



S.A(MD)No.584 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.584 of 2009

Amsavalli

... Appellant/Appellant
Plaintiff

2.Karmegam

... 2nd Appellant

*(Second Appellant is impleaded vide Court
order, dated 28.06.2024 made in
C.M.P(MD)No.7938 of 2024 in S.A(MD)No.
584 of 2009)*

Vs.

1.Ramalingam

2.Azhagar

3.Thamizharasi

4.Minor Kaleeswaran

5.Minor Karthik

6.Minor Kousalya

... Respondents/Respondents
Defendants

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 09.04.2009 and made in A.S.No.110 of 2007 on the file of the Sub Court,



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Sivagangai, confirming the judgment and decree, dated 13.07.2007 in O.S.No.41 of 2006 on the file of the District Munsif, Sivagangai and allow this Second Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.C.Rajagopal

JUDGMENT

The plaintiff in the suit is the appellant herein.

2. The suit is for bare injunction. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent finding, the plaintiff has come by way of this Second Appeal.

3. According to the plaintiff, the suit property was originally belonged to one Rayappa Konar and he sold the same to one Noor Mohamed by registered sale deed, dated 26.02.1984. After death of Noor Mohamed, her grand-son through daughter, namely, Aajim got the property by succession and he sold the suit property to plaintiff's husband. The plaintiff's husband purchased the property by way of a sale deed, dated 18.04.2005. The plaintiff and her husband has been in



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possession and enjoyment of the suit property from the date of purchase by enjoying the same. The patta for the suit property was also issued in the name of the plaintiff. The respondents without having any right attempted to interfere with plaintiff's possession and enjoyment of the suit property and hence, the plaintiff was constrained to file a suit for bare injunction.

4. The defendants filed a written statement denying the title as well as the possession of the plaintiff over the suit property. The defendants also claimed that the property covered by the sale deed relied on by the plaintiff had no relation with the suit property. It was claimed by the defendants that their grand-father purchased the suit property from one Periyanna Pillai under document, dated 02.11.1920. After death of plaintiff's grand-father, Konar, his sons of Periyakarupa Konar, Samayamuthu Konar and Udaiyanga Konar succeeded to the suit property and enjoyed the same. It was also claimed that above mentioned Periyakarupa Konar and Udaiyanga Konar died issueless and hence, Samayamuthu Konar got the property absolutely and after his death, his only son Karupaiya Konar enjoyed the same. After death of Karupaiya Konar, the defendants have been in possession and enjoyment of the suit



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property as his heirs. Upon these pleadings, the defendants sought for dismissal of the suit.

5. Before the Trial Court, the plaintiff and her husband were examined as P.W.1 and P.W.2. Three other witnesses were examined as P.W.3 to P.W.5. On behalf of the plaintiff, 6 documents were marked as Exhibits A.1 to A.6. The defendants 1 and 3 were examined as D.W.1 and D.W.2. Yet another witness was examined as D.W.3. On behalf of the defendants, 28 documents were marked as Exhibits B.1 to B.28. Five third party documents were marked as Exhibits X.1 to X.5. Advocate Commissioner's report and plan were marked as Exhibits C.1 and C.2.

6. The Trial Court on appreciation of oral and documentary evidence came to the conclusion that plaintiff failed to prove her lawful possession over the suit property and consequently, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.110 of 2007 on the file of the Sub Court, Sivagangai. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent finding, the plaintiff has come by way of this Second Appeal.



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7. The learned Counsel appearing for the appellant submitted that plaintiff proved her title over the suit property by producing Exhibits A.1 and A.2 and the Courts below failed to apply the well recognized principle of law that the possession follows title. The learned Counsel also submitted that the Village Administrative Officer, who was examined on behalf of the plaintiff had spoken about the possession of the plaintiff and the said material piece of evidence was over looked by the Courts below. Therefore, the learned Counsel submitted that the judgment and decree passed by the Courts below are vitiated by non-consideration of material evidence available on record and hence, sought for allowing of the second appeal.

8. The plaintiff claimed title over the suit property under sale deed executed in favour of her husband, dated 18.04.2005 marked as Exhibit A.2. The parent document was marked as Exhibit A.1. The defendants opposed the claim of the plaintiff by contending that the property referred to in Exhibit A.1 was not the suit property. The Courts below after taking into consideration Exhibits A.1 and A.2 found that the boundaries mentioned in Exhibits A.1 and A.2 are not tallying with each other. The plaintiff failed to lead any evidence to show that property



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covered under Exhibits A.1 and A.2 are one and the same. The Courts below also referred to the Advocate Commissioner report and came to the conclusion that the boundaries noted by the Advocate Commissioner were not tallying with the boundaries mentioned in Exhibit A.1. It is also seen from the discussion of the Courts below that Village Administrative Officer was examined as D.W.3 and from his deposition and also Exhibits X.1 to X.3, they found that the suit property was originally classified as Government Tharisu. After taking into consideration the entire evidence available on record the Courts below came to the conclusion that plaintiff failed to prove her title over the suit property. Though the plaintiff in order to prove her possession relied on the patta issued by Tahsildar, it appears the same has been challenged before the higher authorities and the order passed by the revisional authority, namely, the District Revenue Officer was sought to be marked as additional evidence before the First Appellate Court. However, the same was rejected by the First Appellate Court on the ground that revenue document would not confer any title to the plaintiff. Therefore, the order passed by the Tahsildar granting patta in favour of the plaintiff has not attained finality. The plaintiff has not produced any other document like tax receipts to prove that she has been in effective possession and



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enjoyment of the suit property. The Courts below also concurrently held that the plaintiff failed to prove her title over the suit property. Therefore, the plaintiff is also not entitled to take advantage of the legal proposition possession follows title. Therefore, I do not find anything to interfere with the concurrent finding of facts reached by the Courts below and hence, the Second Appeal stands dismissed as devoid of merits. There shall be no order as to costs.

26.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Sub Court,
Sivagangai.
- 2.The District Munsif,
Sivagangai.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

BTR

Judgment made in
S.A(MD)No.584 of 2009

Dated:
26.07.2024