plaintiff

.VS.

1.Seeniammal

2.Saraswathiammal

3.Alagar Raja

4.The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur

5.Sankarapandia Arachiar :Respondents/Respondents1,3 to 6/
Defendants

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the concurrent judgment and decree made in A.S.No. Of 2006, dated 28.1.2008, on the file of Subordinate Judge, Srivilliputhur against the judgment and decree made in O.S.No.17 of 2002, dated 8.7.2005, on the file of Principal District Munsif, Srivilliputhur.



For Appellants	:Mr.V.Chandrasekar
For Respondents 1,2 and 5	: No appearance
For Respondent-3	:Mr.S.Venkatesan for Mr.A.Sivaji
For Respondent-4	:Mr.SRA.Ramachandran Addl.Govt.Pleader

JUDGMENT

The Second Appeal is directed against the concurrent judgment and decree made in A.S.No. Of 2006, dated 28.01.2008, on the file of Subordinate Judge, Srivilliputhur against the judgment and decree made in O.S.No.17 of 2002, dated 8.7.2005, on the file of Principal District Munsif, Srivilliputhur.

2.The plaintiff in the suit is the appellant. He filed the suit for declaration of prescriptive title and for consequential injunction restraining the defendants from interfering with his possession over the suit property. He also sought for declaration that the sale deed executed by D1 to D3 in favour of fourth defendant, dated 30.04.2000 was null and void and for consequential injunction restraining the fifth defendant from transferring the patta in favour of the fourth defendant or any other person. The suit was dismissed by the trial Court and the findings rendered by the trial Court was affirmed by the FirstAppellate Court. Aggrieved by the concurrent



findings, the plaintiff is before this Court by filing this Second Appeal.

3. According to the Plaintiff, the suit property belongs to his paternal grand-father Pandiya Thevar. After the death of Pandiya Thevar, the total extent of land available to the family in the suit survey number was divided into three portions and allotted to his sons namely, Subramania Thevar, Chithra Thevar and Rangasamy Thevar. The Plaintiff is the son of Chithra Devar and defendants 1 to 3 are the sons of Rangasamy Thevar. The plaintiff claimed that each of the sons of Pandiya Thevar were allotted 41 cents in suit survey number. Due to the ill-health of defendants 1 to 3's father Rangasamy Thevar, 41 cents of land allotted to his share was in possession and enjoyment of the plaintiff even during the life-time of Rangasamy Thevar. At the time of death of Rangasamy Thevar, the plaintiff paid a sum of Rs.3000/- to the defendants 1 to 3 to meet the funeral expenses and as consideration for the same, the defendants 1 to 3, gave up their right and conveyed the suit property in favour of the plaintiff in the year 1981 itself. Thus the plaintiff has been in possession and enjoyment of the suit property in the year 1981 openly and continuously by mutating the revenue records.



4. On these pleadings, the plaintiff sought for prescriptive title to the suit property. It was further alleged by the plaintiff that the defendants 1 to 3 sold the suit property to the fourth defendant without having any manner of right over the same and on the strength of the said sale, the defendants 1 to 4 made an attempt to interfere with his possession. Hence the plaintiff was constrained to file the above suit for the relief stated supra.

5. The contesting defendants filed their written statement and resisted the claim of the plaintiff that in the year 1981, the defendants 1 to 3 orally conveyed the suit property to the plaintiff. The defendants also denied the title as well as the possession of the plaintiff over the suit property. The defendants 1 to 3 claimed that their father Rangasamy Thevar had been in possession and enjoyment of 34 cents of land in suit survey number and the said property was conveyed to the fourth respondent under the sale deed, dated 30.04.2000. It was asserted by the defendants that the UDR Patta issued in favour of the plaintiff would not bind them, as the same was issued without notice to them. Thus denying the title as well as the possession of the plaintiff over the suit property, the defendants sought for dismissal of the suit.

6. Before the trial Court, three witnesses were examined on



behalf of the plaintiff and ten documents were marked as Ex.A1 to Ex.A10. On behalf of the defendants, two witnesses were examined as D.W.1 and D.W.2 and four documents were marked as Ex.B1 to Ex.B4. The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the plaintiff failed to prove his title and also the plea of adverse possession over the suit property and dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.2 of 2006, on the file of Sub-Court, Srivilliputhur. The findings rendered by the trial Court was affirmed by the First Appellate Court. Aggrieved by the same, the plaintiff came before this Court by way of this appeal.

7. The learned counsel for the appellants vehemently contended that the plaintiff obtained UDR patta in his name even in the year 1981 and he has been in possession and enjoyment of the same from that date onwards for more than the statutory period. Therefore the Courts below ought to have declared adverse title of the plaintiff in respect of the suit property. The learned counsel further submitted that in the partition entered into among the defendants 1 to 3 in the year 1985, in respect of the family properties, the suit property was not included and the said fact probablise the case of the plaintiff that the suit property was conveyed to the plaintiff even in the year 1981.



8. Prior to the filing of the suit, the plaintiff issued a pre-suit notice under Ex.A5, wherein, it was contended by the plaintiff that the suit property was allotted to his share in partition between him and his brothers. In the pre-suit notice, the plaintiff has not mentioned about the alleged oral conveyance by the defendants 1 to 3 in favour of the plaintiff on payment of Rs.3,000/-. Therefore there is a serious contradiction between the pre-suit notice and the plaintiff's averments in respect of title pleaded by the plaintiff. But the plaintiff seeks declaration of title in respect of the suit property and hence, he has to win on his own strength. As per the plaintiff's averments, at the time of death of the father of defendants 1 to 3, the plaintiff paid a sum of Rs.3000/- towards funeral expenses to the defendants 1 to 3 and in lieu of the same, the suit property was conveyed to him. There cannot be transfer of title in respect of immovable property worth more than Rs.100/- by way of oral sale and it shall be done only by registered document. As per the averments contained in the plaint, no registered document was executed in favour of the plaintiff. Therefore, on the face of the averments found in the plaint, the plaintiff is not entitled to any title over the suit property. The plaintiff further pleaded that from the year 1981 onwards, he has been in possession and enjoyment of the suit property to the exclusion of defendants 1 to 3. It is settled law that adverse possession shall be specifically pleaded and



meticulously proved by cogent evidence. In the case on hand, the plaintiff relied on Ex.A1-UDR Patta issued in his name and Ex.A3 Land Tax paid by the plaintiff, dated 22.03.1989. A perusal of Ex.A1 would suggest that UDR patta was issued in the name of the plaintiff does not have the seal of the official who signed the document. Further, the date of the document was also not mentioned. If really the plaintiff has been in possession and enjoyment of the suit property from 1981 to down to the date of filing of suit, he should have paid the land tax every year, however, the plaintiff filed only isolated document, Ex.A3, to prove the payment of land tax in his name. It was contended by the respondent that UDR patta relied on by the plaintiff was issued to the plaintiff without notice to the defendants. In the absence of any evidence to suggest Ex.A1 UDR patta was issued in favour of the plaintiff after issuing notice to the defendants 1 and 2, who were the original owner of the suit property, this Court is unable to rely on Ex.A1. The isolated land tax receipt marked as Ex.A3 is not sufficient to prove adverse title. The plaintiff has failed to prove the hostile possession for more than the statutory period for getting the declaration of prescriptive title. The Courts below rightly appreciating the evidence available on record came to the conclusion that the plaintiff has failed to prove adverse title sought for by him. Once the prayer for declaration sought for by the



plaintiff fails, other prayer, being consequential to the same, also fails. Therefore, I do not find any justification to interfere with the final conclusion reached by the Courts below while dismissing the suit.

9. Accordingly, finding no substantial questions of law, the Second Appeal is dismissed. No costs.

06.06.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1. The Sub-Judge,
Srivilliputhur.
2. The Principal District Munsif,
Srivilliputhur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



9

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.695 OF 2008

06.06.2024